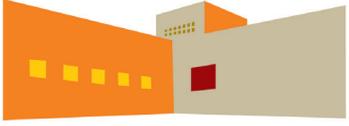


NEW MEXICO   
Commission of Public Records  
at the State Records Center and Archives  
Your Access to Public Information

# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

**Volume XXVIII - Issue 4 - February 28, 2017**

COPYRIGHT © 2017  
BY  
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

# New Mexico Register

Volume XXVIII, Issue 4

February 28, 2017

## Table of Contents

### Notices of Rulemaking and Proposed Rules

#### Albuquerque-Bernalillo County Air Quality Control Board

|  |    |
|--|----|
| Notice Of Hearing To Consider Adoption Of Proposed State Plan For Control Of Certain Emissions From Existing Municipal Solid Waste Landfills And To Amend 20.11.63 NMAC, New Source Performance Standards For Stationary Sources 20.11.64 NMAC, National Emissions Standards For Hazardous Air Pollutants For Stationary Sources 20.11.71 NMAC, Municipal Solid Waste Landfills..... | 83 |
|--|----|

#### Environment Department

##### Construction Programs Bureau

|  |    |
|--|----|
| Notice of Public Hearing To Consider Proposed Amendment To 20.7.5 NMAC – Wastewater Facility Construction Loans..... | 84 |
|--|----|

#### Transportation, Department of

|                               |    |
|-------------------------------|----|
| Notice of Public Hearing..... | 86 |
| Notice of Public Hearing..... | 86 |

---

### Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

#### Game and Fish, Department of

|               |   |                    |    |
|---------------|---|--------------------|----|
| 19.31.17 NMAC | A | Bighorn Sheep..... | 89 |
|---------------|---|--------------------|----|

#### Human Services Department

##### Income Support Division

|                |   |  |     |
|----------------|---|--|-----|
| 8.100.110 NMAC | A | General Operating Policies - Applications.....                           | 90  |
| 8.100.130 NMAC | A | General Operating Policies - Eligibility And Verification Standards..... | 94  |
| 8.139.110 NMAC | A | General Administration - Application Processing.....                     | 108 |
| 8.139.120 NMAC | A | Case Administration - Case Management.....                               | 121 |
| 8.139.410 NMAC | A | General Recipient Requirements - Nonfinancial Eligibility Criteria.....  | 125 |

##### Medical Assistance Division

|                |   |                         |     |
|----------------|---|-------------------------|-----|
| 8.308.12 NMAC  | R | Community Benefit.....  | 138 |
| 8.308.12 NMAC  | N | Community Benefit.....  | 138 |
| 8.200.510 NMAC | A | Resource Standards..... | 155 |
| 8.200.520 NMAC | A | Income Standards.....   | 156 |

#### Public Education Department

|              |   |   |     |
|--------------|---|---|-----|
| 6.29.15 NMAC | N | Primary and Secondary Education-Standards for Excellence-Spanish Language Arts Common Core Standards..... | 160 |
| 6.29.16 NMAC | N | Primary and Secondary Education-Standards for Excellence-Spanish Language Development.....                | 162 |
| 6.29.1 NMAC  | A | Primary and Secondary Education-General Provisions.....   | 164 |

#### Regulation and Licensing Department

##### Dental Health Care, Board of

|             |   |   |     |
|-------------|---|---|-----|
| 16.5.1 NMAC | A | Dentistry (Dentists, Dental Hygienists, Etc.) - General Provisions..... | 182 |
| 16.5.9 NMAC | A | Non-Dentist Owners.....   | 186 |

|                     |   |   |     |
|---------------------|---|---|-----|
| 16.5.16 NMAC        | A | Dentists, Disciplinary Proceedings, License Revocation or Suspension<br>for Disciplinary Actions..... | 188 |
| 16.5.28 NMAC        | A | Dental Hygienists, Local Anesthesia Certification.....  | 190 |
| 16.5.57 NMAC        | A | Management of Pain With Controlled Substances.....  | 120 |
| Optometry, Board of |   |   |     |
| 16.16.15 NMAC       | A | Management of Pain With Controlled Substances.....  | 191 |

---

## **The New Mexico Register**

Published by the Commission of Public Records,  
Administrative Law Division  
1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: [staterules@state.nm.us](mailto:staterules@state.nm.us).

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### NOTICE OF HEARING TO CONSIDER ADOPTION OF PROPOSED STATE PLAN FOR CONTROL OF CERTAIN EMISSIONS FROM EXISTING MUNICIPAL SOLID WASTE LANDFILLS AND TO AMEND 20.11.63 NMAC, NEW SOURCE PERFORMANCE STANDARDS FOR STATIONARY SOURCES 20.11.64 NMAC, NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR STATIONARY SOURCES 20.11.71 NMAC, MUNICIPAL SOLID WASTE LANDFILLS

On Wednesday, April 12, 2017, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (“Air Board”) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM 87102. The hearing will address a petition for regulatory change from the City of Albuquerque, Environmental Health Department (“EHD”), proposing to take certain actions in response to rules promulgated by the U.S. Environmental Protection Agency (“EPA”) affecting municipal solid waste landfills (“MSW landfills”) as described below. Following the hearing, the Air Board at its regular monthly meeting the same evening is expected to consider adopting the regulatory actions and related submittals to EPA proposed in the EHD petition.

The agenda for the April 12, 2017 regular monthly meeting of the Air Board will be viewable at least 72 hours in advance of the meeting at <http://www.cabq.gov/airquality/air-quality-control-board/events/april-12-2017-air-quality-control-board-meeting>.

On August 29, 2016, the EPA issued two final rules affecting emissions of methane from MSW landfills. The first of these rules issued updated emission guidelines for existing MSW landfills. This rule requires states to submit to EPA, by May 30, 2017, a plan under Section 111(d) of the Clean Air Act to implement the updated emission guidelines. The second EPA rule issued standards of performance for newly constructed, modified, or reconstructed MSW landfills.

The City of Albuquerque Environmental Health Department (EHD), Air Quality Program, has petitioned the Air Board, proposing regulatory changes that would address the federal rules for MSW landfills in the following ways:

- (1) EHD proposes to submit a state plan to EPA under Section 111(d) of the Clean Air Act, demonstrating compliance with requirements of the federal emission guidelines for existing MSW landfills, codified at 40 CFR Part 60, Subpart Cf.
- (2) EHD proposes to amend 20.11.71 NMAC, *Municipal Solid Waste Landfills*, to make the requirements for existing MSW landfills in 40 CFR Subpart Cf enforceable as state law.
- (3) EHD proposes to amend 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*, to incorporate by reference federal performance standards for new, modified, and reconstructed MSW landfills under Section 111 of the Clean Air Act, at 40 CFR Part 60, Subpart XXX. EHD’s proposed amendments to this local regulation would also incorporate by reference Section 111 federal performance standards for other stationary sources of air pollution, in addition to MSW landfills, promulgated by EPA as of January 23, 2017.
- (4) EHD proposes to amend 20.11.64 NMAC, *Emission Standards for*

*Hazardous Air Pollutants for Stationary Sources*, in order to incorporate federal emission standards for hazardous air pollutants under Section 112 of the Clean Air Act. These amendments would not relate to landfills but would align additional air quality standards with federal requirements, in accordance with past practice of updating 20.11.63 and 20.11.64 NMAC in tandem to assure uniform regulatory treatment of local stationary sources.

The Public Review Draft of the state plan for landfills and amended 20.11.63, 20.11.64, and 20.11.71 NMAC may be reviewed during regular business hours at the Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, NM 87102. Copies of the Public Review Draft may be obtained by contacting Andrew Daffern, Air Quality Control Board Liaison, at (505) 768-2601 or [adaffern@cabq.gov](mailto:adaffern@cabq.gov). The Public Review Drafts of these documents and EHD’s petition for regulatory change, AQCB Petition No. 2017-1, can also be found on the web site of EHD, Air Quality Program, at: <http://www.cabq.gov/airquality/air-quality-control-board/petitions>.

The hearing on the proposed regulatory change will be conducted in accordance with NMSA 1978 § 74-2-6; City of Albuquerque Joint Air Quality Control Board Ordinance, ROA § 9-5-1-6, *Adoption of Regulations, Notice and Hearing*; Bernalillo County Ordinance, Section 30-35, *Adoption of Regulations, Notice and Hearings*; and 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*.

All interested persons will be given a reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Interested persons may present technical or non-technical testimony.

Persons wishing to present technical testimony must file with the hearing clerk a written notice of intent (NOI) to do so by 5:00 p.m. on Tuesday, August 30, 2016. The contact information for the hearing clerk is: Andrew Daffern, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102. Andrew Daffern may be reached by phone at (505) 768-2601 or by email at [adaffern@cabq.gov](mailto:adaffern@cabq.gov).

As required by 20.11.82.20 NMAC, the NOI shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) include the text of any recommended modifications to the proposed regulatory change;
- (5) list and attach an original and 15 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and
- (6) be served on the petitioner, if the document is an NOI filed by any person other than the petitioner.

An NOI must also follow the filing and service requirements of 20.11.82.16 NMAC.

As provided by 20.11.82.22 NMAC, any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any member of the public may also offer exhibits in connection with non-technical testimony, as long

as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file the written statement prior to the hearing, or submit it at the hearing. Written statements submitted prior to the hearing may be directed to the hearing clerk, Andrew Daffern, at the above contact information.

**NOTICE TO PERSONS WITH DISABILITIES:** If you have a disability and require special assistance to participate in this meeting, please contact the Albuquerque-Bernalillo County Air Quality Control Board Liaison as soon as possible before the meeting date at (505) 768-2601. Those in need of hearing assistance may call 711.

The City of Albuquerque does not discriminate on the bases of race, color, national origin, sex, age or disability. If you believe you have been discriminated against, you may submit a complaint at [www.cabq.gov/humanrights/filing-a-complaint](http://www.cabq.gov/humanrights/filing-a-complaint). You may also contact Gabe Campos at [ODHR@cabq.gov](mailto:ODHR@cabq.gov) or 505-768-4589.

**ENVIRONMENT  
DEPARTMENT  
CONSTRUCTION PROGRAMS  
BUREAU**

**NOTICE OF PUBLIC HEARING  
TO CONSIDER PROPOSED  
AMENDMENT TO 20.7.5 NMAC  
– WASTEWATER FACILITY  
CONSTRUCTION LOANS**

The New Mexico Water Quality Control Commission (“Commission” or “WQCC”) will hold a public hearing on April 11, 2017 at 9:00 am and continuing thereafter as necessary, in the State Capitol Building, Room 307, 409 Old Santa Fe Trail, Santa Fe, New Mexico 87501. The hearing location may change prior to April 11, 2017, and those interested in attending should check the WQCC website: <https://www.env.nm.gov/wqcc/index.html>

prior to the hearing. The purpose of the hearing is to consider proposed amendments to the New Mexico Wastewater Facility Construction Loan regulations (20.7.5 NMAC). The Construction Programs Bureau of the Water Protection Division is the proponent of these regulations.

The proposed amendments to 20.7.5 NMAC would change language in 20.7.5.14.G. and 20.7.5.14.H, to reduce interest rates for Wastewater Construction loans and to specify the use of “per capita income” instead of “median household income.”

Please note formatting and minor technical changes in the regulations may occur. In addition, the Commission may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Commission and evidence presented at the hearing.

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the Commission:

Pam Castaneda, WQCC Administrator  
New Mexico Environment  
Department  
1190 S. St. Francis Drive, S-2102  
Santa Fe, New Mexico, 87502  
(505) 827-2425, Fax (505) 827-2818

The proposed amendments have been posted to the New Mexico Environment Department/ Construction Programs Bureau webpage at <https://www.env.nm.gov/cpb/cpbtop>. Parties interested in receiving a hardcopy should contact Rhonda Holderman by email at: [rhonda.holderman@state.nm.us](mailto:rhonda.holderman@state.nm.us) or by phone at (505) 827-0416. Written comments regarding the new regulations may be addressed to Ms. Castaneda at the above address, and should reference docket number WQCC 16-04 (R).

The hearing will be conducted in accordance with Section 74-6-6

NMSA 1978 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and other applicable procedures. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings and the Hearing Guidelines may be obtained from Ms. Castaneda; they are also available on the Commission's website at <https://www.env.nm.gov/wqcc/index.html>.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony during the hearing must file with the Commission a written Notice of Intent to do so. Notices of Intent must be filed with Pam Castaneda at the address above by 5:00 p.m. on March 28, 2017, and should reference the date of the hearing and docket number WQCC 16-04 (R).

The Notice of Intent shall:

- identify the person for whom the witness (es) will testify;
- identify each technical witness the person intends to present and state the qualifications of that witness including a description of their educational and work background;
- if the hearing will be conducted at multiple locations, indicate the location or locations at which the witness(es) will be present;
- summarize, or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and describe, or attach, all exhibits anticipated to be offered by the person at the hearing.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pam Castaneda, WQCC Administrator at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-2425 or email [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). (TDD or TTY) users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Commission may convene a meeting after the hearing to consider action on the proposal.

**AVISO DE AUDIENCIA PÚBLICA  
PARA CONSIDERAR LAS  
ENMIENDAS PROPUESTAS PARA  
20.7.5 NMAC – PRÉSTAMOS  
PARA LA CONSTRUCCIÓN DE  
INSTALACIONES PARA AGUAS  
RESIDUALES**

La Comisión de Nuevo México para el Control de la Calidad del Agua ("Comisión" o "WQCC" por su sigla en inglés) celebrará una audiencia pública el 11 de abril de 2017 a las 9:00 de la mañana, la cual continuará después de esa fecha según sea necesario, en la Sala 307 del Edificio del Capitolio Estatal, 409 Old Santa Fe Trail, Santa Fe, Nuevo México 87501. El lugar indicado para la audiencia podrá cambiar antes del 11 de abril de 2017, por lo que los interesados en asistir deben verificar esta información en el sitio web de WQCC: <https://www.env.nm.gov/wqcc/index.html> antes de la audiencia. El propósito de la audiencia es considerar las enmiendas propuestas para los reglamentos correspondientes a Préstamos para la Construcción de Instalaciones para Aguas Residuales de Nuevo México (20.7.5 NMAC). El organismo que propone estos reglamentos es la Oficina de Programas de Construcción de la División de Protección del Agua.

Las enmiendas propuestas para 20.7.5 NMAC cambiarían la redacción en 20.7.5.14.G. y en 20.7.5.14.H, para reducir las tasas de interés de los préstamos para la Construcción de Instalaciones para Aguas Residuales y para especificar el uso de "ingresos per cápita" en lugar de "ingreso medio por hogar".

Tenga en cuenta que podrá haber cambios de formato y cambios técnicos menores en los reglamentos. Asimismo, la Comisión podrá realizar otras enmiendas como sea necesario con el propósito de beneficiar la salud pública y la seguridad en respuesta a comentarios del público presentados ante la Comisión y a pruebas presentadas en la audiencia.

Todas las enmiendas propuestas y otros documentos relacionados con la audiencia podrán ser examinados durante el horario laboral en la oficina de la Comisión:

Pam Castaneda, Administradora de WQCC  
Departamento del Medio Ambiente de Nuevo México  
1190 S. St. Francis Drive, S-2102  
Santa Fe, New Mexico, 87502  
(505) 827-2425, Fax (505) 827-2818

Las enmiendas propuestas están publicadas en el sitio web del Departamento del Medio Ambiente de Nuevo México/Oficina de Programas de Construcción en <https://www.env.nm.gov/cpb/cpbtop>. Aquellos interesados en recibir una copia impresa deben comunicarse con Rhonda Holderman por correo electrónico en: [rhonda.holderman@state.nm.us](mailto:rhonda.holderman@state.nm.us) o por teléfono al (505) 827-0416. Los comentarios escritos relativos a las nuevas reglamentaciones deben dirigirse a la Srta. Castaneda en la dirección antes indicada y se debe incluir como referencia el número de expediente WQCC 16-04 (R).

La audiencia se llevará a cabo conforme a NMSA 1978, Sección 74-6-6 de la Ley para la Calidad del Agua; las Pautas para las Audiencias

de Reglamentación de la Comisión para el Control de la Calidad del Agua; y otros procedimientos correspondientes. Se puede obtener una copia de las Pautas para las Audiencias de Reglamentación de la Comisión para el Control de la Calidad del Agua y de las Pautas para las Audiencias por medio de la Srta. Castaneda y también en el sitio web de la Comisión en <https://www.env.nm.gov/wqcc/index.html>.

Todos los interesados tendrán una oportunidad razonable durante la audiencia para presentar pruebas pertinentes, datos, puntos de vista y argumentos, oralmente o por escrito, de presentar documentos y objetos de prueba y de interrogar a los testigos. Toda persona interesada en presentar una declaración escrita que no sea de carácter técnico para que conste en actas, en lugar de testimonio oral, deberá presentar dicha declaración antes de la finalización de la audiencia.

Las personas que deseen presentar testimonio de carácter técnico durante la audiencia deberán presentar por escrito ante la Comisión un Aviso de Intención (Notice of Intent) para ese fin. Los Avisos de Intención deben entregarse a Pam Castaneda en la dirección antes indicada a más tardar a las 5:00 de la tarde del 28 de marzo de 2017, e incluir como referencia la fecha de la audiencia y el número de expediente WQCC 16-04 (R).

El Aviso de Intención debe:

- identificar a la persona para quien testificará/n el/los testigo/s;
- identificar a cada testigo técnico que la persona tenga la intención de presentar y establecer las cualificaciones de cada testigo, incluso una descripción de sus antecedentes educativos y laborales;
- si la audiencia se realizara en diferentes lugares, indicar el lugar o los lugares en los que el/los testigo/s estará/n presente/s;
- resumir o incluir una copia del testimonio directo de cada testigo técnico e indicar la duración prevista del testimonio de ese testigo;

- incluir el texto de toda modificación recomendada para el cambio normativo propuesto; e
- hacer una lista y describir, o adjuntar, todos los documentos y objetos de prueba que la persona presentará en la audiencia.

Toda persona que necesite asistencia, intérprete o un dispositivo auxiliar para participar en este proceso deberá comunicarse con Pam Castaneda, Administradora de WQCC, como mínimo 14 días antes de la fecha de la audiencia en P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, por teléfono al (505) 827-2425 o por correo electrónico: [pam.castaneda@state.nm.us](mailto:pam.castaneda@state.nm.us). Los usuarios de TDD o TTY pueden acceder a ese número por medio de New Mexico Relay Network llamando al 1-800-659-1779 (voz) y los usuarios de TTY deberán llamar al 1-800-659-8331.

La Comisión podrá tomar una decisión acerca del cambio normativo propuesto al finalizar la audiencia, o podrá convocar una reunión después de la audiencia para considerar qué acción tomar en cuanto a la propuesta.

## **TRANSPORTATION, DEPARTMENT OF**

### **NOTICE OF PUBLIC HEARING PROPOSED REVISIONS TO NMAC 7.32.20, 18.20.8, 18.20.10**

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on revisions to Rule Number 7.32.20 NMAC, Driving While Impaired (DWI); Rule Number 18.20.8 NMAC, Driving Safety Schools; and Rule Number 18.20.10 NMAC, New Mexico's Motorcycle Training Program. The purpose of the proposed rule revisions is to update the license and certificate issuance, renewal and revocation procedures for the driving while impaired and driving safety schools, and motorcycle training program.

The hearing is scheduled on April 7, 2017, from 10:00 a.m. to 12:00 p.m. at the New Mexico Department of Transportation, 1120 Cerrillos Road, Training Rooms 1 and 2, in Santa Fe, New Mexico. Please contact Juliet Armijo, Traffic Safety Bureau, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, Telephone (800) 541-7952 or (505) 470-8356 to request a copy of the agenda and the proposed rules.

The hearing will be held before Paul Montoya, Director, Traffic Safety Bureau, NMDOT. Interested persons may also present their views by written statements submitted on or before April 6, to the New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, Telephone (505) 470-8356.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Juliet Armijo at (800) 541-7952 at least ten days before the hearing.

## **TRANSPORTATION, DEPARTMENT OF**

### **NOTICE OF PUBLIC HEARING PROPOSED REVISIONS TO NMAC 7.32.20, 18.20.8, 18.20.10**

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on revisions to Rule Number 7.32.20 NMAC, Driving While Impaired (DWI); Rule Number 18.20.8 NMAC, Driving Safety Schools; and Rule Number 18.20.10 NMAC, New Mexico's Motorcycle Training Program. The purpose of the proposed rule revisions is to update the license and certificate issuance, renewal and revocation procedures for the driving while impaired and driving safety schools, and motorcycle training program.

The hearing is scheduled on April 13, 2017, from 10:00 a.m. to 12:00 p.m. at the UNM Division of Continuing Education, 1634 University Blvd. NE, Rooms B and C, in Albuquerque, New Mexico. Please contact Juliet Armijo, Traffic Safety Bureau, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, Telephone (800) 541-7952 or (505) 470-8356 to request a copy of the agenda and the proposed rules.

The hearing will be held before Paul Montoya, Director, Traffic Safety Bureau, NMDOT. Interested persons may also present their views by written statements submitted on or before April 6, to the New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, Telephone (505) 470-8356.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Juliet Armijo at (800) 541-7952 at least ten days before the hearing.

---

**End of Notices of  
Rulemaking and  
Proposed Rules**

**This Page Intentionally Left Blank**

## Adopted Rules

### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

### GAME AND FISH, DEPARTMENT OF

**This is an amendment to 19.31.17 NMAC, Section 11, effective 2/28/17.**

**19.31.17.11 BIGHORN SHEEP HUNTING SEASONS:** The 2015-16 through 2018-19 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses available, and bag limits. Additional eligibility requirements and restrictions are defined in Section 9 of 19.31.17 NMAC above. Licenses issued through private land authorizations are not ‘once-in-a-lifetime’. The Rocky Mountain ewe hunts shall be offered to address department management needs.

**A.** Rocky mountain bighorn ram hunt for any legal sporting arms (BHS-1-201). Hunters applying for BHS-1-201 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-201 will be up to 24 with a bag limit of one ram.

| open GMUs   | 2015-2016 hunt period | 2016-2017 hunt period | 2017-2018 hunt period | 2018-2019 hunt period |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| 16B, 22, 23, 24   | 1/1-1/31              | 1/1-1/31              | 1/1-1/31              | 1/1-1/31              |
| 45  | 8/14-8/23             | 8/12-8/21             | 8/11-8/20             | 8/10-8/19             |
|   | 8/24-9/6              | 8/22-9/4              | 8/21-9/3              | 8/20-9/2              |
| 45, YO  | 8/24-9/6              | 8/22-9/4              | 8/21-9/3              | 8/20-9/2              |
| 53 south of NM 38 and east of NM 522                                | 9/1-9/15              | 9/1-9/15              | 9/1-9/15              | 9/1-9/15              |
| 53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950 | 8/7-8/16              | 8/5-8/14              | 8/4-8/13              | 8/3-8/12              |
|   | 8/17-8/30             | 8/15-8/28             | 8/14-8/27             | 8/13-8/26             |
| 49, 50, 53 west of NM 522   | 8/15-1/15             | 8/15-1/15             | 8/15-1/15             | 8/15-1/15             |
| 55 north of NM196/FS Rd 1950  | 8/15-1/15             | 8/15-1/15             | 8/15-1/15             | 8/15-1/15             |
| 58; public draw   | TBD                   | TBD                   | TBD                   | TBD                   |
| 58; private land  | TBD                   | TBD                   | TBD                   | TBD                   |

**B.** Rocky mountain bighorn ewe hunt for any legal sporting arms (BHS-1-202). Hunters applying for BHS-1-202 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-202 will be up to 62 with a bag limit of one ewe.

| open GMUs   | 2015-2016 hunt period | 2016-2017 hunt period | 2017-2018 hunt period | 2018-2019 hunt period |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| 45  | 9/7-9/27              | 9/5-9/25              | 9/4-9/24              | 9/3-9/23              |
| 45, YO  | 9/7-9/27              | 9/5-9/25              | 9/4-9/24              | 9/3-9/23              |
| 53 south of NM 38 and east of NM 522                                    | 9/16-9/30             | 9/16-9/30             | 9/16-9/30             | 9/16-9/30             |
|   | 10/1-10/15            | 10/1-10/15            | 10/1-10/15            | 10/1-10/15            |
| 53 south of NM 38 and east of NM 522, YO                                | 9/16-9/30             | 9/16-9/30             | 9/16-9/30             | 9/16-9/30             |
| 53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950     | 9/14-9/27             | 9/12-2/25             | 9/11-9/24             | 9/10-9/23             |
| 53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, YO | 9/14-9/27             | 9/12-2/25             | 9/11-9/24             | 9/10-9/23             |

**C.** Rocky mountain bighorn ewe hunt for bow only (BHS-2-203). Hunters applying for BHS-2-203 will be allowed to select and rank up to two open areas/hunt dates. The number of licenses available for BHS-2-203 will be

up to 12 with a bag limit of one ewe.

| open GMUs  | 2015-2016 hunt period | 2016-2017 hunt period | 2017-2018 hunt period | 2018-2019 hunt period |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| 53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950            | 8/31-9/13             | 8/29-9/11             | 8/28-9/10             | 8/27-9/9              |
| 53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, <b>YO</b> | 8/31-9/13             | 8/29-9/11             | 8/28-9/10             | 8/27-9/9              |

**D.** Desert bighorn ram hunt for any legal sporting arms (BHS-1-204). Hunters applying for BHS-1-204 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-204 will be up to [27] 33 with a bag limit of one ram.

| open GMUs                                  | 2015-2016 hunt period | 2016-2017 hunt period | 2017-2018 hunt period    | 2018-2019 hunt period    |
|--|-----------------------|-----------------------|--------------------------|--------------------------|
| 27   | 11/1-11/30            | 11/1-11/30            | 11/1-11/30               | 11/1-11/30               |
| 26   | 10/1-10/15            | 10/1-10/15            | 10/1-10/15               | 10/1-10/15               |
|  | 10/16-10/31           | 10/16-10/31           | 10/16-10/31              | 10/16-10/31              |
| 19   | 12/14-1/1             | 12/14-1/1             | 12/14-[+/+] <u>12/21</u> | 12/14-[+/+] <u>12/21</u> |
|  | n/a                   | n/a                   | <u>12/27-1/3</u>         | <u>12/27-1/3</u>         |
| 20: south of NM 51                         | 11/16-11/30           | 11/16-11/30           | 11/16-11/30              | 11/16-11/30              |
|  | 12/1-12/15            | 12/1-12/15            | 12/1-12/15               | 12/1-12/15               |
| 20: north of NM 51; public draw            | 8/21-8/30             | 8/19-8/28             | 8/18-8/27                | 8/17-8/26                |
|  | 10/16-10/25           | 3/3-3/12              | 10/13-10/22              | 3/1-3/10                 |
|  | 11/20-11/29           | n/a                   | 11/17-11/26              | n/a                      |
| 20: north of NM 51; private land           | 3/4-3/13              | 10/14-10/23           | 3/2-3/11                 | 10/12-10/21              |
|  | n/a                   | 11/18-11/27           | n/a                      | 11/16-11/25              |
|  | 8/21-8/30             | 8/19-8/28             | 8/18-8/27                | 8/17-8/26                |
| 20: north of NM 51, <b>YO</b> public draw  | 11/20-11/29           | 11/18-11/27           | 11/17-11/26              | 11/16-11/25              |
| 20: north of NM 51, <b>YO</b> private land | 11/20-11/29           | 11/18-11/27           | 11/17-11/26              | 11/16-11/25              |
| 13, 17                                     | 12/1-12/31            | 12/1-12/31            | 12/1-12/31               | 12/1-12/31               |

[19.31.17.11 NMAC - Rp, 19.31.17.11 NMAC, 4-1-15; A, 2-28-17]

**HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**This is an amendment to 8.100.110 NMAC, Sections 8, 9 and 11.**

**8.100.110.8 RIGHT TO APPLY:**

Each individual shall have the opportunity to apply for public assistance programs administered by the department or to have an authorized representative do so on his or her behalf. ~~[An application may be made whether or not it appears as if the applicant is eligible]~~ Paper application forms must be readily accessible in the ISD local office lobby and provided to any person

who requests the form. Applications are made in a format prescribed by the department to include paper forms or electronic submissions. All forms and notices will be accessible to individuals with limited-English proficiency or disabilities. ISD will post signs in local field offices which explain the application processing standards and the right to file an application on the day of initial contact.

**A. Screening:** Every applicant shall have the opportunity to meet, face to face or telephonically, with ~~[a department employee]~~ ISD when an application is submitted during regular business hours. ~~[The employee]~~ ISD will review the application, assist the applicant

in completing the application, if it is incomplete or assistance is otherwise necessary, and will assist in identifying the public assistance program(s) ~~[that]~~ for which the applicant wishes to apply.

**(1) Screening for supplemental nutrition assistance program (SNAP) expedited service:**

~~[The employee]~~ ISD will screen SNAP applicants for entitlement to expedited processing, using the standard formula and documenting the application, ~~[as appropriate]~~ the same day the application is received by ISD.

**(a)**

If the applicant is eligible for expedited service, ~~[the employee will process]~~ the SNAP application will

be processed [within the specified timeframes outlined in federal and state laws and regulations] in accordance with 8.139.110.16 NMAC.

(b) If expedited SNAP processing is denied, the applicant will be informed of the right to request an agency review conference to be held within two days of the request unless the household requests a later date pursuant to Paragraph (4) of Subsection E of 8.100.970.10 NMAC.

(2) **Proof checklist:** [The employee will provide the applicant with the proof checklist on a standard department form that identifies the verification requirements needed for each public assistance program and the various methods that each factor may be verified or established. The employee will explain why the verification is needed, how to obtain the verification, provide examples of the types of verification, the period of time the verification should cover, and offer to help the applicant obtain the verification]. ISD shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of ISD's responsibility to assist the household in obtaining required verification provided the household is cooperating with ISD as specified in 7 C.F.R. 273.2(d)(1) and Section F of 8.139.110.11 NMAC. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in 7 C.F.R. 272.4(b). At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

(3) **Scheduling the appointment:** [The employee will schedule an application interview to be held within ten (10) working days of the date the application was submitted that is, to the extent possible,

convenient for both the applicant and the department. The employee will provide the applicant with a written appointment letter that will include: the date, time and place of the appointment, the name and telephone number of the local county office, the consequences of missing an appointment, how to reschedule an appointment, the possibility of a waiver of the in-office interview, and that the spouse, any other responsible person in the household, or an authorized representative may attend the interview with the applicant or in the applicant's place.] ISD must schedule an interview for all applicant households who are not interviewed on the day their application is received by ISD. An interview should be held within 10 working days from the date the application is received by ISD and, to the extent possible, convenient for both the applicant and ISD. To the extent practicable, ISD must schedule the interview to accommodate the needs of groups with special circumstances, including working households. ISD must schedule all interviews as promptly as possible to ensure eligible households receive an opportunity to participate within 30 days after the application is filed. ISD will send an appointment letter for an interview that includes contact information for ISD, date, time and place of the appointment. ISD must notify each household that misses its interview appointment that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts ISD within the 30-day application processing period, ISD must schedule a second interview. ISD may not deny a household's application prior to the 30th day after application if the household fails to appear for the first scheduled interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, ISD must issue prorated benefits from the date of application.

**B. Alternative interviews:** Specific requirements for telephone and out of office interviews

are outlined in each program's chapter on this topic.

**C. Screening [by mail or drop box] applications received by alternative means:** [If an applicant mails in the application, leaves the application in a drop box, or is unwilling or unable to be screened in person, the department will screen the application for all public assistance programs and for expedited SNAP eligibility upon receipt. An appointment letter and the proof checklist, with appropriate boxes marked, will be mailed to the applicant on the same day as the date of application.] ISD will screen applications for all public assistance programs and for expedited SNAP eligibility which includes applications received by alternative means.

Alternative means include mail, fax, online, electronic transmission, or through an authorized representative.

**D. Resource planning session:** No later than forty-five (45) days after the date of application, the individual applying for qualified benefits shall be provided a resource planning session. The session shall ascertain the immediate needs of the individual or family, shall help the individual to assess his or her financial and non-financial options and shall result in referrals to such other agencies or programs as the individual deems appropriate to his or her specific needs.]

[07/01/97, 04/01/98; 8.100.110.8 NMAC - Rn, 8 NMAC 3.ISD.111, 04/13/2001; A, 11/27/2013; A, 03/01/2017]

**8.100.110.9 SUBMISSION OF FORMS:** Applicants may submit forms to a local county office in person or through an authorized representative, through the approved department web portal, by fax or by mail. The date the application and forms are received by ISD will be documented on the form. Applications submitted after regular business hours shall be considered received after business hours.

**A. Incomplete application:** An applicant has the right to file an incomplete form

as long as the form contains the applicant's name, address and the signature of a responsible household or benefit group member or the household or benefit group's authorized representative, if one is designated.

**B. Requesting application forms:** When [the department] ISD receives a request for an application for assistance, [the department] ISD will mail, fax or hand deliver a paper application and provide the approved [department] web portal address (for online applications), as indicated by the requestor, on the same day the request is received [by the department].

**C. ISD shall provide households that complete an on-line electronic application in person at the ISD office the opportunity to review the information that has been recorded electronically and provide them with a copy of that information for their records, upon request.**

[07/01/97; 8.100.110.9 NMAC - Rn, 8 NMAC 3.ISD.112, 04/13/2001; A, 11/27/2013; A, 03/01/2017]

**8.100.110.11 PROCESSING APPLICATIONS:**

**A. [Financial assistance (FA)] Cash Assistance (CA)/SNAP combined cases:** To facilitate participation in SNAP, the Food Stamp Act requires that individuals applying for [FA] CA be able to apply for SNAP benefits at the same time.

**(1)**

**Application:** A household applying jointly for [FA] CA and SNAP is required to file only one application on a form prescribed by [the department] ISD. The application contains the information necessary to complete the application process whether it was submitted by paper format or electronically online. If it is unclear to [the department] ISD whether the applicant intends to apply for SNAP, [the department] ISD will ask the applicant during the [FA] CA interview or other contact may be made with the applicant. An application for SNAP will be processed in accordance with time

standards and procedures set forth in federal and state laws and regulations governing SNAP, including expedited processing provisions.

**(2) Single**

**interview:** Whenever possible, a single interview will be held with an applicant who applies jointly for [FA] CA and SNAP benefits.

**(3)**

**Categorical eligibility:** A SNAP household that meets criteria set forth in 8.139.420.8 NMAC is categorically eligible. If a household does not meet SNAP eligibility criteria, but is potentially categorically eligible, [the department] ISD must postpone denying the SNAP application until the thirtieth (30th) day.

**(4)**

**Application processing:** Shall be processed in accordance with 7 C.F.R 273.2 j(1)(iv). As a result of differences in [FA] CA and SNAP application processing procedures and timeliness standards, eligibility for SNAP benefits may be determined prior to [FA] CA eligibility determination. Action on a SNAP application may be postponed until categorical eligibility is established to afford the household any benefits of this provision. However, SNAP approval may not exceed the applicable SNAP expedited or regular application processing timeliness standards.

**(5)**

**Application is denied:** If [an FA] a CA application is denied, an applicant is not required to file a new SNAP application. SNAP eligibility will be determined on the basis of the original application filed jointly for [FA] CA and SNAP, as well as any other documentation and information obtained in the course of the [FA] CA determination that is relevant to SNAP eligibility and benefit amount. A SNAP application may not be denied based on [an] a [FA] CA denial reason, but must be based on the SNAP eligibility criteria.

**(6) Denial**

**retrieval:** A SNAP application that is denied on the 30th day must be readily retrievable for another 30 days, in case [if] the household is

later determined eligible for [FA] CA or supplemental security income (SSI) benefits. When this occurs, [the department] ISD will use the original SNAP application, update any information and approve the SNAP case with prorated benefits as of the date of [FA] CA or SSI approval or payment effective date, whichever is later. A second interview is not necessary, however, the applicant or authorized representative should initial all changes and sign and date the verification of the changes.

**B. Reporting**

**changes:** All participants in public assistance programs administered by the department are required to report any changed circumstances that relate to their eligibility for assistance or level of benefits. Each participant is provided with a list of the specific information [he/she] he or she is required to report and the reporting time limits. [~~Clients who report a change for FA are considered to have reported the change for SNAP purposes.~~] When a change is reported, [the department] ISD must ensure that adjustments are made in the client's eligibility status or allotment for those months that the reported change is in effect, in accordance with each program's chapter on this topic.

**(1) Notice:**

Whenever a client's benefits are altered as a result of changes, or whenever a certification period is shortened to reflect changes in the household's circumstances, the client is notified of the action by [the department] ISD in accordance with the notice requirements found in 8.100.180.10 NMAC and 8.100.180.11 NMAC. If the certification period is shortened, the household's certification period may not end any earlier than the second month following the month [the department] ISD determines the certification period should end. This allows adequate time to send a notice of expiration and for the household to timely reapply. If [FA] CA benefits are terminated, but the household is still eligible for SNAP benefits, members of the household must be informed about SNAP employment &

training and ABAWD requirements, if applicable.

(2) [FA]

**CA reduction or termination within SNAP certification period:**

Whenever a reported change results in the reduction or termination of a client's [FA] CA benefits within the SNAP certification period, action will be taken to determine how the change affects the client's SNAP eligibility and benefit levels.

(a)

**Sufficient information:** When there is sufficient information to determine how the change affects SNAP eligibility and benefit levels, the following actions will be taken:

(i)

**Reduction/termination of SNAP benefits:**

A change that reduces or terminates SNAP, [FA] CA or both benefits will generate a notice of adverse action for each category of assistance that is sent to the household and authorized representative. The notice(s) of adverse action will inform the household of its fair hearing rights and method for requesting continuation of benefits.

(ii)

**Increase in SNAP benefits:** If the reduction/termination of [FA] CA benefits results in the increase of SNAP benefits, the increase in SNAP benefits occurs after the [FA] CA notice period expires and the [FA] CA grant is actually reduced or terminated.

(b)

**Insufficient information:** Whenever there is insufficient information to determine how the [FA] CA change affects the client's SNAP eligibility and benefit level, the following actions shall be taken:

(i)

**[FA] CA notice of adverse action required:** Where [an FA] a CA notice of adverse action has been sent and the client requests a fair hearing and [FA] CA benefits are continued pending the appeal, the household's SNAP benefits will be continued on the same basis. However, the household must recertify for SNAP benefits if the SNAP certification period expires before the fair hearing

process is completed.

(ii)

**[FA] CA notice of adverse action not required:**

If [an FA] a CA notice of adverse action is not required, or the client decides not to request a fair hearing and continuation of [FA] CA benefits, the household must be notified that its certification period will expire at the end of the month following the month the notice of expiration is sent, and that it must reapply if it wishes to continue to participate in the SNAP. The notice of expiration will also explain to the household that the certification period is expiring because of changes in its circumstances that may affect its SNAP eligibility and benefit level.

(3)

**Certification periods:** [The department] ISD will assign [FA] CA and SNAP certification periods that expire at the same time. In no event are [FA] CA and SNAP benefits to be continued beyond the end of a certification period.

(4)

**Recertification:** Households in which all members are contained in a single [FA] CA grant or in a single general assistance (GA) grant will have their SNAP interviews for recertification, to the extent possible, at the same time they are redetermined for [FA] CA.

(5) **Reopened**

**cases:** If the [FA] CA and SNAP cases are closed or the SNAP certification expires, and the former recipient reapplies for one or both programs for the month following closure or expiration, benefits are prorated from the date of application for SNAP. If reapplication is made for [FA] CA or SNAP or both, following a break of one full month or more, SNAP and [FA] CA benefits for the month of application will be determined prospectively under beginning month provisions.

C. **Other processing standards**

(1) **SSI**

**Households:** Households in which all members are applying for SSI benefits are handled in the same manner as [FA] CA households with

respect to the postponement of SNAP approval or denial and the retrieval of denied SNAP applications.

(a)

Since [the department] ISD cannot monitor the progress of the SSI application, and if the SNAP application is denied on the [thirtieth] 30th day, the household must be advised to reapply for SNAP when it has been notified of SSI approval.

(b)

SSI households are also entitled to apply for SNAP and be recertified at the social security administration (SSA) offices. SSA will accept the application and forward the completed application, transmittal form, and any available verification to the designated local ISD field office. When SSA accepts and refers the application, the household is not required to appear at a second office interview, although [the department] ISD may request additional verification or information needed to make an eligibility determination. Processing time limits begin when the SNAP application is registered at the SSA office.

(2) **GA**

**households:** Households in which all members are applying for state administered GA are to be processed jointly for GA and SNAP benefits. However, since these households are not, nor will they become categorically eligible, the provisions to postpone approval or denial and to retrieve denied SNAP applications do not apply.

(3)

**Mixed households:** Households in which some but not all of the household members are applying for NMW benefits will file separate applications for [FA] CA and SNAP benefits. Applications will be handled under the same processing provisions required for nonfinancial assistance households. However, if those not applying for [FA] CA benefits are recipients of SSI, the SNAP application would be jointly processed, because SSI recipients are already considered [FA] CA recipients.

(4)

**Application processing standards joint applications other than CA/ SNAP:** Each type of benefit applied for will be processed according to its specific procedures and timeliness standards. No benefit's processing will be delayed waiting for other benefit's requirements.

[07/01/97, 04/01/98; 8.100.110.11 NMAC - Rn, 8 NMAC 3.ISD.114, 04/13/2001; A, 04/01/2010; A, 11/27/2013; A, 03/01/2017]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.100.130 NMAC, Sections 8, 9, 10-16, 19, 22, 23, 24 and 26 - 28.**

**8.100.130.8 PRINCIPLES OF ELIGIBILITY:**

The income support division (ISD) is responsible for administering food, cash, energy, and medical assistance programs. These programs are funded through federal or state sources and provide assistance to individuals who meet certain eligibility factors. State and federal regulations determine eligibility factors for each program. ISD determines if an individual qualifies for a program, and ensures that eligible individuals receive the assistance as quickly as possible and, in any event, within the application time frames for the applicable program.

**A. Proof of eligibility:**

Determining eligibility for assistance requires that certain verification regarding an applicant/recipient's circumstances be made available to ISD. This verification is retained in the case record or noted in the case narrative.

**(1) Applicant/recipient responsibility:**

The applicant/recipient is responsible to provide and obtain the verification necessary to determine eligibility.

**(2) ISD**

**responsibility:** ISD is responsible for the following:

**(a)**

to explain program participation

requirements and the program specific eligibility factors to applicants/recipients;

**(b)**

to explain the information and documents that must be provided to establish eligibility under each eligibility factor for a specific program;

**(c)**

to offer and provide assistance in obtaining verification of an eligibility factor when the applicant/recipient indicates that verification may be difficult or costly to obtain; difficulty in obtaining verification may arise as a result of such circumstances as an applicant/recipient's limited ability to read, speak or understand the English language, mental impairments, physical illness, disability, lack of funds, lack of transportation or lack of knowledge about how to obtain the information; assistance by ~~[the caseworker]~~ ISD includes explaining written information orally in the applicant/recipient's language, providing an interpreter, providing an address or telephone number of a person or agency, making telephone or written inquiries, allowing an applicant/recipient to use the telephone, locating a document, instructing an applicant in obtaining a document, requesting a document on behalf of an applicant/recipient or contacting a collateral contact; the assistance offered and provided is based on the particular needs of the applicant and ~~[the caseworker's]~~ ISD's ability to address those needs;

**(d)**

to inform applicants/recipients ~~[shall be informed]~~ in writing of their responsibility to provide necessary verification.

**(3)**

**Incomplete information:** When available information is inconclusive, incomplete or indefinite, ~~[HSD]~~ ISD shall be responsible for explaining, in writing, what questions remain and how they can be resolved. The explanation must make it clear that eligibility cannot be established without the information or documents and that failure to provide them shall result in denial, reduction or

termination of assistance.

**(a)**

The applicant/recipient shall also be informed they may reapply at any time but that the information, documentation or actions may affect the reapplication. If the applicant/recipient does not provide all of the verification needed, a decision shall be made to the extent possible, based on the existing verified information.

**(b)**

For MAGI medicaid purposes, reasonable compatibility will be effectuated in accordance with 42 CFR 435.952.

~~[(b)]~~ **(c)**

When assistance is denied, reduced, delayed or terminated due to failure to provide information or documents as requested, the case record must contain the explanation that such failure is the basis for the action. The client shall be informed in writing of the action.

**B. Failure to provide verification:**

An applicant/recipient cannot be considered eligible for assistance until necessary verification is obtained. To the extent possible, ~~[the caseworker]~~ ISD shall make eligibility determinations based on verified eligibility issues rather than failure to provide information.

**C. Applicants/recipients may submit documentary evidence in person, by mail, facsimile, or other electronic device or through an authorized representative.**

[8.100.130.8 NMAC - Rp, 8.100.130.8 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.9 METHODS OF VERIFICATION:**

**A. Verification to**

determine eligibility and benefit level is obtained through six methods. Not all methods will necessarily be used in each case. The six methods are outlined in Subsections B - G of this section as well as the circumstance in which they may be used.

**B. Prior case data not subject to change:**

Verification of an eligibility factor not subject to change which previously has been verified is accepted. At the application

interview, [the caseworker] ISD shall advise the applicant/recipient of any eligibility factors which have previously been established through documents in [HSD's] ISD's possession and that are not subject to change. [The caseworker] ISD shall not require further verification of any eligibility factors already established. Such factors include, U.S. citizenship, permanent residency, birth date, relationship, social security enumeration and deprivation due to the death of a parent.

**C. [Government]**

**Electronic data:** Every applicant/recipient shall be informed that the information provided is subject to verification through [government] federal, state, local and contracted data systems. [The caseworker shall review with the applicant/recipient information received from government data systems. The caseworker shall not require further verification of such information unless it is disputed by the applicant or the information is otherwise questionable as defined in 8.100.130.12 NMAC] ISD shall review the information received from the data source with the applicant/recipient and not require additional verification of such information unless it is disputed by the applicant/recipient, the information is otherwise questionable, or the information does not comply with specific benefit requirements. Questionable information is defined in 8.100.130.12 NMAC.

[Government] Electronic data checks are automatically made and are not considered to be collateral contacts. The [government] electronic data checked includes, but [are] is not limited to:

(1) SSA and SSI information through the beneficiary data exchange (BENDEX) and the state data exchange (SDX) systems:

(a) the household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contrary to the information provided by the household or is unavailable;

(b) eligibility and benefit level determination shall not be delayed past the application processing standards of 8.100.130.11 NMAC of this part if SDX or BENDEX data is unavailable;

(2) wage data and unemployment compensation benefits (UCB) through the interface with the New Mexico department of workforce solutions (NMDWS) - unemployment insurance database;

(3) interest, dividends, unearned income and self-employment wages through interfaces with the BENDEX wage data and internal revenue service (IRS) available through income and eligibility verification systems (IEVS):

(a) if the IEVS-obtained information is questionable, this information shall be considered unverified upon receipt and [the caseworker] ISD shall take action to request verification of the information;

(b) except as noted in this paragraph, prior to taking action to terminate, deny or reduce benefits based on IEVS-obtained information, [the caseworker] ISD shall request verification of the information;

(4) vehicle registration and driver's license information available from the New Mexico motor vehicle division; and

(5) child support payment information and absent parent information available from the child support enforcement division.

(6) **Restrictions:** Information on earnings, benefits, resources and absent parents disclosed through government data systems shall be used only for the purpose of:

(a) verifying an applicant/recipient's eligibility;

(b) verifying the proper amount of benefits;

(c) investigating to determine whether

recipients received benefits to which they were not entitled; and (d) substantiating information which will be used in conducting criminal or civil prosecution based on receipt of benefits to which recipients were not entitled.

**D. Documentary evidence** [is the primary source of verification for information not established in prior case information or government data. Obtaining necessary verification through documentary evidence readily available to the applicant/recipient shall always be explored before collateral contacts, home visits, or sworn statements are used. Documentary evidence consists of a written confirmation of a household's circumstances. Acceptable verification is not limited to any single type of document. The types of documents which may be accepted as verification are specified under the sections pertaining to non-financial, financial and allowances/ deductions verification standards later in this chapter. The enumeration of certain types of documents is not meant to exclude other sources of information that the client might be able to provide. The caseworker shall provide applicants/recipients with receipts for verification documents provided subsequent to the interview] ISD shall use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence, collateral contact or data from federal, state, local or contracted data sources, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence cannot be

obtained or is insufficient to make a determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. ISD is responsible for obtaining verification from acceptable collateral contacts. If a collateral contact is not available, a sworn statement shall be accepted from the household. ISD shall provide applicants/recipients with receipts for verification documents provided.

**E. Collateral**

**contacts:** A collateral contact is an oral or written confirmation of a household's circumstances by a person outside the household. [The easeworker] ISD shall document the reason for utilizing a collateral contact in the case file.

(1) A collateral contact can be used only when the applicant/recipient selects a collateral contact as the source of verification and:

(a) [the applicant/recipient indicates difficulty in obtaining acceptable documentary evidence; or] ISD cannot verify using a trusted electronic source;

(b) [the documentary evidence provided by the applicant/recipient is inadequate or questionable.] the applicant/recipient indicates difficulty in obtaining acceptable documentary evidence; or

(c) the documentary evidence provided by the applicant/recipient is inadequate or questionable.

(2)

**Selection of a collateral contact:**

The applicant/recipient and [the easeworker] ISD shall select a mutually agreed upon collateral contact. A collateral contact must have knowledge of the applicant/recipient's circumstances and must be able to give accurate third party information.

(a) [The easeworker] ISD may select a collateral contact only if the household fails to designate one or designates one who lacks knowledge of the applicant/ recipient's

circumstances or cannot give accurate information. If the applicant/recipient does not agree to the collateral contact and does not designate an acceptable collateral contact, the application may, in appropriate circumstances, be denied for failure to verify.

(b) A collateral contact shall not be rejected solely based on the following criteria:

(i) they are related to the applicant/ recipient;

(ii) they are a recipient of public assistance; or

(iii) [because] they do not have a telephone.

**(3) Failure**

**on the part of a collateral contact:**

[The easeworker] ISD shall not deny or delay an eligibility decision solely because of failure of a collateral contact to provide information. [The easeworker] ISD shall decide the applicant/recipient's eligibility and benefit amounts based on all readily available information.

**F. Home visits:** Home visits may be used as verification only when electronic data or documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained. Home visits shall be selected as a method of verification with the applicant/recipient's consent. [The easeworker] ISD shall schedule the home visit with the applicant/recipient in advance during normal business hours. [The easeworker] ISD shall document the reason for the home visit in the case record.

**G. Sworn statements:**

(1) If the applicant/recipient has an immediate need for assistance, [the easeworker] ISD shall accept and, if necessary, assist the applicant/ recipient to identify necessary factors to be included in the statement, an applicant/recipient's sworn statement to verify one or more eligibility factors when there is:

(a) a reasonable explanation as to why electronic data documentary

verification or a collateral contact is not readily available to establish the factors; and

(b) the applicant/recipient's statement does not contradict other credible information received by [the easeworker] ISD; in such instances where the statement contradicts the other information, [the easeworker] ISD may require additional verification within a reasonable time after approval and authorization of assistance: an applicant/recipient who objects to such an additional request for information shall have the right to request and receive a fair hearing.

(2) A sworn statement is defined as the applicant/ recipient's statement signed under penalty of perjury. [8.100.130.9 NMAC - Rp, 8.100.130.9 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.10 SELECTION OF VERIFICATION:** Verification shall be requested only when necessary to establish a specific eligibility factor or benefit amount for a program and is not available or acceptable from an electronic source, in accordance with other benefit requirements.

The method of verification which is selected to establish eligibility on a factor is determined through discussion between [the easeworker] ISD and the applicant/recipient.

**A. Only necessary verification:** [The easeworker] ISD shall only request verification which is necessary to establish eligibility or benefit amounts for the assistance program(s) for which the applicant/ recipient has applied.

**B. Ready availability:** The determination that verification is readily available will be made through discussion with the applicant/ recipient. A readily available document is one which can be obtained by the applicant/recipient within five working days and at no cost to the applicant/recipient.

**C. Verification of a negative statement:** Verification, other than by sworn statement, of a negative statement shall not be

required unless the statement is or becomes questionable as defined in 8.100.130.12 NMAC and at least one specific method of verifying the statement is readily available. A negative statement is a statement by an applicant/recipient that something does not exist or did not occur. Negative statements may be discussed with the applicant/recipient depending on the applicant/recipient's circumstances.

**D. Verifying more than one factor:** To the extent possible, [the caseworker] ISD shall use a document to establish more than one eligibility factor. [8.100.130.10 NMAC - Rp, 8.100.130.10 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.11 TIMEFRAME FOR PROVISION OF**

**VERIFICATION:** An applicant/recipient is always allowed the complete time processing deadline for the program to provide necessary verification. The minimum amount of time allowed is specific to the program. This requirement pertains to requests for verification for initial applications as well as for verification for ongoing eligibility. Below are the time frames for provision of verification by type of assistance. [The caseworker] ISD shall make an eligibility decision within three work days of the receipt of all necessary verification.

**A. Food assistance and NMW/EWP cash assistance programs:** The application disposition deadline for [the food-stamp] SNAP and cash assistance programs is 30 calendar days.

**(1) Expedited (emergency) [food-stamps] SNAP:** If applicant is eligible for expedited [food-stamp] SNAP processing, issue benefits no later than the sixth day following the date of application to be available to the applicant/recipient on the seventh day or the preceding work day if the sixth day falls on a weekend or holiday.

**(2) Day 1:** Calendar day following date of application.

**(3) Approvals:** If verification provided establishes eligibility and the 30th calendar day after the application is:

**(a)** Monday by the preceding Friday, the 27th day;

**(b)** Tuesday by the preceding Monday, the 29th day;

**(c)** Wednesday by the preceding Tuesday, the 29th day;

**(d)** Thursday by the preceding Wednesday, the 29th day;

**(e)** Friday by the preceding Thursday, the 29th day;

**(f)** Saturday by the preceding Friday, the 29th day;

**(g)** Sunday by the preceding Friday, the 28th day;

**(h)** Monday holiday by the preceding Friday, the 27th day;

**(i)** if necessary verification is not received by these deadlines but is received on or before the end of the processing period, approve on the day that full verification is provided.

**(4) Need-based determination:** ~~[If verification provided establishes eligibility, ineligibility or justification for reduced benefits, approve, deny, or approve reduced benefits, no later than the 30th day after the application date, by the preceding work day if the 30th day falls on a weekend or holiday.]~~ ISD must make a need-based eligibility determination for SNAP within 30 days of the date of the application or by the preceding work day if the 30th day falls on a weekend or holiday, if all mandatory verification has been received, with the following specific provisions. If one or more household members have failed to turn in mandatory individual verification that is not required for all the mandatory members of a household, ISD will deny those members missing verification, and will determine eligibility for the

remaining members.

**(5) Procedural denials:**

**(a) Lack of verification:** If verification needed to determine eligibility is not provided and no extension of time is requested, deny on the 30th day after the application date or by next work day if 30th day falls on weekend or holiday.

**(b) Missed interview:** Make eligibility decision on the 30th day after the application date or by next work day if 30th day falls on weekend or holiday if applicant missed interview and did not reschedule interview.

**(6) Extension of time beyond the 30th day:** Make eligibility decision no later than the 60th day after the application date if the applicant requests one or more 10-day extensions of time to provide needed verification. There may only be three 10-day extensions.

**(7) Reconsidering denials for refusal to provide verification or to complete application process:** If an applicant/recipient has been denied benefits for refusal to provide needed verification or to complete the application process, but takes the required action within 30 days after the date of denial, [the caseworker] ISD shall then make a needs-based decision.

**B. Medical assistance:** The application disposition deadline for medical assistance programs is 45 days from the date of application. Medicaid eligibility must be determined within 90 days for applicants who apply based on aged, blind or disability status.

**(1) Day 1:** The date of application is the first day.

**(2) No later than day 44** by the preceding work day if day 44 falls on a weekend or holiday:

**(a)** if verification provided establishes eligibility or ineligibility; or

**(b)** if the day following day 44 is not a work day, then decision must be made earlier than day 44 to allow for

mailing on or before the deadline.  
**(3) No later than day 45** by the next work day if day 45 falls on a weekend or holiday, if needed verification is not provided until day 42 - 44.

**(4) Day 45** by the next work day if day 45 falls on a weekend or holiday, if needed verification is provided on day 45, or is not provided.

**(5) After day 45:**

**(a)**  
 When an applicant/recipient requests one or more 10-day extensions of time to provide needed verification. An applicant/recipient is entitled to receive up to three 10-day extensions of time upon request. Any individual missing necessary verification of citizenship, national status or eligible immigration status is allowed a reasonable opportunity period in accordance with 8.200.410.11 NMAC.

**(b)**  
 The eligibility decision must be made as soon as possible and within three work days of receipt of all necessary verification.

**C. General assistance:**  
 An application for general assistance shall be processed no later than 90 days from the date the application is filed.

**(1) No later than day 89:** by the previous work day if day 89 falls on a weekend or holiday:

**(a)**  
 if verification provided establishes eligibility or ineligibility; or

**(b)**  
 if day following day 89 is not a work day, then decision must be made earlier than day 89 to allow for mailing on or before deadline.

**(2) No later than day 90** by the next work day if day 90 falls on a weekend or holiday, if needed verification is not provided until day 87 - 89.

**(3) Day 90** by the next work day if day 90 falls on a weekend or holiday, if needed verification is provided on day 90, or is not provided.

**(4) After day 90:**  
**(a)**  
 When an applicant/recipient requests one or more 10-day extensions of time to provide needed verification. An applicant/recipient is entitled to receive up to three 10-day extensions of time upon request.

**(b)**  
 The eligibility decision must be made as soon as possible and within 3 work days of receipt of all necessary verification.

**(5) Reconsideration:** Disability may be re-evaluated based on additional medical evidence provided by the client during the reconsideration period, which shall not exceed 120 days from the date of receipt of the initial application.

**(6) Tracking the application processing time limit:** The application processing time limit begins on the day after the signed application is received in the ISD county office.

**(7) Delayed determination:** If an eligibility determination is not made within the required application processing time limit, the applicant/recipient shall be notified in writing of the reason for the delay and that the applicant/recipient has the right to request a fair hearing regarding ISD's failure to act within the time limits. Where applicable, NMAC subsections for specific programs detail how delays will be notified.

**(8) Extensions of time:** Up to three 10 calendar day extensions for providing verification shall be granted at the applicant/recipient's request. The extension begins at the end of the application processing time period or at the end of the previous extension. [8.100.130.11 NMAC - Rp, 8.100.130.11 NMAC, 08/01/2008; A, 12/01/2009; A, 03/01/2017]

**8.100.130.12 QUESTIONABLE INFORMATION/VERIFICATION:**  
**A.** To be considered questionable, incomplete or inadequate, the information or

verification must be documented as one of the following:  
**(1)** inconsistent with statements made by the applicant/recipient;  
**(2)** inconsistent with other information on the application or previous applications;  
**(3)** inconsistent with credible information received by [the department] ISD;  
**(4)** questionable on its face.

**B. Resolving questionable information:** Upon receiving questionable, incomplete or inadequate verification needed to determine an applicant/recipient's eligibility or benefit amount, [the caseworker] ISD shall promptly provide the applicant/recipient a notice which shall include the following:

**(1)** advise the applicant/recipient of the receipt of the information;

**(2)** why it is questionable, incomplete or inadequate;

**(3)** the additional information that must be provided;

**(4)** the alternative methods of providing the information,

**(5)** the deadline for supplying the information (10 working days or the end of the applicable application processing time period, whichever is later);

**(6)** that the applicant/recipient will be allowed an extension of time to supply the information if requested;

**(7)** that the applicant/recipient should contact [the caseworker] ISD if an extension is desired;

**(8)** that the applicant/recipient may discuss with [the caseworker] ISD whether any other readily available verification is acceptable;

**(9)** that [the caseworker] ISD is available to assist the applicant/recipient if the information is not readily available;

and (10) that a failure to supply the needed information or contact [~~the caseworker~~] ISD by the deadline may result in a delay, a denial of eligibility or a reduction in the amount of benefits.

[8.100.130.12 NMAC - Rp, 8100.130.12 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.13 NON-FINANCIAL VERIFICATION STANDARDS - IDENTITY:**

**A. [Food stamp]**

**SNAP and cash assistance programs:** Verification of identity for the applicant is mandatory at application for the [~~food stamp~~] SNAP and cash assistance programs. Documents that can be used to verify identity for the [~~food stamp~~] SNAP and cash assistance programs include, but are not limited to:

- (1) photo ID; including driver’s license;
- (2) birth certificate;
- (3) school record;
- (4) church record;
- (5) hospital or insurance card;
- (6) letter from community resources;
- (7) voter registration card;
- (8) work ID;
- (9) ID for another assistance or social service program;
- (10) wage stubs;
- (11) additional items as listed in ISD 135, “proof checklist”; or
- (12) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

**B. Medical assistance**

**programs:** Verification of citizenship and identity for the applicant/recipient is mandatory at initial application and recertification on or after July 1, 2006.

The applicant/recipient is required to submit an original or a copy certified by the issuing agency.

(1)

**Exemptions:** The following individuals are exempt from providing documentation of citizenship and identity:

- (a) individuals receiving supplemental security income benefits under Title XVI of the Social Security Act;
- (b) individuals entitled to or enrolled in any part of medicare;
- (c) individuals receiving social security disability insurance benefits under Section 223 of the Social Security Act or monthly benefits under Section 202 of the act, based on the individual’s disability, as defined in Section 223(d) of the act;
- (d) individuals who are in foster care and who are assisted under Title IV-B of the Social Security Act; or
- (e) individuals who are recipients of foster care maintenance or adoption assistance payment under Title IV-E of the act.

(2)

**Documents that verify both citizenship and identity:**

- (a) U.S. passport (active or expired);
- (b) certificate of U.S. citizenship (DHS form N-560 or N-561); or
- (c) certificate of naturalization (DHS form N-550 or N-570).

(3)

**Documents to verify identity.**

The following documents may be accepted as proof of identity and must accompany a document establishing citizenship from the second, third or fourth level documents. See Paragraphs (1) (2) and (3) of Subsection B of 8.100.130.16 NMAC:

- (a) a current state driver’s license from a state or territory with the individual’s picture or other identifying information such as name, age, sex, race, height, weight, or eye color;

(b)

school identification card with a picture of the individual;

(c)

U.S. military card or draft record;

(d)

identification card issued by the federal, state or local government with the same information included on the driver’s license;

(e)

military dependent’s identification card;

(f)

certificate of degree of Indian blood, or other American Indian/ Alaska native tribal document with a picture or other personal identifying information, such as age, weight, height, race, sex, and eye color;

(g)

Native American tribal document with a picture or other personal identifying information, such as age, weight, height, race, sex and eye color;

(h)

U.S. coast guard merchant mariner card;

(i)

a cross match with federal or state governmental, public assistance, law enforcement or corrections agency’s data systems, if the agency establishes and certifies the true identity of the individual;

(j)

three or more corroborating documents, such as marriage licenses, divorce decrees, high school diplomas, and employer identification cards may be used to verify the identity of an individual when used in conjunction with level two or three citizen documentation listed at 8.100.130.16 NMAC; these documents must contain the applicant/ recipient’ name and additional information to establish identity; all documents must contain consistent identifying information.

(4) **Special**

**rules for verifying proof of identity for children 16 or younger:**

(a)

school records verified from the school, including report card, daycare or nursery school record;

(b)

clinic, doctor or hospital record;  
 (c) an affidavit signed under penalty of perjury by a parent, guardian or relative caretaker stating the date and place of birth of the child:

(i) An affidavit can only be used if one of the preceding documents is not available.

(ii) An affidavit cannot be used if an affidavit for citizenship was used.

(5) An identity affidavit signed under penalty of perjury by a residential facility director or administrator on behalf of the institutionalized applicant/recipient.  
 [8.100.130.13 NMAC - Rn, 8.100.130.13 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.14 NON-FINANCIAL VERIFICATION STANDARDS: NONCONCURRENT RECEIPT OF ASSISTANCE:**

A. Verification of nonconcurrent receipt of assistance is mandatory. ~~[the caseworker]~~ ISD has responsibility for verifying nonconcurrent receipt of benefits usually through government data systems or other state agencies.

(1) For ~~[food stamp]~~ SNAP purposes, non-receipt of ~~[food stamp]~~ SNAP benefits from this state or another state or receipt of tribal commodities must be verified.

(2) For medicaid, ineligibility to receive medicaid benefits from this state or another state in the current month must be verified.

(3) For cash assistance, ineligibility for and non-receipt of assistance from the supplemental security income (SSI) program and bureau of Indian affairs general assistance (BIA GA) program, TANF assistance from New Mexico tribal programs, cash assistance from a HSD administered program and adoption subsidies funded through Title IV-E of the Social Security Act must be verified.

B. Non-receipt of benefits from another state must be

verified for applicants who indicate a recent move to New Mexico from another state and prior receipt of assistance from that state.

C. Methods which can be used to verify nonconcurrent receipt of assistance include:

(1) ~~[HSD2]~~ ISD eligibility system for non-receipt of assistance from ISD programs;

(2) state data exchange (SDX) for non-receipt of SSI;

(3) contact with the New Mexico children, youth and families department for non-receipt of assistance;

(4) document from another state showing termination of benefits;

(5) collateral contact - oral statement from other state for termination of ~~[food stamps]~~ SNAP, TANF, or medicaid;

(6) collateral contact - oral statement from bureau of Indian affairs for non-receipt of BIA-GA; or

(7) collateral contact - oral statement from tribal TANF programs for non-receipt of tribal TANF  
 [8.100.130.14 - Rp, 8.100.130.13 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.15 NON FINANCIAL VERIFICATION STANDARD - ENUMERATION:**

A. Verification that the enumeration requirement for an applicant/recipient has been met is mandatory for applicants who are seeking benefits for themselves unless the benefit program does not require enumeration, or the applicant seeking benefits is in an immigration status not requiring enumeration. The applicant/recipient must provide the social security number (SSN) which has been issued to the individual no later than 60 days following approval. ~~[The caseworker]~~ ISD shall verify the SSN through the following methods:

(1) **When an SSN is provided:** The SSN will be verified through a data match with the SSA. If the SSN is not validated through the data match, the following

sources of verification listed below may be utilized to validate the SSN:

(a) ~~[HSD2 system validation]~~ ISD eligibility system;

(b) social security card (OA-702);

(c) ISD social security number validation report form (ISD 260);

(d) an original SSA document containing the SSN; or

(e) the individual who has provided their SSN will not be required to produce proof of SSN unless the SSN is found to be questionable.

(2) **When an SSN is not provided:** The applicant/recipient must provide verification of application for an SSN. The verification must indicate an application was made prior to approval of the individual for assistance. The verification shall be retained in the case record. Documents that can be used to verify an application for SSN include:

(a) SSA 2853 enumeration at birth form;

(b) signed and dated statement from the hospital showing enumeration at birth has been done;

(c) original SSA document showing an application for SSN has been made and accepted; or

(d) completed SS-5; the completed SS-5 must be dated and submitted prior to the date of approved; a copy of the completed and submitted SS-5 must be retained in the case record.

B. There is no requirement of enumeration for medicaid-newborn (Category 31).  
 [8.100.130.15 - Rp, 8.100.130.13 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.16 NON FINANCIAL VERIFICATION STANDARD- CITIZENSHIP AND ELIGIBLE ALIEN STATUS:**

This section details the specific types of information and documents to be used in establishing the ~~[applicant/~~

recipient's] citizenship and alien status for individuals who are applying for food assistance, cash assistance and medical assistance programs for themselves.

**A. Citizenship for [food stamp] SNAP and cash assistance:** Citizenship for [food stamp] SNAP and cash assistance programs will be verified only when questionable (as defined by [manual] section 8.100.130.12 NMAC). [Documents] Information and documents that can be used to verify citizenship include:

- \_\_\_\_\_ (1) \_\_\_\_\_  
birth certificate;
- \_\_\_\_\_ (2) \_\_\_\_\_  
naturalization papers from the department of homeland security United States citizenship and immigration services (DHS) such as DHS Forms I-179 or I-197;
- \_\_\_\_\_ (3) \_\_\_\_\_  
U.S. passport;
- \_\_\_\_\_ (4) \_\_\_\_\_  
military service papers;
- \_\_\_\_\_ (5) \_\_\_\_\_  
hospital record of birth;
- \_\_\_\_\_ (6) \_\_\_\_\_  
baptismal record, when place of birth is shown;
- \_\_\_\_\_ (7) \_\_\_\_\_  
Indian census records;
- \_\_\_\_\_ (8) \_\_\_\_\_  
DHS 400 for alien children who can derive citizenship through citizen father or mother;
- \_\_\_\_\_ (9) \_\_\_\_\_  
additional items as listed on ISD 135, "proof checklist";
- \_\_\_\_\_ (10) \_\_\_\_\_  
any document listed in Paragraph B of this section; or
- \_\_\_\_\_ (11) \_\_\_\_\_  
if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.];
- \_\_\_\_\_ (1) \_\_\_\_\_  
social security number;
- \_\_\_\_\_ (2) \_\_\_\_\_  
birth certificate;
- \_\_\_\_\_ (3) \_\_\_\_\_  
naturalization papers from the department of homeland security United States citizenship and immigration services (DHS) such as

- DHS Forms I-179 or I-197;  
\_\_\_\_\_ (4) \_\_\_\_\_
- U.S. passport;  
\_\_\_\_\_ (5) \_\_\_\_\_
- military service papers;  
\_\_\_\_\_ (6) \_\_\_\_\_
- hospital record of birth;  
\_\_\_\_\_ (7) \_\_\_\_\_
- baptismal record, when place of birth is shown;  
\_\_\_\_\_ (8) \_\_\_\_\_
- Indian census records;  
\_\_\_\_\_ (9) \_\_\_\_\_
- DHS 400 for alien children who can derive citizenship through citizen father or mother;  
\_\_\_\_\_ (10) \_\_\_\_\_
- additional items as listed on ISD 135, "proof checklist";  
\_\_\_\_\_ (11) \_\_\_\_\_
- any document listed in Subsection B of this section; or  
\_\_\_\_\_ (12) \_\_\_\_\_
- if electronic verification is not available, and documentary evidence is not readily available, use other acceptable methods of verification as described in 8.100.130.9 NMAC.

**B. Medical assistance programs:** After July 1, 2006, an [applicant for] individual seeking medical assistance [programs] benefits for themselves must provide the income support division with a declaration signed under penalty of perjury that the applicant is a citizen, or a national of the United States, or is in an eligible immigration status. [An alien applicant] Applicants must present information allowing for verification of attested status. An alien applicant who declares to be in [satisfactory] an eligible immigration status is [also] required [to continue] to present immigration status [documentation] information that can be used to verify attested status (such as an "A-number" or an "I-94 number"). Verification of citizenship for the applicant/recipient is mandatory at initial application and recertification on or after July 1, 2006. [The] If a document is necessary, the applicant/recipient is required to submit original or a copy certified by the issuing agency.

**(1) First level documents that verify both**

- citizenship and identity:**
- (a)** U.S. passport (active or expired);
- (b)** certificate of U.S. citizenship (DHS form N-560 or N-561); or
- (c)** certificate of naturalization (DHS form N-550 or N-570).
- (2) Second level information documents:** [These documents] Second level [documents] is [are] unavailable. The following are second level information/documents of citizenship:
- (a)** U.S. public birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (if born on or after 1941, Guam (if born on or after April 10, 1899), the Virgin Islands of the U.S. (if born on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (if born on or after November 4, 1986 NMI local time);
- (i)** data matches with a state vital statistics agency may be used in place of a birth certificate;
- (ii)** the birth record may be issued by the state, commonwealth, territory or local jurisdiction and it must have been recorded before the person was five years of age; a birth record that is recorded at or after the person is five years of age is considered fourth level evidence of citizenship;
- (b)** a certification of report of birth (SD-1350) issued by the department of state to U.S. citizens who were born outside the U.S. and acquired U.S. citizenship at birth;
- (c)** a report of birth abroad of a U.S citizen (FS-240);
- (d)** a certification of birth issued by the department of state (FS-545): in 1990, the FS-545 was replaced by the SD-1350;
- (e)** a U. S. citizen I.D. card (DHS Form I-179 and I-197);
- (f)**

a Northern Mariana identification card (I-873) issued by DHS to a collectively naturalized citizen of the U. S. who was born in the Northern Mariana Islands before November 4, 1986;

(g) an American Indian Card (I-872) issued by the DHS with the classification code "KIC," to identify U.S. citizen members of the Texas Band of Kickapoos living near the U.S./ Mexican border;

(h) final adoption decree with the child's name and U.S. place of birth;

(i) evidence of civil service employment by the U.S. government before June 1, 1976;

(j) U.S. military record of service showing a U.S. place of birth;

(k) a data verification with the SAVE program for naturalized citizens if conducted consistent with a memorandum of understanding with DHS; or

(l) adopted or biological children born outside of the U.S. may establish citizenship obtained automatically under section 320 of the Immigration and Nationality Act (8. U.S.C 1431) as amended by the Child Citizenship Act of 2000; documentary evidence shall be obtained confirming on or after February 27, 2001, the following conditions were met:

(i) at least one parent of the child is a U.S. citizen by birth or naturalization;

(ii) the child is under the age of 18;

(iii) the child is residing in the U.S. in the legal and physical custody of the U.S. citizen parent;

(iv) the child was admitted to the U.S. for lawful permanent residence pursuant to 8 U.S.C. 1641; and

(v) if adopted, the child satisfies the requirements of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) pertaining to

international adoptions.

(3) **Third level documents:** These documents should only be used when first and second [~~level documents~~] levels are unavailable; the following documents are third level documents of citizenship:

(a) Extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five years before the initial application date and shows a U.S. place of birth. For children under the age of 16, the document must have been created near the time of birth or five years before the date of application.

(b) Life, health or other insurance record showing a U.S. place of birth and was created at least five years before the initial application date. For children under the age of 16, the document must have been created near the time of birth or five years before the date of application.

(c) An official religious record recorded with the religious organization in the U.S. within three months of birth showing the birth occurred in the U.S. and showing the date of birth or the individual's age at the time the record was made; if the place of birth is questionable, verification must be obtained that the mother was in the U.S. at the time of birth.

(d) Early school record showing a U.S. place of birth, date of birth, the name of the child, the date of admission to the school and the name and place of birth of the applicant/recipient's parents.

(4) **Fourth level documents:** These documents should only be used when first, second and third level documents are not available. With the exception of the affidavit process described in this section, the applicant/recipient may only use fourth level of evidence of citizenship if alleging a U.S place of birth. The following documents are fourth level documents of citizenship:

(a)

federal or state census record showing U.S. citizenship or a U.S. place of birth and the applicant/recipient's age; or

(b) one of the following documents that shows a U.S. place of birth and that was created at least five years before the application for medicaid; for children under the age of 16, the document must have been created near the time of birth or five years before the date of application. These documents are:

(i) Seneca Indian tribal census record;

(ii) bureau of Indian affairs tribal census records of the Navajo Indians;

(iii) U.S. state vital statistics official notification of birth registration;

(iv) a delayed U.S. public birth record that is recorded more than five years after the person's birth;

(v) a statement signed by a physician or midwife who was in attendance at the time of birth.

(vi) the roll of Alaska natives maintained by the bureau of Indian affairs.

(c) institutional admission papers from a nursing facility, skilled care facility or other institution created at least five years before the initial application date that indicates a U.S. place of birth.

(d) medical (clinic, doctor, or hospital) record created at least five years before the initial application date that indicates U.S. place of birth; for children under the age of 16, the document must have been created near the time of birth or five years before the date of application; an immunization record is not considered a medical record for purposes of establishing citizenship.

(e) written affidavits should only be used in rare circumstances and must contain the following information:

(i) the applicant/recipient musts

provide at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant/recipient's claim of citizenship;

(ii) at least one of the individuals making the affidavit cannot be related to the applicant/recipient and neither can be the applicant/recipient;

(iii) individuals making the affidavit must prove their own citizenship and identity; and

(iv) if available, the affidavit should contain why documentary evidence establishing the applicant/recipient's claim of citizenship does not exist or cannot be readily obtained;

(v) the applicant/recipient or other knowledgeable individual (guardian or representative) must submit a separate affidavit explaining why the evidence does not exist or cannot be obtained; or

(vi) the affidavits must be signed under penalty of perjury and need not be notarized.

**C. Alien status:**  
[A] An alien must have [a valid department of homeland security U.S. citizenship and immigration services document] information allowing attested status to be verified.

**D. Systematic alien verification for entitlement (SAVE)**  
(1) All applicants who [indicate] attest to eligible [alien] immigration status will be subject to verification through the United States department of homeland security's (USDHS) database (SAVE) system.

(2) Conflicting information regarding the alien status provided by the applicant/recipient will require additional verification by the USDHS.

[8.100.130.16 - Rp, 8.100.130.13 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.19 NON FINANCIAL VERIFICATION STANDARDS - AGE:**

**A. Age of child:**

Verification of age of children is mandatory for cash and medical assistance for children programs.

(1) **For cash assistance:** Age of the child is verified prior to approval.

(2) **For medical assistance for children:** Age of the child is verified to determine if the child is under the specified age limit.

**B. Age of adults:**  
Age of adult members is verified in the following circumstances if age is questionable:

(1) ~~[Food stamps]~~ **SNAP:**  
(a) if the individual is claiming a medical deduction on the basis of age (60 and over); or

(b) if the individual is working and income is being disregarded due to age (under age 18).

(2) **Cash assistance:**  
(a) if the parent/caretaker relative is being considered for work program participation on the basis of being a minor parent and the parent claims to be age 20 or over;

(b) if the parent is living in his/her parent's home and is claiming emancipation on the basis of age (18 or over);

(c) if the parent/caretaker relative is not living in his/her parents' home and cooperation with child support enforcement is an issue due to age of the specified relative (under 18); or

(d) if the caretaker relative, parent or other adult member claims exemption from work program participation requirements based on age (60 and over).

(3) **General assistance for the disabled:**  
(a) if the individual is claiming to be 18 or over and evidence is to the contrary; or

(b) if the individual is claiming to be under age 65 and evidence is to the contrary.

(4) **Medical assistance for pregnant women:**  
(a)

if the pregnant woman is living in her parent's home and is claiming emancipation on the basis of age (18 or over); or

(b) if the pregnant woman is under the age of 18 and is not living in her parents' home and cooperation with child support enforcement is an issue.

(5) **Documents that can be used to verify age include:**

(a) birth certificate;

(b) adoption papers or records;

(c) hospital or clinic records;

(d) church records;

(e) baptismal certificate;

(f) bureau of vital statistics records;

(g) U.S. passport;

(h) Indian census records;

(i) local government records;

(j) immigration and naturalization records;

(k) social security records;

(l) school records;

(m) census records;

(n) court support order;

(o) physician's statement;

(p) juvenile court records;

(q) voluntary social service agency records;

(r) insurance policy;

(s) minister's signed statement;

(t) military records;

(u)

driver's license;  
 (v) additional items as listed on ISD-135, "proof checklist"; or  
 (w) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.  
 [8.100.130.19 - Rp, 8.100.130.13 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.22 NON FINANCIAL VERIFICATION STANDARDS -OTHER:**

**A. Fraud conviction for dual state receipt of benefits:**  
 The existence of a fraud conviction for simultaneous receipt of benefits from two states is determined based upon client statement on the application form. If [the caseworker] ISD receives other information indicating the existence of a dual state benefit fraud conviction, [the caseworker] ISD shall verify it by contacting the appropriate authorities.

**B. Fleeing felon and probation or parole violator:**  
 Whether an individual is a fleeing felon or a probation or parole violator is determined based upon a client statement on the application form. If [the caseworker] ISD receives other information indicating that the individual is a fleeing felon, [the caseworker] ISD shall verify it by contacting appropriate authorities. [The caseworker] ISD need not notify the individual of the report, nor request his or her permission to verify the information with appropriate law enforcement agencies.  
 [8.100.130.22 - Rp, 8.100.130.13 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.23 FINANCIAL VERIFICATION STANDARDS - RESOURCES:** The applicant/ recipient's statement is acceptable for verification of resources unless the household is near the resource maximum limit and the information given is not questionable. If information is questionable, inconsistent or the household is near the maximum; [the caseworker] ISD must clearly document why

the household's statement was [unacceptable] questionable in the case record and [it requires] request additional verification. When further information or verification is requested the following items shall be acceptable:

**A. Bank accounts**  
 (checking, savings, certificates of deposit, savings bond, or Keogh's). Documents which may be used to verify bank or financial institution accounts include:

- (1) current bank statement;
- (2) statement from the bank or institution showing the value of the resource or the penalties for early withdrawal of deposit showing the total value and the penalty for early withdrawal;
- (3) savings bond(s) showing total value and statement from bank/institution of penalty for early withdrawal;
- (4) additional items as listed in ISD 135, "proof checklist"; or
- (5) if documentary evidence is not readily available, use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

(6) joint bank accounts: see appropriate program chapter for proper verification requirements.

**B. Stocks and bonds:**  
 Documents which may be used to verify the value of stocks or bonds include:

- (1) newspaper publications of the stock exchange;
- (2) statement from the stock broker;
- (3) additional items as listed in ISD 135, "proof checklist"; or
- (4) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

**C. Life insurance:**  
 Documents which may be used to verify the cash surrender value of life insurance include:

- (1) insurance

policy;  
 (2) statement from the insurance company, insurance agent, lodges or fraternal organizations;

(3) statement from the union or employer who provide the insurance;

(4) statement from the veteran's administration;

(5) additional items as listed in ISD 135, "proof checklist"; or

(6) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC;

(7) if the cash surrender value of the life insurance policy makes the applicant/recipient ineligible, liens against the insurance shall be explored; this will be done through use of acceptable methods of verification set forth in 8.100.130.9 NMAC; the cash surrender value of life insurance is necessary in programs only where it is countable.

**D. Real estate contracts, purchase contracts:**  
 Documents which may be used to verify the value of real estate or purchase contracts include:

(1) statement from a bank or financial institution, commodity broker, real estate agent, or expert in the field of real estate contracts or purchase contracts;

(2) additional items as listed in ISD 135, "proof checklist"; or

(3) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

**E. Non-recurring lump sum payment:** Documents which may be used to verify a nonrecurring lump-sum payment include:

(1) statement from a company, agency or organization that provided payment;

(2) copy of a check or check stub;

(3) award letters;

(4) statement from an attorney;  
 (5) additional items as listed in ISD 135, "proof checklist"; or  
 (6) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

**F. Tools and equipment:** Documents which may be used to verify the value of tools and equipment include:  
 (1) recent sales slips;  
 (2) insurance or tax appraisals;  
 (3) catalogs or newspaper ads;  
 (4) statement from a bank, broker, local merchant or expert on tools and equipment;  
 (5) additional items as listed in ISD 135, "proof checklist"; or  
 (6) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.

**G. Real property:** Documents which may be used to verify the value of real property the applicant/recipient does not use include:  
 (1) a written statement from a real estate agent or broker stating the fair market value of property;  
 (2) statement from a bank or financial institution stating value and equity;  
 (3) additional items as listed in ISD 135, "proof checklist"; or  
 (4) if documentary evidence is not readily available, use other acceptable methods of verification as in 8.100.130.9 NMAC.  
 [8.100.130.23 - Rp, 8.100.130.14 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.24 FINANCIAL VERIFICATION STANDARDS - UNEARNED INCOME:**  
 Verification of income is mandatory

for all programs.  
**A. Social security benefits (OASDI, SSI):** Documents which may be used to verify OASDI/SSI benefits include:  
 (1) award letter (Form SSA 1610);  
 (2) copy of a check(s) - amount of medicare premium must be added in;  
 (3) letter from SSA;  
 (4) direct deposit receipt - amount of medicare premium must be added in;  
 (5) additional items as listed in ISD 135, "proof checklist"; or  
 (6) if documentary evidence is not readily available or is questionable, a collateral contact with the social security administration (TPQY) may be selected as verification of OASDI/SSI or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**B. Veteran's benefits:** Documents which may be used to verify veteran's benefits include:  
 (1) award letter;  
 (2) copy of a check(s);  
 (3) written verification from a regional VA office;  
 (4) direct deposit receipt(s);  
 (5) additional items as listed in ISD 135, "proof checklist"; or  
 (6) if documentary evidence is not readily available or is questionable, a collateral contact with the veteran's administration may be selected as verification of veteran's benefits use other acceptable methods of verification as in 8.100.130.9 NMAC.

**C. Railroad retirement benefits:** Documents which may be used to verify railroad retirement benefits include:  
 (1) award letter;  
 (2) copy of a check;  
 (3) letter from

SSA;  
 (4) direct deposit receipt;  
 (5) additional items as listed in ISD 135, "proof checklist"; or  
 (6) if documentary evidence is not readily available or is questionable, a collateral contact with the regional director of retirement claims may be selected as verification of railroad retirement benefits or use acceptable methods of verification as in 8.100.130.9 NMAC.

**D. Military allotments:** Documents which may be used to verify military allotment include:  
 (1) written statement from the appropriate military service center;  
 (2) copy of the allotment authorization;  
 (3) copy of a check;  
 (4) direct deposit receipt;  
 (5) additional items as listed in ISD 135, "proof checklist"; or  
 (6) if documentary evidence is not readily available or is questionable, a collateral contact with the appropriate military service center may be selected as verification of a military allotment or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**E. Workers' compensation benefits:** Documents which may be used to verify worker's compensation include:  
 (1) employer's statement;  
 (2) written statement from workers' compensation administration;  
 (3) written statement from insurance company;  
 (4) additional items as listed in ISD 135, "proof checklist"; or  
 (5) if documentary evidence is not readily available or is questionable, a collateral contact with the New

Mexico department of workforce solutions (NMDWS) or with the insurance company may be selected as verification of workers' compensation benefits or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**F. Unemployment compensation benefits (UCB):**

Verification of unemployment compensation benefits should first be explored through the NMDWS web link. If it is not available through the NMDWS web link, the following documents may be used to verify UCB include:

- (1) award letter;
- (2) copy of a check;
- (3) statement from the New Mexico DWS;
- (4) additional items as listed in ISD 135, "proof checklist"; or
- (5) if documentary evidence is not readily available, a collateral contact with the NMDWS may be selected as verification of unemployment compensation benefits or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**G. Child/spousal support:**

Verification of child or spousal support should first be explored through the CSED automated system. If it is not available through the CSED system, documents which may be used include:

- (1) written statement from the contributor;
- (2) written statement from the court;
- (3) copy of a check or a canceled check;
- (4) divorce or separation decree;
- (5) court order;
- (6) support agreement;
- (7) correspondence from the contributor regarding support payments;
- (8) court records';
- (9) attorney's

records;

(10) income tax return from the prior year;

(11) employer's record of attached wages;

(12) additional items as listed in ISD 135, "proof checklist"; or

(13) if documentary evidence is not readily available or is questionable, a collateral contact may be selected to verify child/spousal support or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC;

(14) no contact with the absent parent shall be made without the consent of the applicant/recipient. If good cause for failure to cooperate with CSED has been filed, contact with the absent parent must not be made.

**H. Educational scholarships, grants or loans:**

Documents which may be used to verify amounts of an educational scholarship, grant, or loan include:

(1) financial aid award letter or a budget sheet from the institution;

(2) written statement from the institution;

(3) written statement from veteran's administration;

(4) additional items as listed in ISD 135, "proof checklist";

(5) as educational expenses are deducted from the educational scholarship, grant or loan, it will be necessary to obtain verification of the expenses; verification may be obtained from the institution; or

(6) if documentary evidence is not readily available or is questionable, a collateral contact with the institution may be selected as verification of an education scholarship, grant or loan or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**I. Non-recurring lump sum:** See Subsection E of 8.100.130.23 NMAC.

**J. Contributions:**

Documents which may be used to verify contributions include:

(1) written statement from the contributor;

(2) additional items as listed in ISD 135, "proof checklist"; or

(3) if documentary evidence is not readily available or is questionable, a collateral contact with the contributor may be selected as verification of a contribution or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**K. Loans:** Verification of a loan must contain the name of the person making the loan, the amount of the loan, date the loan was made and the repayment arrangement for the loan. Documents which may be used to verify loans include:

(1) written statement from the person or organization making the loan;

(2) promissory note;

(3) loan agreement;

(4) additional items as listed in ISD 135, "proof checklist"; or

(5) if documentary evidence is not readily available or is questionable, a collateral contact with the person or organization making the loan may be selected as verification of a loan or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**L. Individual development accounts (IDA)**

(1) The IDA is verified by reviewing the trust documents creating the IDA and documents verifying deposits and withdrawals from the account during the period since the previous certification. The trust documents must show the terms and conditions governing the IDA, including withdrawal provisions.

(2) [The easeworker] ISD shall review deposits and withdrawals to ensure that no funds are being withdrawn except

for those allowed under IDA policy and to ensure that the individual was employed during the time that any deposits were made.  
[8.100.130.24 NMAC - Rp, 8.100.130.14 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.26 DEDUCTIONS/ ALLOWANCES VERIFICATION STANDARDS - SHELTER:**

**A.** The applicant/ recipient’s statement is acceptable for verification of shelter expenses, if the information given is not questionable. If information is questionable or inconsistent; [the caseworker] ISD must clearly document why the household’s statement was unacceptable and what information requires additional verification. When further information or verification is requested the following items shall be acceptable:

(1) An obligation to pay for shelter is considered a deduction [in the food stamp program] for SNAP. If the expense is questionable and verification of a shelter expense is requested and not provided, [food stamp] SNAP benefits will be determined without allowing a deduction for shelter expenses. When further verification is requested, documents which may be used to verify an obligation to pay for shelter include:

- (a) mortgage payment book;
- (b) written statement from the bank or other financial institution;
- (c) rent receipt;
- (d) written statement from the landlord;
- (e) lease agreement;
- (f) copies of bills for property taxes or house insurance;
- (g) correspondence with the taxing authority or insurance agency; or
- (h) additional items as listed on ISD 135 “proof checklist”.

(2) If documentary evidence is not readily available or is questionable, a collateral contact may be selected to verify the obligation to pay shelter or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

**B. Utilities:** The applicant/recipient’s statement is acceptable for verification of utility expenses, if the information given is not questionable. If information is questionable or inconsistent; [the caseworker] ISD must clearly document why the household’s statement was unacceptable and what information requires additional verification. Documents which may be used to verify an obligation to pay for utilities include:

- (1) utility bills;
- (2) rent receipt, lease agreement, or written statement from the landlord showing the household is responsible for payment of utilities;
- (3) written statement from a utility provider;
- (4) additional items as listed on ISD 135 “proof checklist”; or
- (5) if documentary evidence is

questionable, a collateral contact with the landlord or the utility provider may be selected to verify the obligation to pay for utilities or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

[8.100.130.26 NMAC - Rp, 8.100.130.15 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.27 DEDUCTIONS/ ALLOWANCES VERIFICATION STANDARDS - MEDICAL EXPENSES:**

**A.** Verification of medical expenses is mandatory for [the food stamp program] SNAP if the applicant/recipient meets one of the criteria listed below. The applicant/recipient’s statement that no reimbursement will be received will be accepted unless

questionable. If the household claims a reimbursement, a deduction cannot be allowed until the un-reimbursed portion of the expense is verified.

(1) the individual claiming the medical expense is age 60 or older or disabled; and

(2) the amount of the medical expenses exceeds \$35; or

(3) allowance of the medical expenses would potentially result in a deduction;

(4) failure to provide verification of medical expenses will result in a determination of eligibility and amount of benefits without considering medical expenses.

**B.** Documents which may be used to verify a medical expense include:

- (1) current bill;
- (2) monthly statement from the provider;
- (3) medical insurance policy;
- (4) appointment cards, travel receipts (lodging and transportation) to verify travel costs associated with obtaining medical care;
- (5) additional items as listed in ISD 135 “proof checklist”; or
- (6) if documentary evidence is

questionable, a collateral contact with the landlord or the utility provider may be selected to verify the obligation to pay for utilities or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC.

[8.100.130.27 NMAC - Rp, 8.100.130.15 NMAC, 08/01/2008; A, 03/01/2017]

**8.100.130.28 DEDUCTIONS/ ALLOWANCES VERIFICATION STANDARDS - DEPENDENT CARE:**

**A.** The applicant/ recipient’s statement is acceptable for verification of dependent care expenses, if the information given

is not questionable. If information is questionable or inconsistent; [the caseworker] ISD must clearly document why the household's statement was unacceptable and why information requires additional verification.

**B.** Documents which may be used to verify dependent care costs:

- (1) current bill;
- (2) written statement from the provider;
- (3) additional items as listed in ISD 135 "proof checklist"; or

(4) if documentary evidence is not readily available, or is questionable a collateral contact with the care provider may be used as verification of dependent care costs or use other acceptable methods of verification as set forth in 8.100.130.9 NMAC. [8.100.130.28 NMAC - Rp, 8.100.130.15 NMAC, 08/01/2008; A, 03/01/2017]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.110 NMAC, Sections 6, 8, 9, 10, 11, 12, 13, 14 and 16.**

**8.139.110.6 OBJECTIVE:** Issuance of the revised [food stamp program] SNAP policy manual is intended to be used in administration of [the food stamp program] SNAP in New Mexico. This revision incorporated the latest federal policy changes in [the food stamp program] SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed

to create continuity among ISD programs and to facilitate access to policy throughout the human services department. [02/01/95; 8.139.110.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001; A, 03/01/2017]

**8.139.110.8 APPLICATION PROCESS:** The application process includes completing an application form on paper or electronically, filing the completed application form, being interviewed, and having certain information verified. [ISD must act promptly on all applications and provide SNAP benefits retroactive to the date the application was received by the ISD when applicants are eligible for benefits. Application forms and information on how to submit an electronic application will be readily available to potentially eligible individuals as well as to local agencies and organizations that regularly have contact with potential applicants and recipients. If there is any indication that an applicant may be eligible for supplemental security income (SSI), the relative advantages of the SSI program will be explained and the applicant will be referred to the local social security office to apply for SSI benefits.] ISD will make paper application forms readily accessible in the ISD local office lobby to potentially eligible households and to anyone who requests the form. If HSD maintains a web page, the application will be available on the web page in each language for which the printed application is available. Information on how to submit an electronic application will be readily available to potentially eligible individuals as well as to local agencies and organizations that regularly have contact with potential applicants and recipients. The web page will provide the addresses and phone numbers of all ISD field offices and a statement that the household should return the application form to its nearest local office. Households may submit the application in person, or via mail, fax, electronic device, or through an authorized representative. Applications will be accessible to

persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974. [02/01/95, 06/01/95; 8.139.110.8 NMAC - Rn, 8 NMAC 3.FSP.110, 05/15/2001; A, 07/15/2013; A, 03/01/2017]

**8.139.110.9 RIGHT TO APPLY:**

**A.** [Anyone has the right to apply for any benefits provided by ISD whether or not it appears that the individual will be found eligible. An individual requesting information or assistance shall be informed of the right to apply, whether or not it appears the individual will be found eligible.] Each individual shall have the opportunity to apply for public assistance programs administered by the department or to have an authorized representative do so on his or her behalf. Paper application forms must be readily accessible in the ISD local office lobby and provided to any person who requests the form. Applications are made in a format prescribed by the department to include paper forms or electronic submissions. ISD will post signs in local field offices which explain the application processing standards and the right to file an application on the day of initial contact.

**B.** An individual who requests information or assistance and who wishes to apply, shall be encouraged to complete an application the same day that contact is made with the office.

(1) An individual shall be informed that the date of application affects the benefit amount.

(2) An individual shall be informed that an incomplete application may be filed as long as the form has the applicant's name and address and is signed by a responsible household member or authorized representative.

(3) An interview shall not be required before filing an application.

(4) A household shall be informed, except for a SNAP requirement, that any disadvantages or requirements for applying for or receiving cash assistance do not apply to SNAP and that receiving SNAP shall have no bearing on any other program's time limits that may apply to the household.

(5) If an individual contacts the office by phone or mail and does not wish to come to the office to pick up an application the individual will be mailed an application the same day the office is contacted and offered the option of submitting an electronic application through the YES-New Mexico web portal.

**C. SSI applicants:**

(1) Whenever a household consists only of SSI applicants or recipients, the household has the right to apply for SNAP benefits and to transact all SNAP business at a social security administration (SSA) office, provided it has not applied for SNAP benefits in the preceding 30 days or does not have a SNAP application pending at a local ISD office.

(a) Such applications are considered filed for normal processing purposes when the signed application is received by SSA.

(b) SSA is required to forward every application to the appropriate ISD office within one working day of receipt.

(c) SSI clients are not required to see [an ISD caseworker] ISD or be otherwise subjected to a second interview, although additional information or verification may be requested.

(2) **SSI/[FS] SNAP prerelease applications:** A resident of a public institution who applies for SSI prior to release from the institution under the social security administration (SSA) prerelease program for the institutionalized [42 U.S.C. 1383- (f)] shall be permitted to apply for SNAP benefits at the same time

the individual applies for SSI. The SNAP application shall be processed at a local ISD office in accordance with Paragraph 1 of Subsection C of 8.139.110.9 NMAC above and with the following processing and timeliness standards for joint SSI/ SNAP prerelease applications.

(a) **Application date:**  
(i) When a resident of an institution files a joint application for SSI and SNAP benefits with SSA prior to release from the institution, the date of application for filing purposes at the local ISD office shall be the date of release.

(ii) An application shall be denied upon receipt if the applicant is not otherwise eligible, except for the resident of an institution provision as found at Subparagraph (a) of Paragraph (2) of Subsection C of 8.139.110.9 NMAC and Subsection A and B of 8.139.400.13 NMAC.

(b) **Normal processing standard:**  
(i) An application shall be processed as soon as possible and the applicant afforded an opportunity to participate no later than 30 days from the date of release from the institution.

(ii) Benefits for the initial month of certification shall be prorated from the date of the month the applicant is released from the institution.

(c) **Expedited service:** An applicant who qualifies for expedited service shall receive benefits no later than the seventh calendar day following the applicant's release from the institution.

(d) **Categorical eligibility:** A potential categorically eligible applicant shall not be considered as such until the individual has been released from the institution and SSA has made a final SSI eligibility determination.

(e) **Restored benefits:** SSA must notify the local ISD office of the date of the applicant's release from

the institution. If for any reason notification is not provided on a timely basis, [the caseworker] ISD shall only restore SNAP benefits retroactively to the date of release.

**D. Authorized representatives:**  
(1) **Designation:** The head of the household or the spouse or any other responsible member of the household may designate an individual who is a non-household member to act on its behalf in:

- (a) applying for SNAP benefits; or
- (b) obtaining SNAP benefits; or
- (c) using the SNAP benefits.

(i) [The caseworker] ISD shall obtain a copy of the household's written authorization for the authorized representative and maintain it in the household's case record. No limit shall be placed on the number of households an authorized representative may represent; however, each household may only have one authorized representative at a time.

(ii) Even if the household member is able to make application and obtain benefits, the household should be encouraged to name an authorized representative to use the SNAP benefits in case illness or other circumstances prevent household members from using the benefits themselves.

(iii) The authorized representative's identity shall be verified and a copy of the document maintained in the household's case file.

(2) **Liability of households:** The head of the household or spouse should prepare or review the household's application whenever possible, even though another household member or the authorized representative will actually be interviewed. The household is liable for any over-issuances resulting from incorrect or untrue information given by the authorized

representative.

(3)

**Application:** When the head of the household or spouse cannot apply, another adult member may do so, or an adult who is not a member of the household may be designated as the authorized representative. Nonmember adults shall be designated as authorized representatives for certification purposes only if they are:

(a)

designated in writing by the head of the household, or spouse, or another responsible member of the household; and

(b)

sufficiently aware of relevant household circumstances to represent it.

(4) **Changing**

**authorized representative:** An authorized representative may be designated at the time an application is completed; the authorized representative shall be named on the identification (ID) card. This does not preclude the right of the household to make a designation after it has made application to the program. If a household develops a need for a representative, or needs to change the authorized representative before, during, or after the certification process, a new authorized representative may be appointed and a new ID card shall be issued to the household. The authorized representative designated to apply for the household may be the same individual who obtains or uses the benefits for the household, or may be a different individual.

(5) **Using**

**SNAP benefits:** The authorized representative may use the SNAP benefits to purchase food for the household's consumption with the household's full knowledge and consent, provided that the authorized representative has the household's ID card.

(6) **Kinds of**

**authorized representatives:**

(a)

**Emergency authorized representatives:**

An emergency authorized representative is someone who obtains benefits for a particular month when the household is unable to obtain the benefits because of unforeseen circumstances.

(ii)

A household may designate in writing, on a one-time basis, an emergency authorized representative.

(iii)

The household member whose signature is on the household's ID card must sign a designation authorizing the emergency authorized representative to obtain the benefits.

(b)

**Non-household members:** If the only adult living with a household is classified as an excluded household member or nonmember, that individual may be the authorized representative for the minor members who are eligible.

(c)

**Addiction treatment centers:**

(i)

Residents of public or private, nonprofit drug or alcohol treatment centers must apply and be certified for program participation through the use of an authorized representative who is an employee of, and designated by, the organization or institution administering the treatment and rehabilitation program.

(ii)

~~[The center may receive and spend SNAP benefits for food prepared by and/or served to the center residents, and is responsible for complying with requirements governing treatment centers.]~~ The drug or alcohol treatment center, which acts as authorized representative for residents of the facility, must use SNAP benefits for food prepared by and served to the center residents, and is responsible for complying with requirements governing treatment centers.

(d)

**Group homes:**

(i)

A resident of a group living arrangement may apply for SNAP benefits and be certified through

use of an authorized representative employed and designated by the group home; or on the resident's own behalf; or through an authorized representative of the applicant's choice.

(ii)

A resident of a group home does not have to be certified through an authorized representative or individually in order for one or the other method to be used.

(iii)

The facility is responsible for determining if any resident may apply for benefits on the resident's own behalf. The decision should be based on the resident's physical and mental ability to handle his/her own affairs. The facility is also encouraged to consult with any other agencies of the state providing other services to such a resident prior to this determination.

(iv)

Applications shall be accepted for any individual applying as a one-person household, or for any grouping of residents applying as a household.

(v)

If a resident applies through a facility's authorized representative, the resident's eligibility shall be determined as a one-person household.

(vi)

If a resident is certified on the resident's own behalf, the benefits may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption; and/or used to purchase meals prepared and served by the facility.

(7)

**Disqualification as authorized representative:**

(a)

Any [person] authorized representative who misrepresents a household's circumstances and knowingly provides false information pertaining to a household, or has made improper use of SNAP benefits, shall be disqualified from participating as an authorized

representative for up to one year.

(b) [The caseworker] ISD shall be required to send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification [shall include] must specify the [proposed] final action; the reason for the [proposed] final action; the right to request a fair hearing; the telephone number of the office; and, if possible, the name of the person to contact for additional information.

(c) This provision is not applicable to drug or alcoholic treatment centers [nor] and to those group homes that act as authorized representatives for their residents.

(8) **Restrictions:** HSD employees involved in the certification or issuance process, and retailers who are authorized to accept benefits, cannot act as authorized representatives without the specific written approval of the ISD county director, and then only if the county director determines that no one else is available to serve as an authorized representative. Individuals disqualified for fraud cannot act as authorized representatives during the period of disqualification, unless the disqualified individual is the only adult member of the household able to act on its behalf and only if the county director has determined that no one else is available to serve as an authorized representative. The county director shall decide separately whether such individuals are needed to apply on behalf of the household and use the benefits to purchase food. [02/01/95, 06/01/95; 8.139.110.9 NMAC - Rn, 8 NMAC 3.FSP.111, 05/15/2001; A, 02/14/2002; A, 07/15/2013; A, 03/01/2017]

**8.139.110.10 SUBMISSION OF FORMS:**

**A. Joint cash assistance (CA)/SNAP applications:**

(1) To facilitate participation in [the] SNAP, households in which all members are applying for cash assistance (Title

IV-A or GA) shall be allowed to apply for SNAP benefits at the same time they apply for other assistance. However, SNAP eligibility and benefit amounts shall be based solely on SNAP eligibility factors pending determination of cash assistance eligibility. All households shall be certified in accordance with the notice and procedural and timeliness requirements of [FSP] SNAP regulations. (See Subsection B of 8.139.110.11 NMAC, combined CA/ [FS] SNAP interviews, for further information.)

(2) A household shall be notified of the Privacy Act regarding application information and shall be provided the following information:

(a) The collection of information, including the social security number of each household member, is authorized under the Food Stamp Act of 1977, as amended 7 U.S.C. 2011-2036.

(b) The information shall be used to determine whether a household is eligible or continues to be eligible to participate in the SNAP program.

(c) The information shall be verified through computer matching programs.

(d) The information shall be used to monitor compliance with program regulations and for program management.

(e) The information provided may be disclosed to other federal and state agencies for official examination, and to law enforcement officials for the purpose of apprehending persons fleeing from the law.

(f) If a SNAP claim is filed against a household, the information on the application, including all SSNs, may be referred to federal and state agencies, as well as private claims collection agencies, for claims collection action.

(g) That providing the requested information, including the SSN of

each household member, is voluntary, but that failure to provide required information shall result in the denial of SNAP benefits to a household.

**B. Items completed:** SNAP regulations require only that an application contain the name, address and signature, or witnessed mark, of the applicant in order to be filed and registered.

**C. Who completes the application:** The application must be completed by a household member or designated authorized representative. If an authorized representative or adult member of the SNAP household completes the application form, the applicant should still review the completed form, since the applicant is liable for improper payments resulting from erroneous information given by an authorized representative. If an applicant needs help completing the form, [the caseworker] ISD shall [~~determine if the applicant has a friend or relative to help complete the form. If there is no one to help the applicant, the caseworker shall~~] help the applicant complete the form.

**D. Signature:**  
(1) The application must be signed by the applicant and the authorized representative, if one is designated. A signature means that the applicant is verifying the information provided by the household and has read and agrees with all of the statements on the application or other form requiring a signature.

(2) A signature is the depiction of the individual's name(s) that is, handwritten, electronic or recorded telephonically. Electronic and telephonically recorded signatures are valid only if provided in a format or on a system approved by the department, which includes verification of the identity of the person providing the signature.

(3) If the applicant receives help completing the form, that person must also sign at the bottom of the form.

(4) A person who is unable to sign his own name may sign the application with a mark and have it witnessed. A mark that is

not witnessed cannot be accepted as a valid signature. The witness shall be someone other than the interviewer.

**E. Filing the application:**

(1) An application can be filed in person, through an authorized representative, by mail or by fax or other electronic transmission, including on-line electronic transmission. An application submitted electronically or by fax and containing a handwritten or electronic signature shall be considered an acceptable application.

(2) An application shall be filed at the ISD field office serving the community or county where the applicant lives or through the YES-NM web portal. ISD shall provide households that complete an on-line electronic application in person at the ISD office the opportunity to review the information that has been recorded electronically and provide them with a copy of that information for their records, upon request.

~~(3) If an applicant files an application with the wrong office, that office shall immediately forward the form to the correct office. Households shall be informed that SNAP applications shall not be considered filed and the processing time limit does not begin until the application is received by the correct office. Applications received through the YES-NM web portal are automatically sent to the correct office.]~~

**F. Registration of the application:** ~~[Completed and signed in-state applications]~~ Applications submitted to ISD with at least the applicant's name, address and signature of the applicant, spouse, other adult household member or authorized representative shall be registered effective the date on which an application is received by ISD at the field office or electronically during regular business hours. Applications that are dropped off or submitted electronically after regular business hours will be considered received as of the next business day. Regular business hours are Monday through

Friday from 8 a.m. to ~~[5]~~ 4:30 p.m., excluding state holidays or other days/times when the field office is officially closed. Processing deadlines shall be calculated based on the application date.

**G. Incomplete applications:** Applications that do not contain, at a minimum, the applicant's name, address, and signature, or witnessed mark, are incomplete and cannot be registered. Prompt action shall be taken to return the application form for completion of the minimum required entries. Other missing information does not constitute an incomplete application for purposes of registering the application.

**H. Computer inquiries:** Computer inquiries shall be completed prior to certification and, where feasible, prior to the interview in order to prevent dual participation and to reveal undetected income and resources. These inquiries include scans for wage and unemployment benefits, SSI benefits, and licensed vehicle ownership, as well as for other available information and appropriate IEVS data.

**I. Action on discrepancies:**

(1) If computer interfaces show a household member is currently participating in another household or receiving benefits from the food distribution on Indian reservations program (FDPIR), ~~[the caseworker]~~ ISD shall discuss the situation with the applicant. The household can be certified only after the other project area has been informed of the situation and the case has been adjusted or transferred whichever is appropriate. If an inquiry shows that the case is on file in another project area, residence shall be established. The application shall be forwarded to the project area in which the applicant household has established residency.

(2) **Available information:** The household shall be given an opportunity to verify information from another source if information is contradictory to that already provided or is questionable.

A decision on eligibility and benefit amount shall not be delayed beyond normal application processing standards if other sources of data are unavailable. The final decision to approve or deny shall be based on the available information.

[02/01/95, 06/01/95, 07/01/97, 06/01/99; 8.139.110.10 NMAC - Rn, 8 NMAC 3.FSP.112, 05/01/2001; A, 02/14/2002; A, 07/15/2013; A, 03/01/2017]

**8.139.110.11 INTERVIEWS:**  
**A. Purpose and scope**

**of interview:** The interview is an official and confidential discussion of household circumstances with the applicant. It is intended to provide the applicant with program information, and the worker with the facts needed to make a reasonable eligibility determination. The interview is not simply to review the information on the application, but also to explore and clarify any unclear and incomplete information. The scope of the interview shall not extend beyond examination of the applicant's circumstances that directly relate to determining eligibility and benefit amounts. The interview shall be held prior to disposition of the application.

**B. Joint cash assistance/[food stamp] SNAP interview:** At initial application for cash assistance (CA), a single interview shall be conducted concurrently for both cash assistance and [food stamp] SNAP benefits if the client wishes to apply for both programs. Federal [food stamp] SNAP regulations specifically provide that applicants for both programs shall not be required to see a different [caseworker] ISD worker or be otherwise subjected to two interviews in order to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility for [food stamp] SNAP benefits and cash assistance. In an expedited [food stamp] certification situation, a second interview is permitted if an immediate interview for cash assistance cannot

be arranged.

**C. Individuals**

**interviewed:** Applicants, including those who submit applications by mail, shall be interviewed in person at the local ISD office. When circumstances warrant, the household shall be interviewed by telephone, or at another place reasonably accessible and agreeable to both the applicant and [the caseworker] ISD. The applicant may bring any person he chooses to the interview.

**D. Out of office interviews:**

(1) [A food stamp] An applicant shall not be required to have an initial office interview if the applicant is unable to appoint an authorized representative and the household has no member(s) able to come to [the food stamp office] ISD because the member(s) is elderly or disabled, as defined.

(2) The initial office interview can also be waived if requested by any household that is unable to appoint an authorized representative who is willing and able to perform this function, and who lives in a location not served by a certification office.

(3) **Hardship conditions:** The office interview for [food stamp] SNAP households shall be waived when the applicant meets one of the following conditions:

- (a) over the age of 60;
- (b) disabled;
- (c) employed 20 or more hours per week;
- (d) has a dependent child under the age of 6;
- (e) has transportation difficulties;
- (f) illness;
- (g) care of a household member;
- (h) resides in a rural area;
- (i) prolonged severe weather;
- (j) other hardship identified as situations

warrant; as authorized by the county director.

(4) A face-to-face interview must be granted to any recipient who requests one.

**E. Face-to-face/ telephone interviews:** A household [shall] must have a face-to-face interview at initial certification and at least once every 12 months thereafter.

(1) A household certified for longer than 12 months is excluded.

(2) At recertification, a household is considered to have met the face-to-face requirement when alternative recertification interviews are conducted by telephone.

(3) No household shall have the face-to-face interview waived for two consecutive recertifications.

(4) The requirement for a face-to-face interview may be waived on a case-by-case basis because of household hardship conditions.

**F. Applicant information:** During the application interview all reasonable steps shall be taken to make the applicant feel at ease and protect the applicant's right to privacy.

(1) **[Providing information:** The caseworker shall explain all program information and that, to the best of his/her ability, the caseworker is available to assist the household in gathering information.

(2) All applicants shall be provided with the following information at initial certification and recertification:

- (a) ISD's nondiscrimination policy and procedures;
- (b) complaint and fair hearing procedures and clients' rights;
- (c) program procedures, including the use of IEVS, SDX, BENDEX information, and CSED and MVD interfaces;
- (d) application processing standards, including time limits;

(e) procedures in cases of [overissuance] over-issuance or under-issuance;

(f) regular reporting responsibility to report changes within ten days of the date the change becomes known to the household;

(g) semiannual reporting requirements for those household assigned to semiannual reporting including the following:

(i) requirement to submit a semiannual report in the sixth month of the food stamp certification period;

(ii) requirement to report by the tenth day of the month following the month the household income exceeds 130% of federal poverty guidelines for the size of the household; and

(iii) option to report a change between reporting periods if the household thinks that it will result in an increase in food stamp benefits;]

(h) requirement for cooperation with quality control reviewers (QC), including penalties for non-cooperation;

(i) work requirements and penalties for non-cooperation, including voluntary quit and associated penalties;

(j) responsibility to contact the local ISD office to reschedule missed appointments; and

(k) exemption from gross receipts tax collection by the retailer on eligible food purchased with food stamp benefits.;

(f) requirement for cooperation with quality control reviewers (QC), including penalties for non-cooperation;

(g) work requirements and penalties for non-cooperation, including voluntary quit and associated penalties;

(h) responsibility to contact the local ISD office to reschedule missed

appointments; and

(i)

exemption from gross receipts tax collection by the retailer on eligible food purchased with SNAP benefits.

(j)

For households applying for cash assistance programs and SNAP, ISD must explain that limits and other requirements that apply to the receipt of cash benefits do not apply to the receipt of SNAP benefits.

(k)

ISD has a responsibility to help applicants obtain verification if the applicant indicates that the verification may be difficult for the applicant to obtain and offer to assist with obtaining verification if it appears the household will not be able to obtain it.

(l)

ISD will provide an explanation of information that still needs to be verified and how to verify in accordance with 8.100.130.9 NMAC and 8.100.130.10 NMAC.

(m)

Review all information that ISD has on file and will not require further verification of eligibility factors already established that are not subject to change.

(n)

ISD will review all household information received from data scans with the household during the interview and will not require further verification unless it is questionable or outdated.

(o)

Certified change reporting requirements for households assigned to certified change reporting including the following:

(i)

A written and oral explanation of how certified change reporting works as defined at 8.139.120.12 NMAC;

(ii)

A written and oral explanation of the reporting requirements which includes: what needs to be reported and verified; how to obtain assistance; timeframe for reporting changes; and the consequences of failing to report. Certified change reporting requirements are found at

8.139.120.12 NMAC.

(p)

Simplified reporting requirements for those households assigned [to semiannual] or transferred to simplified reporting including the following:

(i)

A written and oral explanation of how simplified reporting works as defined at 8.139.120.9 NMAC;

(ii)

A written and oral explanation of the reporting requirements which includes: what needs to be reported and verified; when the report is due; how to obtain assistance; and the consequences of failing to file a report. Simplified reporting requirements are found at 8.139.120.9 NMAC.

~~(3)~~ (2) Fair

**hearing information:**

(a)

**Notification of right to request hearing:** At the time of application each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or representative, such as a legal counsel, relative, friend or other individual.

(b)

**Periodic notification:** At any time a household informs the local office that it disagrees with an HSD action, the household shall be reminded of the right to request a fair hearing.

(c)

**Forwarding hearing request:** A request for a hearing made either orally or in writing by a household or representative shall be forwarded to the fair hearings bureau. If it is unclear from a request what action a household or representative wishes to appeal, a clarification may be requested by HSD. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(d)

**Providing a hearing:** The fair hearing process shall be available to any household which feels an action taken by HSD is incorrect, and which

affects participation of the household in the ~~[food stamp program]~~ SNAP.

(e)

**Other representation:** If there is an individual or organization available that provides free legal representation, the household shall be informed of the availability of that source.

~~(4)~~ (3) Agency

**conference information:** A household shall be informed of the availability of an agency conference to resolve a dispute. HSD shall schedule an agency conference for a household when a dispute arises.

(a)

**Denial of expedited service:** An agency conference shall be offered to a household which wishes to contest a denial of expedited service. An agency conference for such a household shall be scheduled within two working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(b)

**Adverse actions:** ~~[HSD]~~ ISD may also offer an agency conference to a household adversely affected by an ~~[HSD]~~ ISD action.

(c)

**Use of agency conference:** ~~[HSD]~~ ISD shall inform a household that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process.

**G. Scheduling**

**interviews:** ~~[The interview on an initial application shall be scheduled within ten (10) working days, and, to the extent possible, at a time that is most convenient for the applicant.]~~ ISD will schedule an interview to be held within 10 working days of the date the application was received that is, to the extent possible, convenient for both the applicant and ISD. The application received date is the first day the application is received within regular business hours. ISD will provide the applicant with a written appointment letter that will include: the date, time and place of the appointment, the name and telephone number of the local county office, the consequences of missing

an appointment, how to reschedule an appointment, the possibility of a telephone interview, and that the spouse, any other responsible person in the household, or an authorized representative may attend the interview with the applicant or in the applicant's place.

**H. Missed interviews:** [HSD] ISD shall notify a household that it missed its first interview appointment and that the household is responsible for rescheduling a missed interview. ISD shall send the household a notice of missed interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the ISD shall schedule a second interview. The household is responsible for rescheduling a missed interview. If the household requests a second interview [contacts the caseworker] ISD within the 30-day application-processing period, [the caseworker] ISD shall schedule a second interview. When the applicant contacts the local ISD office, either orally or in writing, [the caseworker] ISD shall reschedule the interview as soon [thereafter] as possible within the 30-day processing period, without requiring the applicant to provide good cause for failing to appear. If the household is determined eligible, benefits will be pro-rated from the date of application. If the applicant does not contact the office or does not appear for the rescheduled interview, the application shall be denied on the 30th day (or the next work day) after the application was filed (see Section 8.139.110.12 NMAC).

**I. Verification standards:** Verification is use of third-party information or documentation to establish the accuracy of statements on the application, or information provided by the applicant or recipient.

**Initial certification:** Verification is mandatory for the following information prior to initial certification for both new and reopened cases.

**Financial information:**

- \_\_\_\_\_ (i) gross nonexempt income, and
- \_\_\_\_\_ (ii) resources;
- \_\_\_\_\_ (b) **Any of the following if the expense would result in a deduction:**
- \_\_\_\_\_ (i) utility expenses;
- \_\_\_\_\_ (ii) continuing shelter expenses;
- \_\_\_\_\_ (iii) dependent care expenses;
- \_\_\_\_\_ (iv) deductible medical expenses including the amount of reimbursements;
- \_\_\_\_\_ (v) legally obligated child support expenses, and amount actually paid;
- \_\_\_\_\_ (vi) if any of the above expenses will not result in a deduction, verification shall not be required (for example, less than \$35 in medical expenses, or shelter expenses that do not exceed 50% of income after all other deductions).
- \_\_\_\_\_ (c)

**Nonfinancial information:**

- \_\_\_\_\_ (i) residence;
- \_\_\_\_\_ (ii) citizenship, if questionable, and alien status of household members only;
- \_\_\_\_\_ (iii) identity of the applicant and authorized representative, if designated;
- \_\_\_\_\_ (iv) household size and composition;
- \_\_\_\_\_ (v) disability, if necessary;
- \_\_\_\_\_ (vi) social security numbers, except that eligibility or issuance of benefits shall not be delayed solely to verify the social security number of a household member, and
- \_\_\_\_\_ (vii) any questionable information that must be verified to determine eligibility.

**Recertification:** Verification of the following is mandatory at recertification or for cases reopened within 30 days of expiration:

- \_\_\_\_\_ (b) a change in income if the source has changed or the amount has changed by more than \$50.00;
- \_\_\_\_\_ (c) a change in utility expenses if the source has changed;
- \_\_\_\_\_ (e) previously unreported medical expenses, and total recurring medical expenses which have changed by more than \$25.00;
- \_\_\_\_\_ (d) new social security numbers shall be verified as detailed in 8.139.410.8 NMAC;
- \_\_\_\_\_ (e) any other information which has changed or is questionable;
- \_\_\_\_\_ (f) unchanged information shall not be re-verified unless it is incomplete, inaccurate, inconsistent, or outdated.
- \_\_\_\_\_ (3)

**Semiannual reporting:** Verification standards for those households assigned to semiannual reporting are set forth at 8.139.120.9 NMAC.

**(4) Providing verification:**

- \_\_\_\_\_ (a) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.
- \_\_\_\_\_ (b) The caseworker shall assist a household in obtaining verification, provided the household is cooperating in the application process.
- \_\_\_\_\_ (c) A household may supply documentary evidence in person, through the mail or through an authorized representative.
- \_\_\_\_\_ (d) A household shall not be required to supply verification in person at the food stamp office or to schedule an appointment to provide such verification.
- \_\_\_\_\_ (e) The caseworker shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

\_\_\_\_\_ (a)

\_\_\_\_\_ (a)

(5)

**Designating a collateral contact:**

(a)

Whenever evidence is insufficient to make a firm determination of eligibility or benefit amount, or cannot be obtained, the caseworker may require a collateral contact or a home visit.

(b)

The caseworker shall rely on the household to provide the name of a collateral contact.

(c)

A household may request assistance in designating a collateral contact.

(d)

The caseworker shall not be required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide accurate third-party verification.

(e)

When a collateral contact designated by the household is unacceptable, the caseworker shall either designate another collateral contact, ask the household to designate another collateral contact, or provide another alternative form of verification such as a home visit.

(f)

The caseworker is responsible for obtaining verification from acceptable collateral contacts.

(6)

**Documentation:** A case file shall be documented to support eligibility, ineligibility, and benefit amount determination. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.]

[02/01/95, 06/01/95, 10/01/95, 06/01/99; 8.139.110.11 NMAC - Rn, 8 NMAC 3.FSP.113, 05/01/2001; A, 02/14/2002; A, 01/01/2004; A, 08/01/2008; A, 03/01/2017]

**8.139.110.12 PROCESSING APPLICATIONS:**

**A.** HSD is responsible for timely and accurate issuance of benefits to eligible households. All applications for assistance will be processed as soon as possible. Applicants who complete the

application process will have their eligibility determined and be given an opportunity to participate within the time limits mandated for expedited or normal application processing. [The ISS] ISD will explain the time limits to the applicant and inform [him/her] them of the date by which the application will be processed. With the exception of those manual provisions that specify “working days,” time limits begin on the first calendar day following the action that triggered the time limit.

**B. Household**

**cooperation:** To determine eligibility an application form must be completed and signed, a household or its authorized representative interviewed, and certain information on the application verified.

(1) **At**

**application:** If a household refuses to cooperate in completing the process, the application will be denied at the time of refusal. For a determination of refusal to be made, a household must be able to cooperate, but clearly demonstrates that it will not take action that it can take and that is required to complete the application process. If there is any question that a household has failed to cooperate as opposed to refused to cooperate, it will not be denied. Once denied for refusal to cooperate, a household may reapply but will not be determined eligible until it cooperates with [the ISS] ISD.

(2)

**Subsequent reviews:** A household will be determined ineligible if it refuses to cooperate in a subsequent review of eligibility. Such reviews include those because of reported changes and at application for recertification. Once terminated for refusal to cooperate, a household may reapply, but will not be determined eligible until it cooperates with [the ISS] ISD.

(3) **Outside**

**sources:** A household will not be determined ineligible when an individual outside the household fails to cooperate with a request for verification. Individuals identified as ineligible household members

in 8.139.400.12 NMAC will not be considered as individuals outside the household.

(4)

**Cooperation with quality control**

**(QC):** A household will be determined ineligible if it fails or refuses to cooperate in a QC review of eligibility and benefit amount.

(a)

**Period of ineligibility:**

(i)

A household that refuses to cooperate with a state QC review will be determined ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until 95 days from the end of the annual QC review period (January 5) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

(ii)

A household that refuses to cooperate with a federal QC review will be ineligible effective the month following the month the adverse action notice time limit expires. Ineligibility will continue until seven months from the end of the annual review period (May 1) during which non-cooperation is found. The annual QC review period begins October 1 and ends September 30.

(b)

**Re-establishing eligibility:**

(i)

A household may reapply during the period of ineligibility, but will not be determined eligible until it cooperates with the QC review, and is otherwise eligible.

(ii)

A household which reapplies at the end of the period of ineligibility will not be determined ineligible because of its failure or refusal to cooperate with a state or federal QC review. The household must provide verification necessary to determine eligibility at reapplication in accordance with Subsection H of 8.139.110.11 NMAC.

**C. Verification**

**standards:** Verification is use of third-party information or

documentation to establish the accuracy of statements on the application, or information provided by the applicant or recipient.

**(1)**

**Initial certification:** Verification is mandatory for the following information prior to initial certification for both new and reopened cases.

**(a)**

Financial information:

**(i)**

gross nonexempt income, and

**(ii)**

resources.

**(b)**

Any of the following if the expense would result in a deduction:

**(i)**

utility expenses;

**(ii)**

continuing shelter expenses;

**(iii)**

dependent care expenses;

**(iv)**

deductible medical expenses including the amount of reimbursements;

**(v)**

legally obligated child support expenses, and amount actually paid;

**(vi)**

if any of the above expenses will not result in a deduction, verification shall not be required (for example, less than \$35 in medical expenses, or shelter expenses that do not exceed fifty percent of income after all other deductions).

**(c)**

Nonfinancial information:

**(i)**

residence;

**(ii)**

citizenship, if questionable, and alien status of household members who are individually applying for benefits only;

**(iii)**

identity of the applicant and authorized representative, if designated;

**(iv)**

household size and composition;

**(v)**

disability, if necessary;

**(vi)**

social security numbers, except that

eligibility or issuance of benefits shall not be delayed solely to verify the social security number of a household member, and

**(vii)**

any questionable information that must be verified to determine eligibility.

**(2)**

**Verification subsequent to initial certification: Verification of the following is mandatory in accordance with the individual's reporting requirements found at 8.139.120.9 through 12 NMAC:**

**(a)**

a change in income if the source has changed or the amount has changed by more than \$50;

**(b)**

a change in utility expenses if the source has changed;

**(c)**

previously unreported medical expenses, and total recurring medical expenses which have changed by more than \$25;

**(d)**

new social security numbers, for individuals who are applying for benefits, that shall be verified as detailed in 8.139.410.8 NMAC;

**(e)**

any other information which has changed or is questionable;

**(f)**

unchanged information shall not be re-verified unless it is incomplete, inaccurate, inconsistent, or outdated.

**(g)**

satisfactory compliance with time limits for individuals subject to the time limit in accordance with 8.139.410.14 NMAC.

**(3) Providing**

**verification:**

**(a)**

If electronic verification is not available, the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information.

**(b)**

ISD shall assist a household in obtaining verification, provided the household is cooperating in the application process.

**(c)**

A household or their authorized representative may supply documentary evidence in person, by mail, fax, electronic device or through the YES NM web portal.

**(d)**

A household shall not be required to supply verification in person at the ISD office or to schedule an appointment to provide such verification.

**(e)**

ISD shall accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

**(4)**

**Documentation:** A case file shall be documented to support eligibility, ineligibility, and benefit amount determination. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

[02/01/95, 06/01/95, 06/15/96; 8.139.110.12 NMAC - Rn, 8 NMAC 3.FSP.114, 05/15/2001; A, 03/01/2017]

**8.139.110.13 TIME LIMITS:**

**A. Opportunity**

**to participate:** "Opportunity to participate" means having benefits authorized on or before the 27th day after the application is filed, so that the household will have benefits available by the 30th day after the application was filed. Residents of institutions who apply for [food stamp] SNAP benefits prior to their release from the institution will be provided the opportunity to participate as soon as possible but no later than 30 calendar days from the date of the applicant's release from the institution.

**B. Move during**

**eligibility determination:** When an office that is processing an application for assistance learns that the applicant has moved to another county, that office will immediately transfer the case in pending status. The application will be processed

by the new office using the original registration date from the first office.

**C. Withdrawing the application:** An applicant may voluntarily withdraw his/her application at any time prior to the determination of eligibility. A notice will be sent advising the household of the action taken. An applicant will be advised that withdrawal of his/her application has no effect on his/her right to apply for assistance in the future. The agency will document the reason for withdrawal, if any was given.

**D. Delayed eligibility determinations:**

(1)

**Establishing cause for delay:** When an application for [food stamps] SNAP is not processed by the end of the 30 day time limit, a determination as to whether the delay is the fault of the applicant or HSD will be made.

(2)

**Applicant delays:** A delay is the fault of the applicant if he/she has failed to complete the application process. [The-ISS] ISD will send the household a delay notice on the 30th day in accordance with 7 CFR 273.2(h), after the application is filed when the interview has not been held by the 30th day and the appointment has been rescheduled beyond the 30th day, and when the applicant has requested an extension of time to provide information. The notice will inform the applicant that all changes in circumstances since the application was filed must be reported. [The-ISS] ISD must have taken the following actions, as appropriate, before the delay can be considered the fault of the household:

(a)

For applicants who have failed to complete the application form, [the-ISS] ISD must have offered, or attempted to offer, assistance in its completion.

(b)

For applicants who have failed to provide complete verification, [the-ISS] ISD must have provided the household with a statement of required verification, offered assistance as required, and allowed

the household sufficient time to provide the missing verification. Sufficient time is at least 10 days from the date of [the-ISS's] ISD's initial request for the particular verification that is missing.

(c)

For applicants who have failed to appear for the initial interview and request another, [the-ISS] ISD must have attempted to reschedule the interview, if feasible, within 30 days following the date of application. If the applicant has failed to appear for the first interview and a subsequent interview is postponed at the applicant's request or cannot otherwise be rescheduled until after the [twentieth] 20th day but before the [thirtieth] 30th day following the date of application, the applicant must appear for the interview, bring verification, and register household members for work by the [thirtieth] 30th day. Otherwise, the delay is the fault of the applicant.

(d)

If the applicant has failed to appear for the first interview and a subsequent interview is postponed at the applicant's request until after the [thirtieth] 30th day following the date of application, the delay is the fault of the applicant. If the applicant misses both scheduled interviews and requests another interview, any further delay is the fault of the applicant.

(3) Denial

**of the household application:** If the delay is the fault of the applicant and eligibility cannot be determined, the applicant will be sent a denial notice on the [thirtieth] 30th day after the application was filed, or on the following work day if the [thirtieth] 30th day is on a weekend or holiday, unless the household has requested an extension. If an action by the applicant is needed to complete the application process, the denial notice will explain what verification the applicant failed to provide, what must be done to complete the application process, a statement that ISD took necessary steps to assist that applicant, and that an additional [thirty] 30 days is granted to take the actions required to complete the

original application before a new application must be filed. The notice will also state that if the applicant is found eligible benefits will be provided in the month following the month of application.

(4) Benefits

**provided:** If the applicant was at fault for the delay during the first 30-day period but is found eligible during the second 30-day period, [the-ISS] must ensure that benefits are provided only from the date that the applicant took the required action. The household is not entitled to benefits retroactive to the original date of application.

(5) HSD

**delays:** Delays that are the fault of HSD include, but are not limited to, cases where [the-ISS] ISD fails to provide the required assistance, fails to observe time limits, fails to schedule timely interviews, or fails to provide other proper procedural help to the applicant. HSD is at fault when the applicant has met his obligations in a timely manner, but [the-ISS] ISD fails to complete the application process in a timely manner.

(a)

**Action on HSD delays:** If the delay in the initial 30-day period is caused by [HSD;] ISD, ISD will take immediate corrective action and the application will not be denied. The applicant will be notified that the application is pending and informed of any action to take to complete the application process, including reporting any changed circumstances since the application was filed. ISD will send the applicant a notice of delay in accordance with 7 CFR 273.2(h).

(b)

**Retroactive benefit rights:** If the applicant's eligibility is determined during the second 30-day period, the household is entitled to benefits retroactive to the date of application.

(c)

**Denial of an application:** If the household is determined ineligible, the application will be denied and a notice sent no later than the [sixtieth] 60th day after the application was filed, or the following work day if

the 60th day falls on a weekend or holiday.

**(6) Delays beyond 60 days:**

**HSD delays:**

**(i)** If HSD is at fault for not completing the application process by the end of the second 30-day period, and the record is otherwise complete, the application process will be continued until an eligibility determination is accomplished.

**(ii)** If the household is determined eligible, it is entitled to benefits retroactive to the date of original application, but only for those months that it is determined eligible.

**Household delays:**

**(i)** If the household is at fault for not completing the application process by the end of the second 30-day period, the application will be denied and the household will be required to file a new application, if it still wishes to participate in the program.

**(ii)** If the initial delay was the household's fault the household will receive [~~food-stamp~~] SNAP benefits retroactive only to the month following the month of application. The household is not entitled to any lost benefits, even if HSD caused the delay in the initial 30-day period.

**Incomplete information:**

**(i)** If HSD is at fault for not completing the application process by the end of the second 30-day period, but the case record is not complete enough to reach an eligibility determination, the application will be denied and the household advised to file a new application. The household will also be informed that it may be entitled to lost benefits caused by an HSD delay.

**(ii)** If HSD was at fault for the delay in the initial 30-day period, the amount of lost benefits will be calculated from the date of application.

[02/01/95, 06/01/95; 8.139.110.13

NMAC - Rn, 8 NMAC 3.FSP.115, 05/15/2001; A, 03/01/2017]

**8.139.110.14 DISPOSITION OF APPLICATION/NOTICES:**

**A. Approval of**

**SNAP:** Notification of the final eligibility determination will be mailed via US postal service and or through approved electronic methods to the applicant in time to be received not later than the last day of the time limit that is, mailed by the 28th day after the date of application to be received by the 30th day.

**B. Contents of the**

**notice:** The notice of approval provides the household with written notice, sent by mail or electronically, of the amount of the benefits and the beginning and ending dates of the certification period. If the initial benefit amount is prorated or contains benefit amounts for both the month of application and the current month, the notice will explain that the initial month's SNAP benefit amount differs from the benefit amount for the remainder of the certification period. The notice also states that if households that have applied jointly for financial assistance and SNAP begin to receive a financial assistance check, their SNAP benefit amount will be reduced or terminated without advance notice. The notice will contain a telephone number for the customer service call center which will accept calls throughout working hours.

**C. Denial of SNAP:**

If the application is denied, a written or electronic notice will be sent to the applicant explaining the basis for the denial, the right to request a fair hearing, and the telephone number of the ISD office where the household can get information concerning an individual or organization that provides legal representation. Households determined to be ineligible will be sent a denial notice as soon as possible, but not later than 30 days following the date the application was filed, unless an extension was requested. The household must file a new application if it wishes to have eligibility re-

determined, subsequent to the initial denial.

[02/01/95, 06/01/95; 8.139.110.14 NMAC - Rn, 8 NMAC 3.FSP.116, 05/15/2001; A, 07/15/2013; A, 03/01/2017]

**8.139.110.16 EXPEDITED SNAP SERVICE:**

**A. Identifying eligible**

**households:** [~~Households reporting little or no income resources may be entitled to receive SNAP benefits within seven days after they file an application. Applications will be screened to identify such households as soon as possible in order to ensure that the seven-day limit is met.] Households meeting the federal requirements of income and resources may be entitled to receive SNAP benefits within seven days after an application is received by ISD, in accordance with 7 C.F.R 273.2(i). Applications will be screened to identify eligible households within 24 hours in order to ensure that the seven-day limit is met.~~

**(1)**

**Entitlement to expedited service:**

The following households will be expedited, provided that they are otherwise SNAP eligible:

**(a)**

households with less than \$150 in gross monthly income, and with liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, lump sum payments, and the like) not exceeding \$100;

**(b)**

households with combined gross monthly income and liquid resources less than the household's monthly rent, or mortgage, and utilities. The mandatory SUA may be used in making this determination, provided that the household qualifies for the SUA; or

**(c)**

migrant or seasonal farm worker households with \$100 or less in liquid resources and determined to be destitute as defined by the special income calculations in 8.139.400.14 NMAC, migrant and seasonal farm workers.

**(2)**

**Verification requirements:** All households entitled to expedited service must verify identity through readily available documentation or through a collateral contact. All other eligibility factors may be postponed. Reasonable efforts must be made by ~~the caseworker~~ ISD to verify residence, income, liquid resources, and all other eligibility factors. Benefits will not be delayed because of an inability to verify such factors or any questionable information but for identity.

**(3) SSNs and work registration:** Applicant households are specifically permitted to receive their first expedited SNAP benefit amount before providing social security numbers (SSN) or applying for them. Such households are required to do so before their next benefit issuance, but will remain eligible for participation as long as good cause exists. Unless exempt, the household's work registration status will be established at the time of certification for expedited service. If an individual's work registration exemption status is in question, benefits will not be delayed solely to verify the exemption.

**B. Time limits:**

**(1) Expedited time limits:** All households entitled to expedited service will receive their benefits no later than the seventh calendar day after the date the application ~~was filed~~ is received by ISD.

**(2) Out-of-office interview:** If a household is entitled to expedited service and waiver of the office interview, the interview will be conducted and the eligibility determination completed within the expedited service time limits, unless the household cannot be reached. The first day of this count is the first calendar day after the application is filed. If a telephone interview is conducted and the application must be mailed to the household for signature, the mailing time involved will not be calculated in the expedited service time limits.

**(3) Late identification:** If screening fails

to identify a household as being entitled to expedited service and it is subsequently determined that the household was so entitled, the household's application will be processed immediately; the time limits in such instances are calculated from the date that it is discovered that the household was entitled to expedited service.

**(4)**

**Certification periods:** ~~Households entitled to expedited service which provide all necessary verification prior to certification may be certified for up to twelve months, if circumstances warrant. Households whose verification requirements are postponed will be certified for the month of application, and the following month, or for households whose circumstances warrant, a normal certification period will be assigned].~~ Households entitled to expedited service which provide all necessary verification prior to certification may be assigned a certification period in accordance with 8.139.120.9 and 8.139.120.12 NMAC. Households whose verification requirements are outstanding due to an inability to verify via electronic means and the household not providing necessary documentation, will be certified for the month of application, and the following month, or for households whose circumstances warrant, an assigned certification period in accordance with 8.139.120.9 and 8.139.120.12 NMAC. When a certification period of more than one month is assigned, the written notification to the household will state that no further benefits will be issued until the ~~postponed~~ verification requirement is completed. The notice also advises that if verification results in changes in eligibility or SNAP benefit amount, ~~the caseworker~~ ISD will act on these changes without advance notice of adverse action.

**(5)**

**Continuation of benefits:** Households providing ~~the postponed~~ verification by the 30th day after the application date will have their benefits continued. The second

month's benefits will be issued within five working days from the date verification is received, or the first day of the second month, whichever is later.

**(6)**

**Termination of benefits:** Except for migrant farm workers needing out-of-state verification, when the ~~postponed~~ verification requirement is not completed within 30 days of the date of application, the household's participation in the program will be terminated and no further benefits issued.

**(7) Denial**

**of expedited service:** Households determined ineligible for expedited service will have their applications processed according to normal standards. A household wishing to contest a denial of expedited service will be offered an agency conference to discuss the denial. The conference will be scheduled within two ~~(2)~~ working days of the request for a conference, unless the household requests a later date or states that it no longer wishes to have an agency conference.

**C. Number of expedited issuances:**

**(1) Limits:**

There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification the household either has completed the verification requirements ~~postponed at~~ outstanding from the last expedited certification or has been certified under normal processing standards since the last expedited certification.

**(2) At every**

**application:** Expedited services will be available at initial application based on the circumstances existing in the month of application. If a participating household applies for recertification before the end of its current certification period, the expedited service provision will not be applied.

[02/01/95, 06/01/95, 01/01/97, 07/01/98, 08/01/99; 8.139.110.16 NMAC - Rn, 8 NMAC 3.FSP.119, 05/15/2001; A, 07/15/2013; A,

03/01/2017]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.120 NMAC, Sections 6, 8, 13, 14, 15 and 16.**

**8.139.120.6 OBJECTIVE:**

Issuance of the revised [~~food stamp program~~] supplemental nutrition assistance program (SNAP) policy manual is intended to be used in administration of [~~the food stamp program~~] SNAP in New Mexico. This revision incorporated the latest federal policy changes in [~~the food stamp program~~] SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the human services department.

[02/01/95; 8.139.120.6 NMAC - Rn, 8 NMAC 3.FSP.000.6, 05/15/2001; A, 03/01/2017]

**8.139.120.8**

**RECERTIFICATION:** When a household's certification period expires, its eligibility to participate in [~~the food stamp program~~] SNAP ends. [~~Food stamp~~] SNAP benefits will not be continued beyond the certification period. Timely applications for recertification will be approved or denied before the end of the current certification period. ISD must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification

periods.

**A. Notice and time standards:** ISD shall provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration (NOE) at the time of certification. ISD shall provide other households the NOE before the first day of the last month of the certification period, but not before the first day of the next-to-the-last month. Jointly processed Public Assistance ("PA") (as defined at 7 C.F.R. 271.2), and General Assistance ("GA") (as defined at 7 C.F.R. 271.2) households need not receive a separate SNAP notice if they are recertified for SNAP at the same time as their PA or GA redetermination. Every household will be provided with a notice of expiration, as follows:

(1) For a household certified for one or two months, the notice of expiration will be provided at the time of certification. The household will have 15 days from the date the notice is received to submit a timely application for recertification. The household will be approved and provided an opportunity to participate, if eligible, or be denied, within 30 days after obtaining its last [~~food stamp~~] SNAP benefit amount.

(2) For all other households, a notice of expiration will be sent by HSD prior to the start of the last month of the household's certification period. A household has reapplied timely if the application for recertification is filed by the 15th day of the last month of the household's certification period.

(3) [~~The easeworker~~] ISD will complete the application process if the household meets all requirements and finishes the necessary processing steps; [~~the easeworker~~] ISD will approve or deny timely applications before the end of the household's current certification period.

**B. Failure to submit timely application:**

(1) A household that does not submit [~~a timely~~] an application for

recertification by the 15<sup>th</sup> day of the expiration month loses its right to uninterrupted benefits.

(2) [~~Food stamp~~] SNAP benefits will be prorated from the date of application if a household's application is received in the month after its certification period has expired or participation has been terminated for any reason.

(3) [~~The easeworker~~] ISD will ensure that any eligible household that does not submit a timely application for recertification be provided the opportunity to participate, if eligible, within 30 calendar days after the date the application is filed.

**C. [~~HSD failure to act:~~** A household that has made a timely application for recertification, but because of agency error, is not determined eligible in sufficient time to provide for issuance by the household's normal issuance cycle in the following month, will receive an immediate opportunity to participate and will receive a notice of delay. A household will be entitled to restoration of lost benefits if, as a result of such error, it was unable to participate for the month following the expiration of the certification period, or benefits were prorated in the month after expiration.] ISD caused delayed processing: If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of ISD fault, ISD must continue to process the case and provide a full month's allotment for the first month of the new certification period, and will send a delay notice in accordance with Subsection D of 8.139.110.13 NMAC. If the household fails to take required action, ISD may deny the case at the time of application, at the end of the certification period, or at the end of 30 days. ISD shall determine cause for any delay in processing a recertification application in accordance with the provisions of 7 C.F.R. 273.2(h)(1).

**D. Scheduling interviews:** [~~An interview will be~~

~~scheduled on the date or after a timely application for recertification is filed by a household.] ISD shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires. A household will not be required to appear for an interview, or to file an application for recertification, in the month before the last month of its current certification period. An interview may be scheduled in the month before the last month of certification, or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview. If an interview was scheduled, or if household member or authorized representative failed to attend an interview which was scheduled prior to the date a household files a timely application, ~~[the caseworker]~~ ISD will schedule an interview on or after the date an application is timely filed.~~

**E. Failure to appear:**

If a household member or authorized representative fails to appear for a recertification interview scheduled on or after a timely application is filed, the household loses the right to uninterrupted participation. ISD shall send the household a notice of missed interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the ISD shall schedule a second interview. The household is responsible for rescheduling a missed interview. ~~[The caseworker does not need to take any further action to schedule another interview, unless the household member or authorized representative requests another interview.]~~

**F. Prospective**

**eligibility determination:** A household's eligibility and ~~[food stamp]~~ SNAP benefit amount at recertification will be determined prospectively based on circumstances anticipated for the certification period, beginning with the month following the expiration of the current certification period.

**G. Eligibility**

**and benefits:** Eligibility will

be determined at recertification according to the standards described below.

**(1) Timely**

**reapplication:** Applications filed before the 15th of the expiration month will be considered timely. A household member or authorized representative that attends an interview and provides all necessary verification by the end of the household's current certification period, will have the opportunity to participate by the household's normal issuance cycle in the month following the end of the current certification period, if all eligibility factors have been met.

**(2)**

**Reapplication after the 15<sup>th</sup>:** If an application for recertification is submitted after the 15th but before the end of a household's certification period and the household is determined eligible for the first month following the end of the certification period, that month is not considered an initial month and benefits are not prorated.

**(3) First**

**month ineligibility:** If an application for recertification is submitted before the end of a household's certification period, but the household is determined ineligible for the first month following the end of the certification period, the first month of any subsequent certification period will be considered an initial month and ~~[food stamp]~~ SNAP benefits will be prorated.

**(4) Late**

**applications:**

**(a)**

Recertification verification standards, in ~~[Paragraph 2 of Subsection F of 8.139.110.H]~~ accordance with Paragraph (2) of Subsection C of 8.139.110.12 NMAC, will be used when an application is received within 30 days after the certification period expires. Initial month verification standards, in ~~[Subsection F of 8.139.110.H]~~ accordance with Paragraph (1) of Subsection C of 8.139.110.12 NMAC, will be used if the application is received more than one calendar month after the

certification period expires or the case has been closed for any reason.

**(b)**

Initial month certification provisions and proration of benefits for migrant and seasonal farmworker households will apply when more than 30 days have passed since the household was certified for participation. (See 8.139.400.14 NMAC for more information on migrant and seasonal farmworker households).

**(5) Pending**

**verification:** A household member or authorized representative that has reapplied timely, attended an interview, and is required to provide verification, will be given 10 days to provide the verification, or until the certification period expires, whichever is longer. If the certification period expires before the 10-day deadline for submitting the required verification, the household will have the opportunity to participate, if eligible, within five working days after verification is submitted. The household is entitled to a full month's benefits.

[02/01/95, 10/01/95, 01/01/97; 8.139.120.8 NMAC - Rn, 8 NMAC 3.FSP.122, 05/15/2001; A/E, 10/15/2008; A, 12/31/2008; A, 03/01/2017]

**8.139.120.13 REQUIREMENTS FOR MASS CHANGES:**

**A. Mass changes:**

Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it.

**(1) Mass**

changes include, but are not limited to, increases in excluded or deducted items or amounts.

**(2) Mass**

changes affecting income include annual adjustments to social security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions.

**(3)**

Information concerning mass change notice and hearing requirements are set forth in 8.100.180.15 NMAC.

**(4) Notice**

**of mass changes:** Adverse action notices are not required for mass changes resulting from federal adjustments to eligibility standards, the maximum ~~[food-stamp]~~ SNAP allotment, standard deduction, shelter deduction, and state adjustments to the mandatory utility standard. Announcement of anticipated mass changes may be made through the media, posters in ISD offices, and other likely places frequented by households, or through a general notice mailed to a participating household. When HSD makes a mass change in food stamp eligibility or benefit amount affecting the entire caseload or a part of it, affected households shall be mailed a notice of any change, reduction or termination of benefits. HSD shall issue a notice to affected households as far in advance of the household's next scheduled issuance date as is reasonably possible, but by no later than the date the affected benefit is issued.

**B. Federal changes:**

Authorized adjustments which may affect ~~[the food-stamp]~~ SNAP benefit amount for participating households include the maximum ~~[food-stamp]~~ SNAP allotment, standard deduction, excess shelter and dependent care deductions, and income eligibility standards. These changes go into effect for all households annually on October 1. Adjustments to federal standards are made prospectively.

**C. Cost of living**

**adjustments:** Cost of living increases and any other mass changes in federal benefits, such as social security and SSI benefits, shall be treated as mass changes for ~~[food-stamp]~~ SNAP purposes. ~~[The human services department]~~ ISD is responsible for automatically adjusting a household's ~~[food-stamp]~~ SNAP benefit amount to reflect such a change. Households shall not be responsible for reporting these changes.

**D. Mass changes in public assistance:** When overall adjustments to cash assistance payments are made, corresponding adjustments in ~~[food-stamp]~~ SNAP

benefits shall be handled as a mass change. Households shall be given advance notice of any adjustment in the ~~[food-stamp]~~ SNAP benefit amount. If a household requests a fair hearing, benefits shall continue at the former amount only if the issue being appealed is that eligibility or ~~[food-stamp]~~ SNAP benefit amount was determined incorrectly.

**E. Utility standard:**

Authorized adjustments shall be effective for all October ~~[food-stamp]~~ SNAP issuances. Households whose certification periods overlap annual adjustments in the state's mandatory utility allowance shall be informed at the time of certification that the adjustment shall be effective in October 1; the household shall be informed of the adjusted benefit amount, if known at the time of certification. Adjustments in the state's mandatory utility allowance are made prospectively.

[8.139.120.13 NMAC - Rn & A, 8.139.120.12 NMAC, 02/14/2002; 8.139.120.13 NMAC - N/E, 10/15/2008; A, 12/31/2008; A, 03/01/2017]

**8.139.120.14 OTHER CHANGES AFFECTING ~~[FOOD-STAMP]~~ SNAP HOUSEHOLDS:**

**A. Failure to report changes:**

(1) If ~~[the caseworker]~~ ISD discovers that the household failed to report a change as required, ~~[the caseworker]~~ ISD shall evaluate the change to determine whether the household received benefits to which it was not entitled.

(2) After verifying the change, ~~[the caseworker]~~ ISD shall initiate a claim against the household for any month in which the household was ~~[overissued food-stamp]~~ over issued SNAP benefits. The first month of the ~~[overissuance]~~ over issuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change.

(3) If the discovery is made within the certification period, the household is entitled to a notice of adverse action if

its benefits will be reduced.

(4) No claim shall be established because of a change in circumstances that a household is not required to report.

**B. Noncompliance with program requirements or fraud:**

(1) **Intentional failure to comply or fraud:** No household shall receive an increase in ~~[food-stamp]~~ SNAP benefits when benefits from another program have been decreased (reduced, suspended or terminated) for intentional failure to comply with the other program eligibility requirements or for an act of fraud. This provision applies in cases where the other program is a means-tested, federal, state or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds.

(2) Failure to comply shall be determined as provided in Paragraph (3) of Subsection I of 8.139.520.9 NMAC.

(3) **Verification of recoupment:** Agencies administering means-tested, publicly funded assistance programs provide recipients with written advance notice of proposed changes in benefit amounts. Such notices provide information which shall determine if the reduction in cash assistance is because of a properly reported change in circumstances. In most cases, the notice shall document whether the reduction is because of a recoupment of overpaid benefits resulting from intentional failure to report changes. If the notice is not detailed enough to make a determination, the agency which initiated recoupment shall be contacted to obtain the necessary information. ~~[Food-stamp]~~ SNAP benefits shall not be delayed beyond normal processing standards pending the outcome of this determination.

(4) **Calculating benefits:** When a recipient's assistance benefits are decreased to recoup an overpayment, that portion of the decrease that is the

recoupment shall first be identified. The recoupment is the amount of decrease attributed to the repayment of benefits [~~overissued~~] over issued. If a Title IV-A recipient intentionally underreports income, the Title IV-A grant is first reduced to reflect the corrected income, then reduced further by the recoupment amount. In such a case, the [~~food stamp~~] SNAP calculation would reflect the Title IV-A amount reduced because of income, but not the second reduction caused by recoupment. [8.139.120.14 NMAC - N/E, 10/15/2008; A, 12/31/2008; A, 03/01/2017]

**8.139.120.15 CHANGE NOTICES:**

**A. Agency responsibilities:**

(1) [~~The caseworker~~] ISD shall take action on any change reported by a household, and on any change which becomes known through other sources.

(2) The household shall be issued a change notice.

(a) If there is a reduction or termination of benefits, the household shall be issued an adverse action notice, unless the change has been reported by the household in writing.

(b) If the household reports the change in writing, advance notice of the change in benefit amount is required before the household's next issuance.

(c) If there is no change in the benefit amount, the household shall be notified that the change resulted in no change in benefit amount.

(3) If a household receiving cash assistance reports a change, it shall be considered to have also reported the change for [~~food stamp~~] SNAP purposes. A notice shall be sent to the household acknowledging the reported change, even if there is no change in benefits. A notice of adverse action shall be sent if there is a reduction or termination in the [~~food stamp~~] SNAP benefit amount and the

change was not reported in writing.

**B. Notice of adverse action:**

(1) Prior to any action to reduce or terminate a household's [~~food stamp~~] SNAP benefits within the certification period, the household shall be provided with a timely and adequate advance notice before the adverse action is taken, unless the change was reported by the household in writing. A written change report submitted by the household is subject to the adequate notice requirements in subsection C of 8.139.120.15 NMAC.

(2) At a minimum, the adverse action notice shall include the following information:

(a) proposed action and reason for the action;

(b) month in which the change takes effect;

(c) adjusted benefit amount;

(d) household's right to request a fair hearing, circumstances under which the household can continue benefits at the greater amount, and deadline dates for requesting a hearing;

(e) household's liability for any benefits [~~overissued~~] over issued if the decision of the fair hearing is that the department took the correct action;

(f) general information on whom to contact for additional information, including the right to representation by legal services.

(3) Individual notices of adverse action shall not be provided when:

(a) there is a mass change;

(b) [~~the caseworker~~] ISD determines on the basis of reliable information that the household has moved from the project area;

(c) [~~the caseworker~~] ISD determines on the basis of reliable information that all members of a household have

died;

(d) the household has received an increased benefit amount to restore lost benefits, the restoration is complete, and the household has been notified in writing of the date the increased benefit amount would terminate;

(e) the household's benefit amount varies from month to month within the certification period to take into account changes anticipated at the time of certification, and the household was notified of such variations at the time of certification;

(f) the household applied for cash assistance and [~~food stamp~~] SNAP benefits at the same time, has been receiving [~~food stamp~~] SNAP benefits pending approval of cash assistance, and the household was notified at the time of certification that [~~food stamp~~] SNAP benefits would be reduced upon approval of the cash assistance grant;

(g) a household member is disqualified for intentional program violation, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of the household member.

(h) the household was certified on an expedited basis, is assigned a certification period longer than one month, and verification has been postponed; the household must have received written notice that receipt of benefits beyond the month of application is contingent on the household providing the postponed verification;

(i) the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement is terminated because the treatment center or group living arrangement loses either its certification or its status as authorized representative;

(j) the household voluntarily requests, in writing or in the presence of [~~the caseworker~~] ISD, that its participation

be terminated.

**C. Adequate notice:**

If a change was reported in writing that will result in a reduction or termination in [food-stamp] SNAP benefits, the household shall be provided with adequate advance written notice confirming the change. Adequate notice does not preclude the household's right to request a fair hearing. The household shall be notified that its benefits are being reduced or terminated no later than the date the household will receive, or would have received, its [food-stamp] SNAP benefits. Adequate notice shall be provided when changes reported in writing meet the following conditions:

(1) the household reports the information which results in the reduction or termination;

(2) the reported information is in writing and signed by a member of the household;

(3) [the-easeworker] ISD can determine the household's reduced benefit amount or ineligibility based solely on the information provided by the household in the written report;

(4) the household retains its right to a fair hearing;

(5) the household retains its right to continued benefits if the fair hearing is requested within the advance notice time limit;

(6) [the-easeworker] ISD continues the household's previous benefit amount if required, within five working days of the household's request for a fair hearing.

[8.139.120.15 NMAC - Rn & A/E, 8.139.120.11 NMAC, 10/15/2008; A, 03/01/2017]

**8.139.120.16 TRANSFER OF HOUSEHOLDS:** When a household transfers from one project area to another, the household's case record and computer file shall be transferred accordingly. Procedures for handling households which transfer between project areas within the state and between offices within a single project

area are described below.

**A. Transfer of**

**inactive cases:** Inactive cases are those that have been certified and are subsequently closed. [The-easeworker] ISD in the new project area is responsible for requesting that the case record be transferred. The former project area is responsible for transferring case records and making sure they are complete.

**B. Transfer of**

**active cases:** Active cases are those presently certified.

(1) **Timely reporting:** Transfers within the state shall be considered like any other reported change in circumstances. The household must timely report a move and verify its new address and shelter expenses, as well as any change in household composition and income, before benefits may continue or be issued (see Subsection A of 8.139.120.12 NMAC). The former project area shall update the household's address on its computer file and transfer the case in active status to the new project area. The new project area shall verify the household's new circumstances, including but not limited to, address, shelter expenses, income, and household composition (see Paragraph 1 of Subsection B of 8.139.120.12 NMAC).

(2) **Not reported:** If a project area becomes aware that a household has moved but has not been informed of a new in-state address, either by the household or its designee or by another project area, participation shall be terminated immediately based on unverified residence. If the household wishes to continue participation, it must file a new application.

**C. Procedures**

**for nonreceipt of benefits:** If a household which has moved to a different project area has not received its current month's [food-stamp] SNAP benefits, action required by [the-easeworker] ISD shall depend on circumstances described below:

(1) If the [food-stamp] SNAP benefits are returned to the central mail issuance

unit, reissuance is authorized by the new project area to the household's address in the new project area.

(2) If the [food-stamp] SNAP benefits are not returned to the central mail issuance unit, an affidavit shall be submitted by the new project area, as described in Subsection G of 8.139.610.14 NMAC, replacement of benefits lost in the mail, even though the original issuance was from the former project area. The new project area shall make sure that the household's residence and mailing address are changed prior to submitting the affidavit.

[8.139.120.16 NMAC - Rn & A/E, 8.139.120.12 NMAC, 10/15/2008; A, 03/01/2017]

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**This is an amendment to 8.139.410 NMAC, Sections 3, 6, 8, 9, 11, 12 and 13.**

**8.139.410.3 STATUTORY AUTHORITY:** The [food-stamp-program] supplemental nutrition assistance program (SNAP) is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering [the-food-stamp-program] SNAP is contained in Chapter 27 NMSA, 1978. Administration of the human services department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). [02/01/95; 8.139.410.3 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.000.3, 05/15/2001; A, 03/01/2017]

**8.139.410.6 OBJECTIVE:** Issuance of the revised [food-stamp-program] SNAP policy manual is intended to be used in administration of [the-food-stamp-program] SNAP in New Mexico. This revision incorporated the latest federal policy changes in [the-food-stamp-program]

SNAP not yet filed. In addition, current policy citations were rewritten for clarification purposes or were simply reformatted. Issuance of the revised policy manual incorporated a new format which is the same in all income support division policy manuals. A new numbering system was designated so that similar topics in different programs carry the same number. The revised format and numbering standards were designed to create continuity among ISD programs and to facilitate access to policy throughout the human services department.

[02/01/95; 8.139.410.6 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.000.6, 05/15/2001; A, 03/01/2017]

**8.139.410.8 ENUMERATION (SOCIAL SECURITY NUMBER):**

**A. Requirement:**

[The social security number is required for every individual who receives food stamp benefits. Providing the social security number of a household member is voluntary. However, failure to provide the social security number shall result in the denial of food stamp benefits to the household member.] The social security number is required for every individual who applies for SNAP benefits. While providing the social security number of a household member is voluntary, failure to provide the social security number for a household member applying for SNAP benefits shall result in the denial of SNAP benefits to that household member.

(1) A household participating in [the food stamp program (FSP)] SNAP must provide the social security number of each household member applying for SNAP benefits before certification. An actual social security card is not mandatory to fulfill the verification requirement.

(2) If an applying individual has more than one number, all numbers must be provided.

(3) If an applying individual does not have a social security number, or if

the household does not know if an applying individual member has a social security number, the household must apply for a social security number for [the] all applying individual(s) before certification.

(4) [A-easeworker] ISD shall inform the household where to apply and what information is needed, and shall advise the household that proof of application from the social security administration (SSA) office for a social security number is required before certification.

(5) [The-easeworker] ISD shall explain to applicants and participants that refusal or failure to comply, without good cause, shall result in disqualification of the applying/participating individual household member for whom a social security number has not been provided or obtained.

(6) For a newborn, the household must provide a social security number or proof of application for a social security number at the next recertification or within six months, whichever is later.

**B. Validation of social security number:**

(1) [The-easeworker] ISD shall record, in the case file [~~and the computer file,~~] the social security number of each applying/participating household member at certification [~~recertification, or at any contact with the household~~]. The social security number is validated by the SSA on a periodic basis.

(2) Immediate validation of an applying individual's social security number is not required for participation in [the FSP] SNAP. Household certification or issuance of SNAP benefits shall not be delayed solely to validate the social security number of a household member.

(3) ISD shall offer to:

(a) complete, or help the applicant complete, an application for a social security number, form SS-5.

(b) verify identity, age, and citizenship

or alien status, as required by social security administration (SSA):

(c) forward the SS-5 application to the social security administration (SSA).

[~~(3)~~] (4) When a social security number has been validated by the SSA, [the-easeworker] ISD shall make a permanent annotation on the client case file to prevent future validation of the social security number [~~in the future~~].

[~~\_\_\_\_\_~~] (4) The-easeworker shall offer to:

(a) complete, or help the applicant complete, an application for a social security number, form SS-5.

(b) verify identity, age, and citizenship or alien status, as required by SSA;

(c) forward the SS-5 application to the SSA.;

(5) For those applicant individuals who do not have an SSN, ISD shall:

(a) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS-5. To complete Form SS-5, ISD must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS-5 to SSA.

(b) If no enumeration agreement exists, an individual must apply at the SSA, and ISD shall arrange with SSA to be notified directly of the SSN when it is issued. ISD shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify ISD of the SSN. ISD shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt of Application for a Social Security Number, Form SSA-5028, as evidence that an individual has applied for an SSN. ISD may also use their own documents for this purpose.

(c) ISD shall follow the procedures described in paragraphs (a) and (b).

of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

**(d)**

If the household is unable to provide proof of application for an SSN for a newborn, the household must provide the SSN or proof of application at its next recertification or within six months following the month the baby is born, whichever is later. If the household does not timely this information the ISD shall determine if the good cause provisions of Subsection C (3) of this section are applicable.

**C. Disqualification from [food stamps] SNAP:** If [a caseworker] ISD determines that the [household] applicant/recipient has refused or failed to provide or apply for a social security number without good cause, [the] that individual [who does not have a social security number] shall be ineligible to participate in [the FSP] SNAP.

**(1) Refusal to comply:** Refusal to provide or apply for a social security number shall result in the disqualification of the individual for whom a social security number is required. Any remaining household members are eligible to participate in [the FSP] SNAP.

**(2) Failure to comply:** [Individuals] Applying individuals who fail, without good cause, to meet the enumeration requirement within the required time period are ineligible. The disqualification applies to an individual(s), not to an entire household. An individual becomes eligible to participate, and the disqualification ends, when the social security number is provided.

**(3) Determining good cause:** If a household can show good cause why an application has not been completed in a timely manner, the applying household member without a social security number shall be allowed to participate for one month in addition to the application month. To determine good cause, information from the household member, the social security administration, and

HSD records shall be considered. Documentary evidence or collateral information [(8-139.100.7 NMAC definitions)] that the member has applied for a social security number or has made every effort to provide the social security administration with the information needed to complete an application is considered good cause for not complying timely with this requirement. If a household member applying for a social security number is unable to obtain the documents required by the social security administration, [the caseworker] ISD shall make every effort to help the household get these documents.

**(a)**

If a household can show good cause why an application for a social security number has not been made in a timely manner, the household member concerned shall be allowed to continue to participate each month that good cause exists.

**(b)**

Good cause does not include delays caused by illness, lack of transportation, or temporary absence, since the SSA provides for the application process to be conducted entirely by mail. A personal interview is not required except for persons age 18 or over who must apply for an original social security number at a local SSA office.

**(4)**

**Participation pending notification:** When an application for a social security number has been filed, as verified by a receipt of application for a social security number from the social security administration (SSA), an individual shall be permitted to participate in [the food stamp program] SNAP, pending notification by the SSA of the household member's social security number.

**(5)**

**Subsequent actions:** If the social security number is not verified at recertification for a number already provided, or has not been computer-verified in the interim, [the caseworker] ISD shall disqualify the individual for noncompliance with the enumeration requirement. [The caseworker] ISD shall have

offered to help the individual complete an application for a duplicate social security number. Any household member disqualified for noncompliance with the enumeration requirement becomes eligible upon providing verification of a valid social security number.

**D. Resources**

**and income:** The resources of a disqualified individual count in their entirety. A pro rata share of the disqualified individual's income shall be considered available to the remaining household members.

**E. Use of social**

**security number:** HSD is authorized to use social security numbers in the administration of [the food stamp program] SNAP. To the extent determined necessary, HSD may access computer information regarding individual applicants and participants who receive benefits or services under Title XVI of the Social Security Act. The social security number shall be used to prevent duplicate participation, to facilitate mass changes in federal benefits, and to request and exchange information on individuals through [the HEVS and SAVE] computer match programs [and the department of labor]. [02/01/95, 07/01/98; 8.139.410.8 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.411, 05/15/2001; A, 02/14/2002; A, 03/01/2017]

**8.139.410.9 CITIZENSHIP AND ALIEN STATUS:** Participation in [the food stamp program] SNAP is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible [alien] immigration status. Among those ineligible for participation are alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.

**A. Eligibility:** No individual is eligible to participate in [the food stamp program] SNAP unless that individual is otherwise eligible and is:

**(1)** a U.S. citizen;

(2) a U.S. non-citizen national;

(3) an American Indian who is:

(a) an American Indian born in Canada who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(b) a member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians.

(4) **Hmong or Highland Laotian who is:**

(a) a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975 who is lawfully residing in the U.S.;

(b) the spouse, or surviving spouse of such Hmong or Highland Laotian, or

(c) an unmarried or surviving dependent child who is under the age of 18 or if a full-time student under the age of 22; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday of such Hmong or Highland Laotian.

(5) **Human trafficking victim who is:**

(a) certified by the DHS, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(b) under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(c) the spouse, child, parent or unmarried minor sibling of a victim of a severe

form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(d) the spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA.

~~(6) **Qualified and eligible alien:** An individual who is both a "qualified alien" and an "eligible alien" as defined in Subsection B of 8.139.410.9 NMAC.]~~

**B. [Qualified and eligible aliens:** An alien may qualify for participation in the food stamp program if the alien meets at least one definition of "qualified alien" from Paragraph (1) below and one definition of "eligible alien" as defined in Paragraph (2) below.]

**Qualified and eligible alien:** An individual who is in a qualified immigration status for SNAP eligibility as defined in Subsection B below.

**(1) Qualified Eligible Status:** An alien may qualify for participation in SNAP if the alien meets at least one of the criteria from Paragraph (1) below and one definition of "eligible alien" as defined in Paragraph (2) below.

**(+)(2) Qualified alien:** A "qualified alien" means:

(a) an alien who is lawfully admitted for permanent residence under the INA;

(b) an alien who is granted asylum under section 208 of the INA;

(c) a refugee who is admitted to the United States under section 207 of the INA;

(d) an alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least [±] one year;

(e) an alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997,

or whose removal is withheld under section 241(b)(3) of the INA;

(f) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(g) an alien, an alien child's parents or an alien child who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse;

(h) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

**[(2)] (3) Eligible aliens not subject to the five year bar:** A qualified alien, as defined in Paragraph (1) of this Subsection, is eligible to receive [food stamps] SNAP and is not subject to the requirement to be in a qualified status for five years as set forth in Subparagraph (b) of Paragraph (2) of this section, if the individual meets at least one of the criteria of Paragraph (2):

(a) an alien age 18 or older lawfully admitted for permanent residence under INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(b) an alien admitted as a refugee under section 207 of the INA;

(c) an alien granted asylum under section 208 of the INA;

(d) an alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose

removal is withheld under section 241(b)(3) of the INA;

(e)

an alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(f)

an Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461;

(g)

an alien with one of the following military connections:

(i)

a veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C 5303A(d), including an individual who died in active military, naval or air service;

(ii)

an individual on active duty in the armed forces of the U.S. (other than for training);

(iii)

the spouse or surviving spouse of a veteran or active duty military alien described above provided the spouse has not remarried;

(iv)

a child or surviving child of a deceased veteran (provided such child was dependent upon the veteran at the time of the veteran's death) who is under the age of 18 (if a full-time student, under the age of 22); or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18<sup>th</sup> birthday;

(h)

a qualified alien who is lawfully residing in the U.S. and is receiving benefits or assistance for blindness or disability as defined in Paragraph (23) of Subsection A of 8.139.100.7 NMAC;

(i) an

individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(j) an

individual who is lawfully residing in the U.S. and is under 18 years of age.

~~(3)~~ (4) Eligible

**aliens subject to the five year bar:**

The following qualified aliens, as defined in Paragraph (1) above, must be in a qualified status for five years before being eligible to receive ~~[food stamps]~~ SNAP. The five years in qualified status may be either consecutive or non-consecutive.

Temporary absences of less than six months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than six months, ~~[the department]~~ ISD shall presume that U.S. residency was interrupted unless the alien presents evidence of their intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the U.S. for five years, the agency shall consider all months of residency in the U.S., including any months of residency before interruption:

(a) an

alien 18 or older lawfully admitted for permanent residence under the INA;

(b)

an alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year;

(c)

an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of abuse, an alien whose child has been battered or subjected to cruelty, or an alien child whose parent has been battered;

(d) an

alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

~~(4)~~ (5) Quarters

**of coverage:**

(a)

SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(b)

An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the Social

Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(i)

A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of ~~[food stamp]~~ SNAP eligibility.

(ii)

If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, ~~[the caseworker]~~ ISD shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(c)

**Disputing quarters:** If an applicant disputes the SSA determination of quarters of coverage reported by QCHS, the individual may participate for up to six (6) months pending the results of an SSA investigation. The individual or HSD must have requested an investigation from SSA in order to participate. The household is responsible for repayment of any ~~[food stamp]~~ SNAP benefits issued for such individual during the investigation if SSA determines that the individual cannot be credited with 40 quarters of coverage under Title II of the Social Security Act.

~~(5)~~ (6) Federal

**means-tested benefit:** After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit, or actually received ~~[food stamps]~~ SNAP benefits is not creditable toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit or actually received ~~[food stamps]~~ SNAP in that

quarter. If the alien earns the 40th quarter of coverage prior to applying for ~~[food stamps]~~ SNAP benefits or any other federal means-tested public benefit in that same quarter, ~~[the caseworker]~~ ISD shall allow that quarter toward the 40 qualifying quarters total.

(a)

Federal means-tested benefits include, but may not be limited to, benefits from:

- (i) ~~[the food stamp program]~~ SNAP;
- (ii) the food assistance block grant programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands;
- (iii) supplemental security income (SSI);
- (iv) TANF block grant under Title IV of the Social Security Act.

(b)

For purposes of determining whether an alien has or has not received a federal means-tested benefit during a quarter, the definition of federal means-tested benefit shall not include:

- (i) medical assistance under Title XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;
- (ii) short-term, non-cash, in-kind emergency disaster relief;
- (iii) assistance or benefits under the National School Lunch Act;
- (iv) assistance or benefits under the Child Nutrition Act of 1966;
- (v) public health assistance (not including any assistance under Title XIX medicaid) for immunizations, and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;
- (vi) payments for foster care and adoption assistance under Part B and E of Title

IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child is a qualified alien;

(vii)

programs, services, or assistance, delivering in-kind services at the community level and necessary for the protection of life or safety, that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(viii)

programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act;

(ix)

means-tested programs under the Elementary and Secondary Education Act of 1965;

(x)

benefits under the Head Start Act;

(xi)

benefits under the Workforce Investment Act.

~~(6)~~ (7)

**Adjustments in status:** Each category of eligible alien status stands alone for purposes of determining eligibility.

(a)

When a qualified alien determined to be an eligible alien not required to meet the five year bar adjusts to an eligible alien status that must meet the five year bar they will not lose ~~[food stamp]~~ SNAP eligibility.

(b)

Upon expiration of one eligibility status, ~~[the department]~~ ISD must determine if eligibility exists under another status.

**C. Verification of citizenship/eligible alien status:**

U.S. citizenship ~~[is verified]~~ verification is required only when client statement of citizenship is inconsistent with statements made

by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) U.S.

**citizenship:** Any member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining household members.

(2) **Eligible**

**alien status:** Verification of eligible alien status is mandatory at initial certification. Only those household members identified as aliens with qualified and eligible alien status are eligible to participate in ~~[the FSP]~~ SNAP.

(3) **Ineligible**

**or questionable alien status:** Any household member identified as an ineligible alien, or whose alien status is in question cannot participate in ~~[the FSP]~~ SNAP. ~~[The caseworker]~~ ISD is responsible for offering to contact the immigration and naturalization service if the alien has a document that does not clearly indicate eligible or ineligible alien status.

**D. Need for**

**documentation:**

(1)

~~[Household members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status]. Household members identified as aliens must present information or documentation, such as but not limited to, an A-number, an I-94 number, a letter, notice of eligibility, or identification card which allows ISD to establish that the alien is in an eligible immigration status.~~

(2) [A-

~~caseworker shall allow aliens a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be 10 days after the date the caseworker~~

requests an acceptable document, or until the 30th day after application, whichever is longer.] ISD shall allow aliens a reasonable opportunity to submit acceptable information or documentation of eligible alien status. Any individual missing necessary verification of citizenship, national status or eligible immigration status is allowed a reasonable opportunity period in accordance with 8.200.410.10 NMAC

(3) If verification of an applying individual's eligible status is not provided by the deadline, the eligibility of the remaining household members shall be determined. Verification of eligible [alien] immigration status provided at a later date shall be treated as a reported change in household membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual [of] or HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual for up to six months pending the results of the inquiry. The six-month time limit begins in the month the original request for verification is made.

~~\_\_\_\_\_ (5) If a caseworker accepts a non-INS document and determines that it is reasonable evidence of eligible alien status, the document shall be copied and sent to INS for verification. The caseworker shall not delay, deny, reduce, or terminate the individual's participation pending verification from INS.]~~

~~(6)~~ **(5) Inability to obtain [INS documentation] verification:** [If a household indicates an inability to provide documentation of alien status for any member of the household, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.] If a household indicates an inability to provide attestation of an eligible immigration status for any applying

member of the household, that member shall be considered an ineligible alien.

**E. Failure to cooperate:** ~~[If a household, or a household member, indicates an unwillingness to provide documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation]. If a household, or household member, indicates an unwillingness to provide attestation, information or documentation of an eligible immigration status for any applying member, that member shall be considered an ineligible alien. ISD shall not continue efforts to get the necessary information.~~

**F. Reporting illegal aliens:**

(1) HSD shall inform the local DHS office only when an official determination is made that any member of a household who is applying for or receives benefits is present in the US in violation of the INA. An official determination that an illegal alien is in the US in violation of the INA is only made when:

(a) the ~~[illegal aliens]~~ alien's unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individuals eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US, such as a final order of deportation.

(2) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

(3) Illegal alien status is considered reported when ~~[the caseworker]~~ ISD enters the information about the non-citizen on

the household's computer file.

**G. Income and resources of ineligible aliens:** All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and SNAP benefit amount for the remaining eligible household members.

[02/01/95, 07/01/98, 02/01/99; 8.139.410.9 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.412, 05/15/2001; A, 02/14/2002; A, 10/01/2002; A, 04/01/2003; A, 10/01/2003; A, 06/01/2011; A, 03/01/2017]

**8.139.410.11 NONCONCURRENT RECEIPT OF ASSISTANCE (DUAL PARTICIPATION):**

**A.** In no event may an individual receive ~~[food stamp]~~ SNAP benefits in more than one household in the state of New Mexico in the same month, with the exception of ~~[women and children in battered women's shelters]~~ individuals residing in shelters for battered persons (Subsection B of 8.139.410.10 NMAC). In addition, an individual may not receive ~~[food stamp]~~ SNAP benefits in the state of New Mexico and any other state, or the territories of Guam, the Virgin Islands, or Puerto Rico, in the same month. An individual or household participating in a commodity distribution program administered by any Indian tribal organization (ITO) on an Indian reservation is not eligible to receive ~~[food stamp]~~ SNAP benefits in the same month that commodities are received. A household need not be living on the Indian reservation to participate in an Indian tribal commodities program. If ~~[an ISS]~~ ISD determines that an individual or household has received ~~[food stamp]~~ SNAP benefits to which it was not entitled because of dual participation, a claim will be filed for any month in which there was an over-issuance of ~~[food stamp]~~ SNAP benefits.

**B. Disqualification for receipt of multiple benefits:** A finding that an individual has received

multiple [food stamp] SNAP benefits simultaneously as a result of an administrative disqualification hearing and IPV, or a conviction in federal or state court, will result in a ten year disqualification period. The income and resources of the disqualified individual will continue to count in their entirety to the household while the individual remains in the home. [02/01/95, 07/01/98; 8.139.410.11 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.414, 05/15/2001; A, 03/01/2017]

**8.139.410.12 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)**

**WORK PROVISIONS AND EMPLOYMENT AND TRAINING PROGRAM (E&T):** Any SNAP recipient may be subject to work requirements. SNAP recipients who do not meet a federal exemption must meet the work requirements in accordance with Subsection B of this section. Federal exemptions from work requirements are found at 7 Code of Federal Regulation (CFR) 273.7(a)(6) and (b). SNAP recipients may be subject to E&T program participation requirements. SNAP recipients who do not meet a state or federal exemption for E&T work program participation are general participants (participants). The state and federal exemptions are listed in Paragraphs (1) and (2) of Subsection C of this section. A participant will follow all program requirements per 7 CFR 273.7 and as contained in this rule. Participants are voluntary until ~~[October 1, 2016]~~ March 1, 2018, when they become mandatory, unless exempted, at the time of initial application or at recertification, whichever occurs first.

**A. Work requirements:** ~~[The department]~~ ISD will administer the work requirements in accordance with 7 CFR 273.7~~[(a), (b) and (c)]~~. As a condition of eligibility for participation in SNAP, every household member who does not qualify for a federal exemption, must meet work requirements as outlined in Subsection B of this section. Federal exemptions from

work requirements are found at 7 CFR 273.7(a)(6) and 273.7(b). Physical and mental unfitness for the federal exemption is defined as an individual who has a mental or physical illness or disability, temporary or permanent, which reduces their ability to financially support themselves. Unfitness can be:

(1) obvious to ~~[the department]~~ ISD and documented in the case file; or

(2) not obvious to ~~[the department]~~ ISD, but is documented by a physician, physician’s assistant, nurse, nurse practitioner, a licensed or certified psychiatrist or a licensed or certified psychologist, or social worker as being unfit to work; the claim of physical or mental unfitness must be substantiated by written documentation identifying the physical or mental condition and certifying that the person is unfit for employment.

**B. Compliance with work requirements and consequences of noncompliance:**

An individual who is not temporarily waived or exempt in accordance with 7 CFR 273.7(a)(6) and (b) must:

(1) register for work at the time of application and every 12 months thereafter; all SNAP participants are considered registered for work with the head of household’s signature on an application or recertification form for SNAP participation;

(2) participate in an E&T program to the extent required by law;

(3) provide ISD or E&T program service provider with information regarding employment status, participation in E&T program status, or availability for work;

(4) report to an employer referred to by ISD or its designee if the potential employment meets the suitability requirements in accordance with 7 CFR 273.7(h);

(5) accept a bona fide offer of suitable employment at a site or plant not subject to a strike or lockout, at a

wage equal to the higher of the federal or state minimum wage or eighty percent of the wage that would have governed had the minimum hourly rate of the Fair Labor Standards Act been applicable to the offer of employment; and

(6) not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week within the 30 day period prior to the household’s application date, or any time after filing an application, or any time during the household’s certification period in accordance with 7 CFR 273.7(a)(vii) [and 8.139.410.13 NMAC].

(7) Prior to placing a disqualification for noncompliance with the work requirements, good cause will be determined in accordance with 7 CFR 273.7(i). When determining whether or not good cause applies to voluntary quit, voluntary quit will be evaluated up to the 30 day period prior to applying for SNAP benefits and at any time thereafter.

(8) Consequences of non-compliance with work requirements, other than voluntary quit or a reduction in work, will be in accordance with 7 C.F.R. 273.7(f).

(a) For the first occurrence of noncompliance, the individual will be disqualified for 3 months or until compliance, whichever occurs later;

(b) For the second occurrence of noncompliance, the individual will be disqualified for 6 months or until compliance, whichever occurs later; and

(c) For the third or subsequent occurrence of noncompliance, the individual will be disqualified for 12 months or until compliance, whichever occurs later.

(9) Consequences of voluntary quit or reduction in work effort without good cause, will be in accordance with 7 C.F.R 273.7(f) and 7 CFR 273.7(J).

(a) For the first occurrence of

noncompliance, the individual will be disqualified for 3 months;

(b)

For the second occurrence of noncompliance, the individual will be disqualified for 6 months; and

(c)

For the third or subsequent occurrence of noncompliance, the individual will be disqualified for 12 months.

**C. E&T program participation exemptions:** [~~The department~~] ISD will screen each work registrant in accordance with 7 CFR 273.7(c). SNAP recipients not otherwise exempted as determined by [~~the department~~] ISD are subject to the E&T program participation requirements beginning on [~~October 1, 2016~~] **March 1, 2018**. Failure to comply with the requirements, without good cause, will result in disqualification in accordance with Subsection L of 8.139.410.12 NMAC.

(1) Federal

exemptions: Individuals who are temporarily waived or exempt from work requirements are therefore also temporarily waived or exempt from the E&T program participation in accordance with 7 CFR 273.7(a)(6), (b)(1), and (d)(4)(v).

(2)

State exemptions: The following individuals are exempt from E&T program participation:

(a)

a parent or other household member who is responsible for the care of a dependent child under age 13; if the child has their thirteenth birthday during the certification period, the individual responsible for the care of the child is required to participate in the E&T program as part of the next scheduled recertification, unless the individual qualifies for another exemption;

(b) a

pregnant woman;

(c)

workers in ACTION programs (such as VISTA) who average 30 or more hours of work per week are exempt, even though they earn less than minimum wage;

(d)

any individual residing in or

relocating to a county that has an unemployment rate twenty percent above the national average as defined by [~~the department~~] ISD, will not be required to participate in the E&T program;

(e)

any individual residing in or relocating to pueblos, tribes, and nations, with an estimated employment to population ratio as a measure for insufficient job availability as determined by [~~the department~~] ISD; or

(f)

any individual determined to be an able bodied adult and subject to the time limit, in accordance with 8.139.410.14 NMAC.

(3) Interim

changes in status: Anyone losing exempt status because of changes required to be reported [~~under 7 CFR 273.12~~] in accordance with 8.139.120.9 NMAC through 8.139.120.12 NMAC, will have their E&T status determined at recertification. Anyone gaining exempt status because of changes reported will have their E&T status updated when it is reported.

(4) Relocation

changes: Participants who relocate within the state retain their E&T participation status at their new location unless their circumstances change or their new location falls under a waiver as defined by the department.

**D. General E&T program procedures:**

(1) Good

**cause for non-compliance with E&T participation:** ISD will address good cause in accordance with 7 CFR 273.7(i).

(a)

Good cause is determined by considering the facts and circumstances involved, including information submitted by the individual, the individual's representative, the work experience service site or community service site.

(b)

Good cause includes circumstances beyond an individual's control, such as, but not limited to:

(i)

participant illness;

(ii)

illness of another household member requiring the presence of the participating member;

(iii)

an individual or family crisis or a family circumstance that may preclude participation;

(iv)

lack of transportation and the distance to walk to the activity site exceeds five miles roundtrip;

(v)

participant whose physical residence is more than 30 miles away from an income support field office, workforce solutions office or E&T program service provider;

(vi)

court appearance of participant or household member;

(vii)

farmworkers who are away from their permanent residence or home base who travel to work in agriculture or a related industry during part of the year;

(viii)

an absence of dependent care or transportation support services necessary for participation;

(ix)

participant's receipt of job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;

(x)

participant is a victim of family violence; or

(xi)

no available jobs within reasonable commuting distance; a distance is considered unreasonable if the round trip exceeds two hours by public or private transportation.

(2)

**E&T program service provider responsibilities:** The E&T program service provider is responsible for providing participants referred to the E&T program with an [~~explanation of exemptions;~~] assessment, orientation, development of individual responsibility plan (IRP), a work participation agreement (WPA)

and an explanation of good cause. [The department] ISD and the E&T program service provider will provide language access services and any necessary reasonable accommodations to SNAP participants, in accordance with 7 CFR 15.

(a)

Scheduling and conducting assessment and orientation sessions: The E&T program service provider will inform each participant of:

(i)

E&T program requirements and opportunities, including rights, responsibilities, good cause and exemptions;

(ii)

services; and

(iii)

benefits.

(b)

Placing a participant in an activity component: A participant may be placed in any component deemed appropriate in accordance with 7 CFR 273.7(c) by the E&T program service provider;

(c)

Authorizing reimbursements: [The E&T program service provider staff will notify ISD of requests for reimbursement of expenses that are reasonably necessary and directly related to participation in the E&T program.] ISD will authorize allowable reimbursements up to the monthly limit established by the department in accordance with 7 CFR 273.7(d)(4).

(d)

Reporting changes to [the department] ISD: The following changes, if reported by the participant to the E&T program service provider, will be shared with ISD:

- (i) participants who become exempt;
- (ii) potential good cause;
- (iii) participants who request closure of SNAP benefits;
- (iv) participants who relocate;
- (v) participants who fail or refuse to comply; or

(vi)

voluntary work participants who no longer wish to volunteer.

**E. Assessment:** An assessment must be completed by a participant and the E&T program service provider no later than 15 calendar days after an application or recertification form for SNAP participation is approved. Assessment tools and forms will be used to address the participant's education, skills, prior work experience, employability, and barriers. The assessment will be utilized to identify exemptions, potential good cause, and to determine appropriate activity placement.

**F. Orientation:**

Participants will be provided a program orientation that explains the program and its objectives. The orientation will include the following information:

(1)

the participants rights and responsibilities;

(2) support

services;

(3) benefits

of participation in the E&T work program; and

(4)

consequences of non-compliance with the E&T work program requirements.

**G. Individual**

**responsibility plan (IRP):**

Participants may complete an IRP with the assistance of the E&T program service provider. The IRP shall include a specific achievable goal or goals and a plan for securing and maintaining employment.

**H. Work participation**

**agreement (WPA):**

(1)

**Requirements:** The WPA is an agreement between the participant and [the department] ISD. Participants must complete the WPA with the E&T program service provider:

(a) no

later than 30 calendar days from date of approval for benefits;

(b) no

later than five calendar days after the expiration of an existing WPA; and

(c)

the WPA will be reevaluated by the parties at recertification and for changes in circumstances as reported.

**(2) WPA**

**Elements:** The WPA will:

(a)

list the participant's approved E&T allowable component(s);

(b)

list the level of effort for each activity;

(c)

list the support services available and to be provided by [the department] ISD;

(d)

list the reasonable accommodations that may be necessary to ensure meaningful engagement;

(e)

explained to the participant; and

(f)

be approved and signed by the E&T program service provider.

**I. E&T allowable**

**components:** ISD will administer E&T components in accordance with 7 CFR 273.7(e).

(1)

**Determination of required**

**hours:** At initial eligibility and recertification, participants will be required to participate in any combination of the components [below] as provided by ISD and, as assigned by the E&T program service provider, for a minimum requirement of up to 12 or 24 activity hours within the initial consecutive three month period during the 12 month certification period from the date of SNAP benefit approval.

(a)

Individuals in a rural area will be required to complete up to 12 activity hours. Rural area is defined as a county containing a core urban area of 50,000 or fewer people as defined by office of management and budget (OMB) metropolitan statistical area designation. An individual residing on a tribe, pueblo, or nation that is also within such a county, will be defined as living in a rural area. Individuals residing in an area that is determined to be non-rural, as defined by OMB, will be required to complete up to 24 activity hours.

(b)  
The collective hours a household must complete will be determined in accordance with 7 CFR 273.7(e)(3) (ii).

(2) **Individual or group job search with employer contacts:**

(a)  
**General:** The purpose of the job search component is to provide the participant a reasonable opportunity to find suitable employment.

(b)  
**Component activities:** All participants are required to register as a “job seeker” through the New Mexico department of workforce solutions (DWS), “New Mexico workforce connection”. [The department] ISD will verify registration in accordance with 8.100.130.9 NMAC. All participants in this component are required to complete the individual or group job search training with employer contacts. One job search activity is equal to one hour of activity. Job search activity examples can be found at 7 CFR 273(e).

(3) **Work experience:**

(a)  
**General:** The purpose of the work experience component is to improve the employability of participants.

(b)  
**Component activities:**  
(i) on-the-job skills training;  
(ii) work experience related to their occupational interests.  
(c)  
The number of hours necessary for compliance in this component are calculated in accordance with 7 CFR 273.7(e)(1).

(4) **Community service:**

(a)  
**General:** The purpose of the community service component is to provide on-the-job skills training and to assist the communities of participants.

(b)  
**Component activities:**

(i) on-the-job skills training;  
(ii) work-like experience.

**J. Federal financial participation:** Federal financial participation will be in accordance with 7 CFR 273.7(d).

**K. Reimbursement:** Participants who incur expenses that are reasonably necessary and directly related to participation in the E&T program will be reimbursed up to the monthly limit as determined by [the department] ISD, in accordance with 7 CFR 273.7(d)(4).

**L. Disqualification for non-compliance:** Participants who fail to:

- (1) timely complete the assessment;
- (2) timely complete a WPA; and
- (3) comply with assigned component requirements and their required hours of participation as outlined in their WPA will be disqualified in accordance with 7 CFR 273.7(f).

(4) **Individual disqualification:** A participant who fails or refuses to comply with the E&T program participation will be considered an ineligible household member in accordance with 7 CFR 273.7(f). Any participant who fails or refuses to comply with the E&T participation, without good cause will be disqualified as follows:

- (a) first occurrence: for three months or until compliance, whichever occurs [earlier] later;
- (b) second occurrence: for six months or until compliance, whichever occurs [earlier] later;
- (c) third occurrence: for one year or until compliance, whichever occurs [earlier] later.

(5) **Individual that is voluntarily participating:** Any individual that is voluntarily participating in the E&T program is not subject to disqualification [for non-compliance].

(6) **Treatment**

**of income and resources:** All the income and resources of an individual disqualified for non-compliance with work requirements or work participation will be counted to determine the household’s income and resource maximum levels and benefit amount in accordance with 8.139.520 NMAC.

(7) **Notice of adverse action:** Within 10 days of determining that a participant has failed to meet an E&T requirement, [the department] ISD shall issue a notice of adverse action in accordance with 7 CFR 273.7(c)(3).

(8) **Determining the SNAP ineligibility period:** ISD will determine, track and notify participants of disqualification periods in accordance with 7 CFR 273.7(f) and 273.13.

**M. Head of household provisions:**

(1)  
**Designation:** The household may designate a head of household in accordance with 7 CFR 273.1(d).

(2) **E&T requirements:** For purposes of determining compliance with the E&T program, the head of household will be considered as an individual household member. If the head of household fails to comply, the head of household will be disqualified in accordance with the disqualification penalties in 8.139.410.12 NMAC.

**N. Fair hearings:** Each individual or household has the right to request a fair hearing to appeal a denial, reduction or termination of benefits due to a determination of nonexempt status, or a state agency determination of failure to comply with SNAP work requirements or E&T program requirements, in accordance with 7 CFR 273.7(f)(6).

[02/01/95, 07/01/98; 8.139.410.12 NMAC - Rn, 8 NMAC 3.SNAP PROGRAM.415, 05/15/2001; A, 10/15/2003; A, 01/01/2004; A, 04/01/2010; A, 06/01/2013; A, 10/01/2014; A, 01/01/2016; A, 01/01/2016; A, 03/01/2017]

8.139.410.13 ~~VOLUNTARY~~

**QUIT AND REDUCTION OF HOURS:**

**A. Voluntary quit/reducing work hours:** When a household reports a loss of income or reduction in work hours, a determination must be made whether any member has voluntarily quit a job or reduced work hours without good cause or if the individual is an employee of the federal government, or state or a political subdivision of the state, who is dismissed for participating in a strike against the federal government, state or political subdivision of the state.

**(1) Period for establishing voluntary quit or a reduction in work hours:** A determination of voluntary quit or reduction in work hours shall be made within the 60 day period prior to the household's application date, or any time after filing an application, or any time during the household's certification period.

**(2) Verification requirements:** Verification of the circumstances surrounding the quit or reduction in work hours is required. Verification is mandatory for all individuals participating in the SNAP program. Benefits may not be conditionally granted pending verification of voluntary quit or reduction in work hours, except when verification cannot be obtained prior to the expedited service time limit.

**(3) Providing verification:** The primary responsibility for providing verification of the circumstances surrounding a quit or reduction in work hours rests with the household.

**(a)** Acceptable sources of verification include, but are not limited to: the employer at the time of quit, employee associations, union representatives, grievance committees or organizations.

**(b)** If documentary evidence cannot be obtained, a collateral contact may be used. The ISD will obtain verification from acceptable collateral contacts provided by the household.

**(c)** If the household and ISD are unable to obtain requested verification because the reason for the quit or reduction in work hours resulted from circumstances that cannot be verified for good cause, the ISD will use the best source of information available. The household will not be denied access to the FSP.

**(d)** Circumstances which cannot be verified for good cause may include a refusal by an employer to provide information, discriminatory practices or unreasonable demands by an employer, or an inability to locate the employer.

**(4) Applicant households:** In the case of an applicant household, if any household member subject to SNAP E&T work requirements voluntarily quit a job or reduced work effort, that individual shall be disqualified according to Subsection F of 8.139.410.12 NMAC. The disqualification is effective upon a determination of eligibility for the remaining household members.

**(5) Participating households:** In the case of a participating household, if a household member is determined to have voluntarily quit a job or reduced work effort without good cause, that individual shall be disqualified according to Subsection F of 8.139.410.12 NMAC. The disqualification is effective the first month following the expiration of the notice of adverse action time limit.

**B. Disqualification for voluntary quit or a reduction in work hours:** No physically or mentally fit individual 16 years of age or older and under the age of 60 will be eligible to participate in the SNAP program if the individual has voluntarily quit or reduces work hours, without good cause, or is striking against the government.

**(1) Individual disqualification:** Any individual who voluntarily quits a job, or reduces work hours without good cause will be disqualified as follows:

**(a)** **first occurrence:** for three months;

**(b)** **second occurrence:** for six months;

**(c)** **third occurrence:** for one year.

**(2) Lifting the disqualification:** An individual who has been disqualified due to voluntary quit or reduction in work hours may resume participation when the disqualification period expires or by becoming exempt from E&T work requirements listed in Paragraph (2) of Subsection D of 8.139.410.12 NMAC, if otherwise eligible.

**(3) Treatment of income and resources:**

**(a)**

All the income and resources of an individual disqualified for voluntary quit or reduction of work hours will be counted to determine the household's income and resource maximum levels, and benefit amount (see Subsection C of 8.139.520.10 NMAC).

**(b)** In the case of an applicant household, where there has been a determination of voluntary quit or reduction in work hours without good cause within 60 days prior to the application date, the earned income lost as a result of the quit or reduction in hours shall not be counted.

**(c)** When a determination is made that a household member has voluntarily quit or reduced work hours without good cause after an application is filed, but before approval, the earned income of the disqualified individual that would have been countable at application shall be calculated and used to determine the eligibility and benefit amount of the remaining household members.

**(d)** In the case of a participating household, where there has been a determination of voluntary quit or reduction in work hours without good cause, the department shall ensure that, as a result of the individual disqualification:

**(i)** the household's SNAP benefits do not increase for the length of the disqualification period;

(ii) the household's SNAP benefit amount for the length of the disqualification period is calculated by using the disqualified individual's income prior to the quit or reduction; and

(iii) the household will be issued the lesser of the SNAP benefit amount the household is eligible for prospectively or the SNAP benefit amount the household was receiving prior to the individual's disqualification.

(e) Any reported change that does not relate to the individual disqualification shall be processed after the appropriate determination in (a), (b) or (c) or (d) above is made. SNAP benefits shall be increased or decreased according to the change processing requirements at 8.139.120.10 NMAC.

**C. Suitability and good cause:** The ISD must make a determination whether there was good cause for the voluntary quit or reduction in work hours. Individuals determined to have good cause will be registered for work and must comply with E&T work requirements, unless an exemption in Paragraph (2) of Subsection D of 8.139.410.12 NMAC is met. For purposes of determining suitability of employment and good cause for noncompliance with the work requirements in Subsection C of 8.139.410.12 NMAC, the following considerations may be evaluated:

(1) **Unsuitable employment:** In addition to any suitability requirements established under the E&T work program, employment is not considered suitable if:

(a) the wage offered is less than the higher of:

(i) the applicable federal or state minimum wage; or

(ii) 80% of the federal minimum wage that would have governed had the minimum hourly rate under Section 6(a)(1) of the Fair Labor Standards Act of 1938 been applicable to the offer of employment;

(b) the employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in (a);

(c) the household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization;

(d) the work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under Section 208 of the Labor-Management Relations Act [29 U.S.C. 178] commonly known as the Taft-Hartley Act, or unless an injunction has been issued under Section 10 of the Railway Labor Act (45 U.S.C. 160);

(e) the degree of risk to health and safety is unreasonable;

(f) the member is physically or mentally unfit to perform the job duties, as documented by medical evidence or by reliable information from other sources;

(g) the employment offered within the first 30 days is not in the member's major field of experience;

(h) the distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting; employment is not considered suitable if daily commuting exceeds two hours per day, not including transporting a child to and from a child care facility; nor is employment considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site;

(i) the working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs; for example,

a Sabbatarian may refuse to work on the Sabbath.

(2) **Good cause for voluntary quit/reducing work hours:** Good cause includes the following and must be evaluated on a case by case basis:

(a) circumstances beyond the individual's control, such as those that prevent compliance with E&T work registration as described in Paragraph (2) of Subsection E of 8.139.410.12 NMAC;

(b) resigning from a job that does not meet the criteria used to establish suitable employment in Paragraph (1) of Subsection B of 8.139.410.13 NMAC;

(c) discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;

(d) work demands or conditions that make continued employment unreasonable, such as working without being paid on schedule;

(e) enrollment of an individual at least half-time in a recognized school, training program, or institution of higher education which requires the individual to leave employment, or which requires the household to move to another county or political subdivision;

(f) resignations by individuals under age 60 which are recognized by the employer as retirement;

(g) acceptance of a bona fide offer of employment of more than 20 hours per week in which the weekly earnings are equivalent to the federal minimum wage multiplied by 20, which because of circumstances beyond the control of the individual, subsequently either does not materialize or results in employment of less than 20 hours per week or weekly earnings of less than the federal minimum wage multiplied by 20 hours;

(h)

leaving a job in connection with patterns of employment in which workers frequently move from one employer to another, such as migrant farm workers or construction workers; even though work at the new site has not actually begun, quitting previous employment is considered to be for good cause if it is part of the pattern of that type of employment.]

**[RESERVED]**

[8.139.410.13 NMAC - N, 04/01/2010; Repealed, 03/01/2017]

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
PROGRAM**

The New Mexico Human Services Department (HSD) through the Medical Assistance Division (MAD) approved, at its 12/2/2016 hearing, to repeal its rule 8.308.12 NMAC, Managed Care Program - Community Benefit (filed 12/17/2013) and replace it with 8.308.12 NMAC, Managed Care Program - Community Benefit, effective 3/1/2017.

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
PROGRAM**

**TITLE 8 SOCIAL  
SERVICES  
CHAPTER 308 MANAGED  
CARE PROGRAM  
PART 12 COMMUNITY  
BENEFIT**

**8.308.12.1 ISSUING**  
**AGENCY:** New Mexico Human Services Department (HSD).  
[8.308.12.1 NMAC - Rp, 8.308.12.1 NMAC, 2/16/2017]

**8.308.12.2 SCOPE:** This rule applies to the general public.  
[8.308.12.2 NMAC - Rp, 8.308.12.2 NMAC, 2/16/2017]

**8.308.12.3 STATUTORY AUTHORITY:** The New Mexico

medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 *et seq.*, NMSA1978.  
[8.308.12.3 NMAC - Rp, 8.308.12.3 NMAC, 2/16/2017]

**8.308.12.4 DURATION:** Permanent.  
[8.308.12.4 NMAC - Rp, 8.308.12.4 NMAC, 2/16/2017]

**8.308.12.5 EFFECTIVE DATE:** March 1, 2017, unless a later date is cited at the end of a section.  
[8.308.12.5 NMAC - Rp, 8.308.12.5 NMAC, 2/16/2017]

**8.308.12.6 OBJECTIVE:** The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance division (MAD) programs.  
[8.308.12.6 NMAC - Rp, 8.308.12.6 NMAC, 2/16/2017]

**8.308.12.7 DEFINITIONS:**  
**A.** Agency based community benefit (ABCB): The community benefit (CB) services offered to a member who does not wish to self-direct his or her CB services.

**B.** ABCB care plan: For a member who is participating in the ABCB approach, the care plan outlines the specific community benefit services that the member and the care coordinator have identified as needed services through the comprehensive needs assessment (CNA).

**C.** Authorized representative: The individual designated to represent and act on the member's behalf. The member or authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or

household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the member.

**D.** Budget: The maximum budget allotment available to a self-directed community benefit (SDCB) member, determined by his or her CNA. Based on this maximum amount, the eligible member will develop a care plan in collaboration with their support broker to meet his or her assessed functional, medical and habilitative needs to enable that member to remain in the community.

**E.** Care coordinator: The care coordinator provides care coordination activities that comply with all state and federal requirements. This includes, but is not limited to: assigning an appropriate care coordination level; performing a CNA a minimum of annually to determine physical, behavioral and long-term care needs; developing a comprehensive care plan and budget based on those needs; and delivering on-going care coordination services based on the member's assessed need and in accordance with the care plan and contractual obligations.

**F.** Community benefits (CB): Services that allow a member to receive care in his or her home or in the community as an alternative to being placed in a long-term care facility. Services are intended to supplement natural supports and are not available 24-hours per day.

**G.** Comprehensive care plan: A comprehensive plan that includes community benefit services that meet the member's long-term, physical and behavioral health care needs which must include, but is not limited to: the amount, frequency and duration of the community benefit services, the cost of goods and services; the type of provider who will furnish each service; other services the member will access; and the member's available supports that will complement community benefit services in meeting the member's needs. The member works with his or her care coordinator, support broker

or both to develop a care plan which is submitted to the managed care organization (MCO) for review and approval.

**H. Comprehensive needs assessment (CNA):** The comprehensive needs assessment will be conducted in person, in the member's primary place of residence, by the MCO care coordinator for a member who is assigned a care coordination level of two or three. The CNA will assess the physical health, behavioral health, and long-term care needs; identify potential risks and provide social and cultural information. The results of the CNA will be used to create the care plan which is based on the member's assessed needs.

**I. Eligible member:** A medical assistance programs (MAP) enrolled MCO member who meets a specific level of care (LOC) and who selects to receive his or her MCO community benefits either through the ABCB or the self-directed community benefit (SDCB) approach. The eligible member must continue to meet a specific LOC and financial eligibility to continue accessing his or her MCO community benefits.

**J. Employer of record (EOR):** The employer of record is the individual responsible for directing the work of the member's SDCB employees, including recruiting, hiring, managing and terminating all employees. The EOR tracks expenditures for employee payroll, goods, and services. The EOR authorizes the payment of timesheets by the financial management agency (FMA). A member through the use of the EOR self-assessment instrument is either deemed able to be his or her own EOR or the member must assign the EOR duties to another eligible individual meeting specific EOR qualifications. A member who is a minor or a member who has a plenary or limited guardianship or conservatorship over financial matters in place is not able to be his or her own EOR.

**K. Financial management agency (FMA):** An entity that contracts with a HSD MCO

to provide the fiscal administration functions for members participating in the SDCB approach.

**L. Individual Plan of Care (IPoC):** The plan for the provision of an ABCB member's personal care services. The plan is developed by the personal care services (PCS) agency and approved by the member's MCO.

**M. Legally responsible individual (LRI):** A legally responsible individual is any person who has a duty under state law to care for another person. This category typically includes: the parent (biological, legal, or adoptive) of a minor child; the guardian of a minor child who must provide care to the child; or a spouse.

**N. Nursing Facility level of care (NF LOC):** The member's functional level is such that (2) two or more activities of daily living (ADLs) cannot be accomplished without consistent, ongoing, daily provision, of some or all of the following levels of service: skilled, intermediate or assistance. A member must meet the NF LOC to be eligible for community benefit services.

**O. Self-directed community benefit (SDCB):** The CB services offered to a member who is able to and who chooses to self-direct his or her CB services.

**P. SDCB care plan:** For a member who selected the SDCB approach, the care plan includes the services that the member and the support broker have identified through the CNA that will be purchased with the member's budget.

**Q. Support broker:** The function of the support broker is to directly assist the member in implementing the care plan and budget to ensure access to SDCB services and supports and to enhance success with self-direction. The support broker's primary function is to assist the member with employer or vendor related functions and other aspects of implementing his or her care plan and budget.

[8.308.12.7 NMAC - Rp, 8.308.12.7 NMAC, 2/16/2017]

**8.308.12.8 [RESERVED]**  
[8.308.12.8 NMAC - Rp, 8.308.12.8 NMAC, 2/16/2017]

**8.308.12.9 MANAGED CARE COMMUNITY BENEFIT OPTIONS:** A MCO member, meeting a specific LOC, can select the approach to receiving his or her community benefit services. The MCO offers two approaches to the delivery of these services: agency based (ABCB) or self-directed (SDCB). The MCO shall use the nursing facility (NF) LOC criteria for determining medical eligibility for community benefits.  
[8.308.12.9 NMAC - Rp, 8.308.12.9 NMAC, 2/16/2017]

**8.308.12.10 AGENCY BASED COMMUNITY BENEFIT (ABCB):** The MCOs shall offer the ABCB approach to its members who meets the NF LOC and are determined through a CNA or reassessment to need MCO CB services. Although a member's assessment for the amount and types of services may vary, ABCB services are not provided 24 hours per day. A member has the option of choosing the ABCB or the SDCB approach. A member cannot participate in both community benefit approaches concurrently.  
[8.308.12.10 NMAC - Rp, 8.308.12.10 NMAC, 2/16/2017]

**8.308.12.11 ELIGIBLE ABCB PROVIDERS:** All ABCB agencies must apply and be approved to be a MAD provider and must then contract with any or all approved MCOs. A complete listing of all CB provider qualifications and responsibilities are detailed in the MAD MCO policy manual. ABCB providers must meet all Federal requirements for home and community based providers.  
[8.308.12.11 NMAC - Rp, 8.308.12.11 NMAC, 2/16/2017]

**8.308.12.12 ELIGIBLE ABCB MEMBERS:** A member must meet NF LOC and be determined through a CNA or reassessment to need MCO CB services.  
[8.308.12.12 NMAC - Rp,

8.308.12.12 NMAC, 2/16/2017]

**8.308.12.13 COVERED SERVICES IN AGENCY BASED COMMUNITY BENEFIT (ABCB):**

**A.** Adult day health: adult day health services provide structured therapeutic, social and rehabilitative services designed to meet the specific needs and interests of a member that are incorporated into the member's care plan.

**(1)** Adult day health services are provided by a licensed community-based adult day-care facility that offers health and social services to assist a member to achieve his or her optimal functioning.

**(2)** Private duty nursing services and skilled maintenance therapies (physical, occupational and speech) may be provided within the adult day health setting and in conjunction with adult day health services but are reimbursed separately from adult day health services.

**(3)** Adult day health settings must be integrated and support full access of individuals receiving medicaid home and community-based services (HCBS) to the greater community, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving medicaid HCBS.

**B.** Assisted living is a residential service that provides a homelike environment, which may be in a group setting, with individualized services designed to respond to the member's needs as identified and incorporated in the care plan.

**(1)** Core services are a broad range of activities of daily living (ADL) including: personal support services (homemaker, chore, attendant services, meal preparation); companion services; medication oversight (to the extent permitted under state law); 24-hour on-site response capability:

**(a)** to meet scheduled or unpredictable

member's needs; and

**(b)** to provide supervision, safety, and security.

**(2)** Services include social and recreational programming. Coverage does not include 24-hour skilled care or supervision or the cost of room or board. Nursing and skilled therapy services are incidental, rather than integral to, the provision of assisted living services. Services provided by third parties must be coordinated with the assisted living provider.

**(3)** Assisted living settings must be integrated and support full access of individuals receiving Medicaid home and community-based services (HCBS) to the greater community, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving medicaid HCBS.

**(4)** Assisted living settings must meet CMS requirements for residential settings as outlined in the MAD MCO policy manual.

**C.** Behavior support consultation is the provision of assessment, treatment, evaluation and follow-up services to assist the member, his or her parents, family, and primary caregivers with coping skills which promote maintaining the member in a home environment.

**(1)** Behavior support consultation:

**(a)** informs and guides the member's paid and unpaid caregivers about the services and supports that relate to the member's medical and behavioral health condition;

**(b)** identifies support strategies for a member that ameliorate contributing factors with the intention of enhancing functional capacities, adding to the provider's competency to predict, prevent and respond to interfering behavior and potentially reducing interfering behavior;

**(c)** supports effective implementation

based on a member's functional assessment;

**(d)** collaborates with medical and ancillary therapists to promote coherent and coordinated services addressing behavioral issues and to limit the need for psychotherapeutic medications; and

**(e)** monitors and adapts support strategies based on the response of the member and his or her services and supports providers.

**(2)** Based on the member's care plan, services are delivered in an integrated, natural setting or in a clinical setting.

**D.** Community transition services are non-recurring set-up expenses for a member who is transitioning from an institutional or another provider-operated living arrangement (excluding assisted living) to a living arrangement in a private residence where the member is directly responsible for his or her own living expenses.

**(1)** Allowable expenses are those necessary to enable the member to establish a basic household that does not constitute room and board and may include:

**(a)** security deposits that are required to obtain a lease on an apartment or home;

**(b)** essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bed and bath linens;

**(c)** set-up fees or deposits for utility or service access, including telephone, electricity, heating and water;

**(d)** services necessary for the member's health and safety, such as, but not limited to, pest eradication and one-time cleaning prior to occupancy; and

**(e)** moving expenses.

**(2)** Community transition services do not include monthly rental or

mortgage expenses, food, regular utility charges, household appliances, or items that are intended for purely diversional or recreational purposes.

**(3)**

Community transition services are limited to three thousand five hundred dollars (\$3500).per member every five years. In order to be eligible for this service, the member must have a NF stay of at least 90-consecutive days prior to transition to the community.

**E.** Emergency response services provide an electronic device that enables a member to secure help in an emergency at his or her home, avoiding institutionalization. The member may also wear a portable “help” button to allow for mobility. The system is connected to the member’s phone and programmed to signal a response center when the “help” button is activated. The response center is staffed by trained professionals. Emergency response services include: testing and maintaining equipment; training the member, his or her caregivers and first responders on use of the equipment; 24-hour monitoring for alarms; checking systems monthly or more frequently (if warranted by electrical outages, severe weather, etc.); and reporting member emergencies and changes in the member’s condition that may affect service delivery.

**F.** Employment supports include job development, job seeking and job coaching supports after available vocational rehabilitation supports have been exhausted.

- (1)** The job coach provides:
- (a)** training, skill development;
  - (b)** employer consultation that a member may require while learning to perform specific work tasks on the job;
  - (c)** co-worker training;
  - (d)** job site analysis;
  - (e)** situational and vocational assessments and profiles;

**(f)** education of the member and co-workers on rights and responsibilities; and

**(g)**

benefits counseling. The service must be tied to a specific goal in the member’s care plan.

**(2)** Job

development is a service provided to a member by skilled staff. The service has five components:

- (a)** job identification and development activities;
- (b)** employer negotiations;
- (c)** job restructuring;
- (d)** job sampling; and
- (e)** job placement.

**(3)**

Employment supports are provided by staff at current or potential work sites. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by the member receiving services as a result of his or her disabilities, and does not include payment for the supervisory activities rendered as a normal part of the business setting.

**(4)** Payment

shall not be made for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

- (a)** incentive payments made to an employer to encourage or subsidize the employer’s participation in a supported employment program;
- (b)** payments that are passed through to users of supported employment programs; or
- (c)** payments for training that is not directly related to a member’s supported employment program.

**(5)** Federal

financial participation cannot be claimed to defray expenses associated

with starting up or operating a business.

**(6)**

Employment supports settings must be integrated and support full access of individuals receiving medicaid HCBS to the greater community, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving medicaid HCBS.

**G.** Environmental

modification services include: the purchase of, the installation of equipment for the physical adaptations to a member’s residence that are necessary to ensure the health, welfare, and safety of the member or enhance the member’s level of independence.

**(1)**

Adaptations include the installation of:

- (a)** ramps and grab-bars;
- (b)** widening of doorways and hallways;
- (c)** installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;
- (d)** lifts and elevators;
- (e)** modification of bathroom facilities (roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing);
- (f)** turnaround space adaptations;
- (g)** specialized accessibility/safety adaptations/additions;
- (h)** trapeze and mobility tracks for home ceilings;
- (i)** automatic door openers/doorbells;
- (j)** voice-activated, light-activated, motion-activated and electronic devices;
- (k)** fire safety adaptations; air filtering devices;
- (l)**

heating and cooling adaptations;  
**(m)**  
 glass substitute for windows and doors; modified switches, outlets or environmental controls for home devices; and

**(n)**  
 alarm and alert systems, including signaling devices.  
**(2)** All services shall be provided in accordance with applicable federal and state statutes, regulations and rules and local building codes.

**(3)** Non-covered adaptations or improvements to the member's home include:

**(a)**  
 adaptations for general utility which are not for direct medical or remedial benefit to the member; and

**(b)**  
 adaptations that add to the total square footage of the member's resident except when necessary to complete an approved adaptation.

**(4)** The environmental modification provider must:

**(a)**  
 ensure proper design criteria is addressed in planning and design of the adaptation;

**(b)**  
 provide or secure the appropriate licensed contractor or approved vendor to provide construction and remodeling services;

**(c)**  
 provide administrative and technical oversight of construction projects;

**(d)**  
 provide consultation to members, family members, providers and contractors concerning environmental modification projects to the member's residence; and

**(e)**  
 inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

**(5)**  
 Environmental modification services to a member are limited to five-thousand dollars (\$5,000) every five years. Additional services may be

requested if the member's health and safety needs exceed the specified limit.

**H.** Home health aide services provide total care or assist the member in all ADLs.

**(1)** Total care includes: the provision of bathing (bed, sponge, tub, or shower); shampoo (sink, tub, or bed); care of nails and skin; oral hygiene; toileting and elimination; safe transfer techniques and ambulation; normal range of motion and positioning; and adequate oral nutrition and fluid intake.

**(2)** The home health aide services assist the member in a manner that promotes an improved quality of life and a safe environment for him or her. Home health aide services can be provided outside the member's home.

**(3)** Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Home health aides perform an extension of therapy services including:

**(a)**  
 bowel and bladder care;

**(b)**  
 ostomy site care;

**(c)**  
 personal care;

**(d)**  
 ambulation and exercise;

**(e)**  
 household services essential to health care at home;

**(f)**  
 assisting with medications that are normally self-administered;

**(g)**  
 reporting changes in patient conditions and needs; and

**(h)**  
 completing appropriate records.

**(4)** Home health aide services must be provided under the supervision of a registered nurse (RN) licensed by the New Mexico board of nursing, or other appropriate professional staff. Such staff must make a supervisory visit to the member's residence at least every two weeks to observe and determine whether the member's goals are being

met.

**I.** Personal care services (PCS) are provided to a member unable to perform a range of ADLs and instrumental activities of daily living (IADL). PCS shall not replace natural supports such as the member's family, friends, individuals in the community, clubs, and organizations that are able and consistently available to provide support and service to the member.

**(1)** PCS is a benefit for a member 21 years of age or older who meets the eligibility for CB services. A member under 21 years of age must access PCS through the EPSDT program.

**(2)** PCS delivery models: A member may select either the consumer-delegated or the consumer-directed delivery of his or her PCS. The PCS consumer-delegated or consumer-directed agency must be certified as such by MAD or its designee to perform such duties and to be reimbursed for the delivery model of those services. The MCO's care coordinator is responsible for explaining both models to each member, initially, and annually thereafter.

**(a)**  
 The consumer delegated (PCS/ CDelegated) model allows the member to select his or her PCS agency to perform all PCS employer-related tasks. This agency is responsible for ensuring all PCS are delivered to the member.

**(b)**  
 The consumer-directed (PCS/ CDirected) model allows the member to oversee his or her own PCS delivery, and requires that the member work with his or her PCS agency who then acts as a fiscal intermediary agency to process all financial paperwork to be submitted to the MCO.

**(c)** If a member is unable to select or unable to communicate which PCS delivery model he or she selects, then his or her authorized representative will select on behalf of the member. The member's authorized representative status must be properly documented

with the member's PCS agency.

**(d)**

For both models, the member may select his or her family member, with the exception of the member's spouse. A friend; neighbor; or other person may also be selected as his or her PCS attendant. A family member shall not be reimbursed for a service he or she would have otherwise provided as a natural support. A PCS attendant, regardless of family relationship, who resides with the member shall not be paid to deliver household services, or supports such as shopping, errands, or meal preparation that are routinely provided as part of the household division of chores, unless those services are specific to the member.

**(e)**

A member may have a relative, friend, or other spokesperson assisting him or her with communicating information or instructions to the member's attendant, providing information concerning the member's natural services or supports needs during the member's assessment, or fulfilling additional roles as designated by the member or the member's authorized representative in writing. A spokesperson may not make decisions on behalf of a member, which is the member or member's authorized representative's sole responsibility, unless the member's authorized representative is also the member's spokesperson.

**(3) Eligible**

PCS agencies: PCS agencies electing to provide PCS must obtain agency certification. A PCS agency provider, must comply with the requirements as listed in the MAD MCO policy manual PCS agencies must be an enrolled MAD provider.

**(4) Bladder**

and bowel care: PCS must be related to the member's functional level to perform ADLs and IADLs as indicated in the members CNA. PCS will not include those services, or supports the member does not need or is already receiving from other sources including tasks provided by natural supports.

**(a)**

A member who has a signed statement

by his or her primary care provider (PCP) stating he or she is medically stable and able to communicate and assess his or her bladder and bowel care needs may access this service when included in his or her individual care plan.

**(i)**

bowel care includes the evacuation and ostomy care, changing and cleaning of such bags and ostomy site skin care;

**(ii)**

bladder care includes the attendant cueing the member to empty his or her bladder at timed intervals to prevent incontinence; and

**(iii)**

catheter care, including the changing and cleaning of such bag.

**(b)**

A member who is determined by his or her PCP in a signed statement to not be medically stable and not able to communicate and assess his or her bladder and bowel care needs may access these services:

**(i)**

perineal care including cleansing of the perineal area and changing of feminine sanitary products;

**(ii)**

toileting including assisting with bedside commode or bedpan;

**(iii)**

cleaning perineal area,

**(iv)**

changing adult briefs or pads;

**(v)**

cleaning changing of wet or soiled clothing; and

**(vi)**

assisting with adjustment of clothing before and after toileting.

**(5) Meal**

preparation and assistance: Meal preparation includes cutting ingredients to be cooked, cooking meals, placing and presenting the meal in front the member to eat, cutting up food into bite-sized portions for the member, or assisting the member as stated in his or her individual plan of care (IPoC). This includes provision of snacks and fluids and may include mobility assistance and prompting or cueing the member to prepare meals.

**(6) Eating:**

Feeding or assisting the member with eating a prepared meal using a utensil or specialized utensils is a covered service. Eating assistance may include mobility assistance and prompting or cueing a member to ensure appropriate nutritional intake and monitor for choking. If the member has special needs in this area, the PCS agency will include specific instruction in the member's IPoC on how to meet those needs. Gastrostomy feeding and tube feeding are not covered services.

**(7) Household**

support services: This service is for assisting and performing interior household activities and other support services that provide additional assistance to the member. Interior household activities are limited to the upkeep of the member's personal living areas to maintain a safe and clean environment for the member, particularly a member who may not have adequate support in his or her residence. Assistance may include mobility assistance and prompting and cueing a member to ensure appropriate household support services.

**(a)**

An attendant who resides in the same household as the member may not be paid for household support services routinely provided as part of the household division of chores, unless those services are specific to the member such as, changing the member's linens, and cleaning the member's personal living areas.

**(b)**

Services include:

**(i)**

sweeping, mopping, or vacuuming;

**(ii)**

dusting furniture;

**(iii)**

changing linens;

**(iv)**

washing laundry;

**(v)**

cleaning bathrooms includes tubs, showers, sinks, and toilets;

**(vi)**

cleaning the kitchen and dining area including washing dishes, putting

them away; cleaning counter tops, and eating areas, etc.; household services do not include cleaning up after other household members or pets;

(vii)

minor cleaning of an assistive device, wheelchair and durable medical equipment (DME) is a covered service. A member must have an assistive device requiring regular cleaning that cannot be performed by the member and is not cleaned regularly by the supplier of the assistive device to be eligible to receive services under this category;

(viii)

shopping or completing errands specific to the member with or without the member;

(ix)

cueing a member to feed and hydrate his or her documented personal assistance animal or feed and hydrate such an animal when the member is unable;

(x)

assistance with battery replacement and minor, routine wheelchair and DME maintenance is a covered service. A member must have an assistive device that requires regular maintenance, that is not already provided by the supplier of the assistive device, and that the member cannot maintain in order to be eligible to receive services under this category;

(xi)

assisting a member self-administering: assistance with self-administering physician ordered (prescription) medications is limited to prompting and reminding only. The use of over the counter medications does not qualify for this service. A member must meet the definition of "ability to self-administer" defined in this section, to be eligible to receive time for this task. A member who does not meet the definition of ability to self-administer is not eligible for this service. This assistance does not include administration of injections, which is a skilled/nursing task; splitting or crushing medications or filling medication boxes. Assistance includes: getting a glass of water or other liquid as requested by the

member for the purpose of taking medications; at the direction of the member, handing the member his or her daily medication box or medication bottle; and at the direction of the member, helping a member with placement of oxygen tubes for members who can communicate to the caregiver the dosage or route of oxygen; and

(xii)

transportation of the member: transportation shall only be for non-medically necessary events and may include assistance with transfers in and out of vehicles. Medically necessary transportation services may be a covered PCS service when the MCO has assessed and determined that other medically necessary transportation services are not available through other state plan services.

(8) Hygiene

and grooming: The attendant may perform for the member or the attendant may cue and prompt the member to perform the following services:

(a)

bathing to include giving a sponge bath in the member's bed, bathtub or shower; transferring in and out of the bathtub or shower, turning water on and off; selecting a comfortable water temperature; bringing in water from outside or heating water for the member;

(b)

dressing to include putting on, fastening, and removing clothing including shoes;

(c)

grooming to include combing or brushing hair, applying make-up, trimming beard or mustache, braiding hair, shaving under arms, legs or face;

(d)

oral care for a member with intact swallowing reflex to include brushing teeth, cleaning dentures or partials including the use of floss, swabs, or mouthwash;

(e)

nail care to include cleaning, filing to trim, or cuticle care for member's without a medical condition. For a documented medically at-risk

member; nail care is not covered under PCS; it is a skilled nurse service. Medically at risk conditions include, but are not limited to venous insufficiency, diabetes, peripheral neuropathy;

(f)

applying lotion or moisturizer to intact skin for routine skin care;

(g)

physician ordered skin care is limited to the application of skin cream when a member has a documented chronic skin condition and is determined by his or her PCP unable to self-administer the medication. The member's PCP must order a prescription or over-the-counter medication to treat the condition.

(i)

When the PCP determines the member is able to self-administer the prescribed or over-the-counter medication the attendant is limited to prompting and reminding the member.

(ii)

PCS does not include the care of a member's wounds, open sores, debridement or dressing of open wounds.

(h)

prompting or cueing to ensure appropriate bathing, dressing, grooming, oral care, nail care and application of lotion for routine skin care; and

(i)

mobility assistance to ensure appropriate bathing, dressing, grooming, oral care and skin care.

(9) Supportive

mobility assistance: Physical or verbal prompting and cueing mobility assistance provided by the attendant that is not already included as part of other PCS includes assistance with:

(a)

ambulation to include moving around inside or outside the member's residence or living area with or without an assistive device such as a walker, cane or wheelchair;

(b)

transferring to include moving to and from one location or position to another with or without an assistive device such as in and out of a vehicle;

(c)

toileting to include transferring on or off a toilet; and  
**(d)** repositioning to include turning or changing a bed-bound member's position to prevent skin breakdown.  
**(10)** Non-covered services: The following services are not covered as PCS:  
**(a)** services to an inpatient or resident of a hospital, NF, ICF-IID, mental health facility, correctional facility, or other institutional settings, with the exception when a member is transitioning from a NF;  
**(b)** services that are already provided by other sources, including natural supports;  
**(c)** household services, support services such as shopping, errands, or meal preparation that are routinely provided as part of the household division of chores;  
**(d)** services provided by a person not meeting the requirements and qualifications of a personal care attendant; including but not limited to, training and criminal background checks;  
**(e)** services not approved in the member's IPoC;  
**(f)** childcare, pet care, or personal care for other household members. This does not include the member's documented assistant service animal;  
**(g)** retroactive services;  
**(h)** services provided to an individual who is not a MCO member or does not meet the eligibility criteria for CB services;  
**(i)** member assistance with finances and budgeting;  
**(j)** member appointment scheduling;  
**(k)** member range of motion exercises;  
**(l)** wound care of open sores and debridement or dressing of open

wounds;  
**(m)** filling of medication boxes, cutting or grinding pills, administration of injections, assistance with over-the-counter medication or medication that the member cannot self-administer;  
**(n)** skilled nail care for a member documented as medically at-risk;  
**(o)** medically necessary transportation when available through the member's MCO general benefit services;  
**(p)** bowel and bladder services that include insertion or extraction of a catheter or digital stimulation; and  
**(q)** gastrostomy feeding and tube feeding.  
**J. Private duty**  
 nursing services include activities, procedures, and treatment for a physical condition, physical illness, or chronic disability for a member who is 21 years of age and older with intermittent or extended direct nursing care in his or her home.  
**(1)** Services include:  
**(a)** medication management;  
**(b)** administration and teaching;  
**(c)** aspiration precautions;  
**(d)** feeding tube management;  
**(e)** gastrostomy and jejunostomy;  
**(f)** skin care;  
**(g)** weight management;  
**(h)** urinary catheter management;  
**(i)** bowel and bladder care;  
**(j)** wound care;  
**(k)** health education;  
**(l)** health screening;  
**(m)** infection control;  
**(n)** environmental management for

safety;  
**(o)** nutrition management;  
**(p)** oxygen management;  
**(q)** seizure management and precautions;  
**(r)** anxiety reduction;  
**(s)** staff supervision; and  
**(t)** behavior and self-care assistance.  
**(2)** All services are provided under a written physician's order and must be rendered by a New Mexico board of nursing licensed RN or a licensed practical nurse (LPN) who provides services within his or her scope of practice.  
**K. Respite services** are provided to a member unable to care for him or herself and are furnished on a short-term basis to allow the member's primary caregiver a limited leave of absence in order to reduce stress, accommodate a caregiver illness, or meet a sudden family crisis or emergency. Respite provides a temporary relief to the primary caregiver of a CB member during times when he/she would normally provide unpaid care.  
**(1)** Respite care is furnished at home, in a private residence of a respite care provider, in a specialized foster care home, in a hospital or NF, that meet the qualifications for MAD provider enrollment requirements. For purposes of ABCB eligibility, when respite services are delivered through an institutional provider, the member is not considered a resident of the institution.  
**(2)** Respite care services include:  
**(a)** medical and non-medical health care;  
**(b)** personal care; bathing;  
**(c)** showering; skin care;  
**(d)** grooming;  
**(e)** oral hygiene;

(f) bowel and bladder care;

(g) catheter and supra-pubic catheter care;

(h) preparing or assisting in preparation of meals and eating;

(i) administering enteral feedings;

(j) providing home management skills;

(k) changing linens;

(l) making beds;

(m) washing dishes;

(n) shopping; errands;

(o) calls for maintenance;

(p) assisting with enhancing self-help skills, such as promoting use of appropriate interpersonal communication skills and language, working independently without constant supervision or observation;

(q) providing body positioning, ambulation and transfer skills;

(r) arranging for transportation to medical or therapy services;

(s) assisting in arranging health care needs and follow-up as directed by primary care giver, physician, and care coordinator; and

(t) ensuring the health and safety of the member at all times.

(3) Respite may be provided on either a planned or an unplanned basis and may be provided in a variety of settings. If unplanned respite is needed, the appropriate agency personnel will assess the situation, and with the caregiver, recommend the appropriate setting for respite services to the member. Services must only be provided on an intermittent or short-term basis because of the absence or need for relief of those persons normally providing care to the member.

(4) Respite services are limited to a maximum of 100 hours annually per care plan year. Additional hours may be requested if a member's health and safety needs exceed the specified limit.

L. Skilled maintenance therapy services for a member 21 years and older are provided when his or her MCO's general physical health benefit skilled therapy services are exhausted or are not a MCO covered benefit. The community benefit skilled maintenance therapy services include physical therapy, occupational therapy or speech language therapy. Therapy services focus on improving functional independence, health maintenance, community integration, socialization, and exercise, and enhance the support and normalization of the member's family relationships.

(1) Physical therapy services promote gross and fine motor skills, facilitate independent functioning and prevent progressive disabilities. Specific services may include but are not limited to:

(a) professional assessment, evaluation and monitoring for therapeutic purposes;

(b) physical therapy treatments and interventions;

(c) training regarding PT activities;

(d) use of equipment and technologies or any other aspect of the member's physical therapy services;

(e) designing, modifying or monitoring use of related environmental modifications;

(f) designing, modifying, and monitoring use of related activities supportive to the care plan goals and objectives; and

(g) consulting or collaborating with other service providers or family enrollees, as directed by the member.

(2) Occupational therapy (OT)

services promote fine motor skills, coordination, sensory integration, and facilitate the use of adaptive equipment or other assistive technology. Specific services may include but are not limited to:

(a) teaching of daily living skills;

(b) development of perceptual motor skills and sensory integrative functioning;

(c) design, fabrication, or modification of assistive technology or adaptive devices;

(d) provision of assistive technology services;

(e) design, fabrication, or applying selected orthotic or prosthetic devices or selecting adaptive equipment;

(f) use of specifically designed crafts and exercise to enhance function; training regarding OT activities; and

(g) consulting or collaborating with other service providers or family enrollees, as directed by the member.

(3) Speech and language therapy (SLT) services preserve abilities for independent function in communication; facilitate oral motor and swallowing function; facilitate use of assistive technology; and prevent progressive disabilities. Specific services may include but are not limited to:

(a) identification of communicative or oropharyngeal disorders and delays in the development of communication skills;

(b) prevention of communicative or oropharyngeal disorders and delays in the development of communication skills;

(c) development of eating or swallowing plans and monitoring their effectiveness;

(d) use of specifically designed equipment, tools, and exercises to enhance function;

(e) design, fabrication, or modification of assistive technology or adaptive devices;

(f) provision of assistive technology services;

(g) adaptation of the member's environment to meet his or her needs;

(h) training regarding SLT activities; and

(i) consulting or collaborating with other service providers or family enrollees as directed by the member.

(4) A signed therapy referral for treatment must be obtained from the member's PCP. The referral will include frequency, estimated duration of therapy and treatment, and procedures to be provided.

[8.308.12.13 NMAC - Rp,  
8.308.12.13 NMAC, 2/16/2017]

**8.308.12.14 ABCB NON-COVERED SERVICES:** MAD and the member's MCO do not cover certain procedures, services, or miscellaneous items. See specific MAD NMAC rules, sections of this rule, and the MAD MCO manual for additional information on benefit coverage and limitations.

[8.308.12.14 NMAC - Rp,  
8.308.12.14 NMAC, 2/16/2017]

**8.308.12.15 SELF-DIRECTED COMMUNITY BENEFIT (SDCB):**

The MCO shall offer the SDCB approach to a member who meets a NF LOC and is determined through a CNA or reassessment to need CB services. Self-direction affords a member the opportunity to have choice and control over how his or her CB services are provided and who provides the services. Although a member's assessment for the amount and types of services may vary, SDCB services are not provided 24 hours per day. Services are reimbursed according to the MAD fee schedule that has a range of allowable reimbursement rates to a provider of a specific service. The member's MCO approves the final reimbursement rate

for each provider of a CB service. A member has the option of choosing the ABCB or the SDCB approach.

A member cannot participate in both community benefit approaches concurrently.

[8.308.12.15 NMAC - Rp,  
8.308.12.15 NMAC, 2/16/2017]

**8.308.12.16 ELIGIBLE PROVIDERS:**

**A.** The FMA, member or his or her EOR shall verify that a potential provider meets all applicable qualifications prior to rendering a service. If a provider or employee is unable to pass a nationwide criminal history screening pursuant to NMSA 1978, 29-12-2 et seq. or is listed in the abuse registry as defined in 27-7a-1 et seq., NMSA 1978 he or she may not be employed to render any service to the member. Following formal approval from the MCO, LRIs may serve as a SDCB provider under extraordinary circumstances in order to assure the health and welfare of the member and to avoid his or her institutionalization. The MCO shall make decisions regarding LRIs serving as providers for members on a case by case basis. Following formal approval from the MCO, a spouse of a member may serve as a provider under extraordinary circumstances in order to assure the health and welfare of the member and to avoid institutionalization. The MCO shall provide such approval on a case by case basis. SDCB providers must meet all Federal and state requirements for home and community based providers.

**B.** An EOR shall have an employment agreement or vendor agreement with each of the member's providers. The employee or vendor agreement template shall be prescribed by MAD. Prior to a payment being made to a provider for SDCB services, the FMA shall ensure that: the provider meets all qualifications; and an employee agreement or vendor agreement is signed between the EOR and the provider. A member's employee agreement shall be updated anytime there is a change in any of the

terms or conditions specified in the agreement. Employee agreements shall be signed by the new EOR when there is a change in EORs. A copy of each employee agreement or vendor agreement shall be provided to the member and EOR. Refer to the MAD MCO policy manual for a complete listing of all SDCB provider qualifications and responsibilities.

[8.308.12.16 NMAC - Rp,  
8.308.12.16 NMAC, 2/16/2017]

**8.308.12.17 ELIGIBLE**

**MEMBERS:** A member must meet NF LOC, be determined through a CNA or reassessment to need MCO CB services, and be approved by the member's MCO for the SDCB approach.

[8.308.12.17 NMAC - Rp,  
8.308.12.17 NMAC, 2/16/2017]

**8.308.12.18 COVERED SERVICES IN SELF-DIRECTED COMMUNITY BENEFIT SDCB:**

MAD and the member's MCO cover certain procedures, services, and miscellaneous items. For those services that are the same in ABCB and SDCB, detailed descriptions are found in 8.308.12.13 NMAC. Other services may be available to a member in the SDCB approach and detailed descriptions are included in each subsection of this section.

**A.** Behavior support consultation is the provision of assessment, treatment, evaluation and follow-up services to assist the member, his or her parents, family, and primary caregivers with coping skills which promote maintaining the member in a home environment. See Subsection C of Section 8.308.12.13 NMAC for a detailed description of this service.

**B.** Customized community supports include participation in community congregate day programs and centers that offer functional meaningful activities that assist with acquisition, retention or improvement in self-help, socialization and adaptive skills. Customized community supports may include day support models. Customized community supports

are provided in community day program facilities and centers and can take place in non-institutional and non-residential settings. These services are provided at least four or more hours per day one or more days per week as specified in the member's care plan. Customized community supports settings must be integrated and support full access of individuals receiving medicaid HCBS to the greater community, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving medicaid HCBS.

**C.** Emergency response services provide an electronic device that enables a member to secure help in an emergency at his or her home, avoiding institutionalization. The member may also wear a portable "help" button to allow for mobility. The system is connected to the member's phone and programmed to signal a response center when the "help" button is activated. The response center is staffed by trained professionals. See Subsection E of Section 8.308.12.13 NMAC for a detailed description of this service.

**D.** Employment supports include job development, job seeking and job coaching supports after available vocational rehabilitation supports have been exhausted. Employment supports settings must be integrated and support full access of individuals receiving medicaid HCBS to the greater community, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving medicaid HCBS. See Subsection F of Section 8.308.12.13 NMAC for a detailed description of this service.

**E.** Environmental modification services include: the purchase of, the installation of equipment for the physical adaptations to a member's residence that are necessary to ensure the health, welfare, and safety of the member or enhance the member's level of

independence. See Subsection G of Section 8.308.12.13 NMAC for a detailed description of this service.

**F.** Home health aide services provide total care or assist the member in all ADLs. See Subsection H of Section 8.308.12.13 NMAC for a detailed description of this service.

**G.** Homemaker services are provided on an episodic or continuing basis to assist the member with ADLs, performance of general household tasks, provide companionship to acquire, maintain, or improve social interaction skills in the community, and enable the member to accomplish tasks he or she would normally do for him or herself if he or she did not have a disability.

**(1)** Homemaker services are provided in the member's home and in the community, depending on the member's needs. The member identifies the homemaker's training needs, and, if the member is unable to do the training himself or herself, the member arranges for the needed training.

**(2)** Services are not intended to replace supports available from a primary caregiver. Homemaker services are not duplicative of home health aide services.

**(3)** Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Homemakers do not have this ability to perform such tasks.

**H.** Non-medical transportation services are offered to enable a member to gain access to services, activities, and resources, as specified by his or her care plan. Non-medical transportation services in the SDCB are offered in accordance with the member's care plan. Payment for SDCB non-medical transportation services is made to the member's individual transportation employee or to a public or private transportation service vendor. Payment cannot be made to the member. Non-medical transportation services for minors

is not a covered service as these are services that a LRI would ordinarily provide for household members of the same age who do not have a disability or chronic illness.

**I.** Nutritional counseling services include assessment of the member's nutritional needs, development and revision of the member's nutritional plan, counseling and nutritional intervention, and observation and technical assistance related to implementation of the nutritional plan.

**J.** Private duty nursing services include activities, procedures, and treatment for a physical condition, physical illness, or chronic disability for a member who is 21 years of age and older with intermittent or extended direct nursing care in his or her home. See Subsection J of Section 8.308.12.13 NMAC for a detailed description of this service.

**K.** Related goods are equipment, supplies or fees and memberships, not otherwise provided through the member's MCO general benefits.

**(1)** Related goods must address a need identified in the member's CNA including improving and maintaining the member's opportunities for full membership in the community, and meet all the following requirements:

**(a)** be responsive to the member's qualifying condition or disability;

**(b)** accommodate the member in managing his or her household;

**(c)** facilitate the member's ADL;

**(d)** promote the member's personal safety and health;

**(e)** afford the member an accommodation for greater independence;

**(f)** advance the desired outcomes in the member's care plan; and

**(g)** decrease the need for other medicaid services.

(2) Related goods will be carefully monitored by the member's MCO to avoid abuses or inappropriate use of this benefit.

**L.** Respite services are provided to a member unable to care for him or herself and are furnished on a short-term basis to allow the member's primary caregiver a limited leave of absence in order to reduce stress, accommodate a caregiver illness, or meet a sudden family crisis or emergency. See Subsection K of Section 8.308.12 NMAC for a detailed description of this service.

**M.** Skilled maintenance therapy services for a member 21 years and older are provided when his or her MCO's general physical health benefit skilled therapy services are exhausted or not a covered MCO benefit. The community benefit skilled maintenance therapy services include physical therapy, occupational therapy or speech language therapy. Therapy services focus on improving functional independence, health maintenance, community integration, socialization, and exercise, and enhance the support and normalization of the member's family relationships. See Subsection L of 8.308.12 NMAC for a detailed description of this service.

**N.** Specialized therapies are non-experimental therapies or techniques that have been proven effective for certain conditions. A member may include specialized therapies in his or her care plan when the services enhance opportunities to achieve inclusion in community activities and avoid institutionalization. Services must be related to the member's disability or condition, ensure the member's health and welfare in the community, supplement rather than replace the member's natural supports and other community services for which the member may be eligible, and prevent the member's admission to institutional services.

(1) Acupuncture is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain

or other physical or behavioral health condition by controlling and regulating the flow and balance of energy, form, and function to restore and maintain physical health and increased mental clarity to a member. Acupuncture may provide effective pain control, decreased symptoms of stress, improved circulation and a stronger immune system, as well as other benefits to the member.

(2) Biofeedback uses visual, auditory or other monitors to feed back physiological information of which the member is normally unaware. This technique enables a member to learn how to change physiological, psychological and behavioral responses for the purposes of improving emotional, behavioral, and cognitive health and performance. The use of biofeedback may assist in strengthening or gaining conscious control over the above processes in order for the member to self-regulate. Biofeedback therapy is also useful for muscle re-education of specific muscle groups or for treating the member's pathological muscle abnormalities of spasticity, incapacitating muscle spasm, or weakness.

(3) Chiropractic care for a member is designed to locate and remove interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the vertebral column and pelvis for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, the adjustment and manipulation of the human structure. Chiropractic therapy may positively affect neurological function, improve certain reflexes and sensations, increase range of motion, and lead to improved general health of the member.

(4) Cognitive rehabilitation therapy services for a member are designed to improve cognitive functioning by reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns

of cognitive activity or compensatory mechanisms for impaired neurological systems. Treatments may be focused on improving a particular cognitive domain such as attention, memory, language, or executive functions. Alternatively, treatments may be skill-based, aimed at improving performance of ADL. The overall goal is to restore the member's function in a cognitive domain or set of domains, or to teach compensatory strategies to overcome specific cognitive problems.

(5) Hippotherapy is a physical, occupational, and speech-language therapy treatment strategy that utilizes equine movement as part of an integrated intervention program to achieve functional outcomes. Hippotherapy applies multidimensional movement of a horse for a member with movement dysfunction and may increase mobility and range of motion, decrease contractures and aid in normalizing muscle tone. Hippotherapy requires that the member use cognitive functioning, especially for sequencing and memory. A member with attention deficits and maladaptive behaviors is redirecting attention and behaviors by focusing on the activity. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities, and for individual speech therapy. The activities may also help improve respiratory function and assist with improved breathing and speech production of the member.

(6) Massage therapy for a member is the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Massage increases the circulation, helps loosen contracted,

shortened muscles and can stimulate weak muscles to improve posture and movement, improves range of motion and reduces spasticity. Massage therapy may increase, or help sustain, a member's ability to be more independent in the performance of ADL; thereby, decreasing dependency upon others to perform or assist with basic daily activities.

(7) Naprapathy focuses on the evaluation and treatment of neuro-musculoskeletal conditions, and is a system for restoring functionality and reducing pain in muscles and joints. The therapy uses manipulation and mobilization of the spine and other joints, and muscle treatments such as stretching and massage. Based on the concept that constricted connective tissue (ligaments, muscles and tendons) interfere with nerve, blood and lymph flow, naprapathy uses manipulation of connective tissue to open these channels of body function for a member.

(8) A Native American healer is an individual who is recognized as a healer within his or her respective native American community. A native American member may be from one of the 22 sovereign tribes, nations and pueblos in New Mexico or may be from other tribal backgrounds. A native American healer delivers a wide variety of culturally-appropriate therapies that support the member by addressing the member's physical, emotional and spiritual health. Treatments delivered by a native American healer may include prayer, dance, ceremony and song, plant medicines and foods; participation in sweat lodges, and the use of meaningful symbols of healing, such as the medicine wheel or other sacred objects. A native American healer provides opportunities for the member to remain connected with his or her tribal community. The communal and spiritual support provided by this type of healing can reduce pain and stress and improve quality of life. It is also important to note that some tribes, nations and pueblos prefer to keep these healing therapies and practices

safeguarded due to the significance of their religious ties.

[8.308.12.18 NMAC - Rp, 8.308.12.18 NMAC, 2/16/2017]

**8.308.12.19 SDCB NON-COVERED SERVICES AND SERVICE LIMITATIONS:** MAD and the member's MCO do not cover certain procedures, services, or miscellaneous items. Services and goods that are not covered by the SDCB approach include, but are not limited to the following:

**A.** services covered by third-parties; MAD or the MCO is the payer of last resort;

**B.** any service or good, the provision of which would violate federal or state statutes, rules or guidance; this includes services that are considered primarily recreational or diversional, which are not deemed eligible SDCB services by CMS;

**C.** formal academic degrees or certification-seeking education, educational services covered by IDEA or vocational training provided by the public education department (PED), division of vocational rehabilitation (DVR);

**D.** room and board, meaning shelter expenses, including property-related costs, such as rental or purchase of real estate and furnishing(s), home and property maintenance, utilities and utility deposits, and related administrative expenses; utilities include gas, electricity, propane, fire wood, wood pellets, water, sewer, and waste management;

**E.** experimental or investigational services, procedures or goods, as defined in 8.325.6 NMAC;

**F.** any goods or services that a household that does not include a person with a disability would be expected to pay for as a routine household expense;

**G.** personal goods or items not related to the SDCB member's condition or disability;

**H.** purchase of animals and the costs of maintaining animals, including the purchase of food, veterinary visits, grooming and boarding but with the exception of

training and certification for service dogs;

**I.** gas cards and gift cards; items that are purchased with SDCB program funds may not be returned for store credit, cash or gift cards;

**J.** purchase of insurance, such as car, health, life, burial, renters, home-owners, service warranties or other such policies. This includes purchase of cell phone insurance;

**K.** purchase of a vehicle, and long-term lease or rental of a vehicle;

**L.** purchase of recreational vehicles, such as motorcycles, campers, boats or other similar items;

**M.** firearms, ammunition or any other type of weapons;

**N.** gambling, games of chance (such as bingo or lottery), alcohol, tobacco, or similar items;

**O.** vacation expenses, including airline tickets, cruise ship or other means of transport, guided tours, meals, hotel, lodging or similar recreational expenses; this also includes mileage or driver time reimbursement for vacation travel by automobile;

**P.** purchase of usual and customary furniture and home furnishings, unless adapted to the SDCB member's disability or use, or of specialized benefit to the SDCB member's condition; requests for adapted or specialized furniture or furnishings must include a doctor's order from the member's health care provider and, when appropriate, a denial of payment from any other source;

**Q.** regularly scheduled upkeep, maintenance and repairs of a home and addition of fences, storage sheds or other outbuildings, except upkeep and maintenance of modifications or alterations to a home which are an accommodation directly related to the SDCB member's qualifying condition or disability;

**R.** regularly scheduled upkeep, maintenance and repairs of a vehicle, or tire purchase or

replacement, except upkeep and maintenance of modifications or alterations to a vehicle or van, which is an accommodation directly related to the SDCB member's qualifying condition or disability; requests must include documentation that the adapted vehicle is the SDCB member's primary means of transportation;

**S.** clothing and accessories, except specialized clothing based on the SDCB member's disability or condition;

**T.** training expenses for paid employees;

**U.** conference or class fees may be covered for SDCB members or unpaid caregivers, but costs associated with such conferences or classes cannot be covered, including airfare, lodging or meals;

**V.** for member electronics such as cell phones, computers, printers and fax machines, or other electronic equipment, no more than one of each type of item may be purchased at one time, and member electronics may not be replaced more frequently than once every three years; laptops or any electronic tablets are considered computers;

**W.** home schooling materials or related supplemental materials and activities;

**X.** cell phone services that include more than one cell phone or cell phone line per SDCB member; cell phone service, including data, is limited to the cost of one hundred dollars per month; and

**Y.** moving expenses are limited to, the cost of moving truck rental, gas/mileage, labor, moving equipment, supplies, boxes, tape and moving blankets.

[8.308.12.19 NMAC - Rp, 8.308.12.19 NMAC, 2/16/2017]

**8.308.12.20 TRANSITION TO THE SELF-DIRECTED COMMUNITY BENEFIT:**

A member who meets a NF LOC and who qualifies for MCO CB must first access services through his or her MCO's ABCB approach. After

120 calendar days, the member may continue his or her CB services provided through the MCO's ABCB or may select the MCO's SDCB approach. The member's MCO shall obtain a signed statement from the member regarding his or her decision to participate in the SDCB approach. The signed statement will include member attestation that he or she understands the responsibilities of self-directing his or her CB services, including the management of his or her care plan. For a member transitioning from a NF: and the member continues to meet NF LOC; the member selects his or her MCO's SDCB approach; the member must access CB services through the MCO's ABCB approach for the first 120 calendar days of eligibility; and after 120 calendar days, the member may transition to the MCO's SDCB.

**A. Self-assessment:** The member's care coordinator shall provide him or her with the MAD self-assessment instrument. The self-assessment instrument shall be completed by the member with assistance from the member's care coordinator upon request. The care coordinator shall file the completed self-assessment in the member's file.

**B. Employer of record (EOR):** A member who is an unemancipated minor or has an authorized representative over financial matters in place cannot serve as his or her own EOR. When the member's care coordinator, based on the results of the member's self-assessment, determines the member requires assistance to direct his or her SDCB services, the member must designate in writing an EOR to assume the functions on behalf of the member. A member that serves as his or her EOR has the option to do so or may, on his or her own, designate a person to serve as his or her EOR in writing. A designated EOR may not also be an employee of the member. The member's file must have documentation of either the member acting as his or her EOR or of the designated EOR. The member's MCO will make the final determination on whether the member

may be his or her own EOR.

**C. Supports for self-direction:** A member or his or her authorized representative may designate a person to provide support to the member's self-directed functions. The member or his or her authorized representative may act as his or her EOR. A member's authorized representative may function as the member's spokesperson. The member's care coordinator shall include a copy of any EOR or spokesperson forms in the member's file and provide copies to the member, the member's authorized representative, spokesperson and the FMA.

**(1) Care coordination for self-direction:** The MCO shall ensure that the member or the member's authorized representative fully participates in developing and administering SDCB services and that sufficient supports, such as care coordinators and support brokers, are made available to assist the member or the member's authorized representative who requests or requires assistance. In this capacity, the care coordinator shall fulfill, in addition to contractual requirement, the following tasks:

**(a)** understand member and EOR roles and responsibilities;

**(b)** identify resources outside the member's MCO SDCB, including natural and informal supports, that may assist in meeting the member's long term care needs;

**(c)** understand the array of SDCB services;

**(d)** assign the annual SDCB budget based on the member's CNA to address the needs of the member;

**(e)** monitor utilization of SDCB services on a regular basis;

**(f)** conduct employer-related activities such as assisting a member in identifying a designated EOR as appropriate;

**(g)**

identify and resolve issues related to the implementation of the member's SDCB care plan;

(h)

assist the member with quality assurance activities to ensure implementation of the member's SDCB care plan and utilization of his or her authorized budget;

(i)

recognize and report critical incidents, including abuse, neglect, exploitation, emergency services, law enforcement involvement, and environmental hazards;

(j)

monitor quality of services provided by the member's support broker; and

(k)

work with the member to provide the necessary assistance for successful SDCB implementation.

(2) A support

broker is a qualified vendor for a SDCB member who is either employed by or contracted by the member's MCO. At a minimum, the support broker shall perform the following functions:

(a)

educate the member on how to use self-directed supports and services and provide information on program changes or updates;

(b)

review, monitor and document progress of the member's SDCB care plan;

(c)

assist in managing budget expenditures, complete and submit SDCB care plan and revisions;

(d)

assist with employer functions such as recruiting, hiring and supervising SDCB providers;

(e)

assist with developing and approving job descriptions for SDCB direct supports;

(f)

assist with completing forms related to the member's employees;

(g)

assist with approving timesheets, purchase orders or invoices for goods, obtain quotes for services and goods, as well as identify and negotiate with

vendors;

(h)

assist with problem solving of an employee or vendor payment issue with the FMA and other appropriate parties;

(i)

facilitate resolution of any disputes regarding payment to a provider for services rendered;

(j)

develop the care plan for SDCB based on the member's budget amount as determined by the CNA; and

(k)

assist in completing all documentation required by the FMA.

(3) The FMA

acts as the intermediary between the member and the member's MCO's payment system and assists the member or the member's EOR with employer-related responsibilities. The FMA pays employees and vendors based upon the member's approved SDCB care plan and budget. The FMA assures member and program compliance with state and federal employment requirements, monitors, and makes available to the member and MAD reports related to utilization of services and budget expenditures. Based on the member's approved individual care plan and budget, the FMA must:

(a)

verify that the member is eligible for SDCB services prior to making payment for services;

(b)

receive and verify that all required employee and vendor documentation and qualifications are in compliance with applicable NMAC rules and the MAD MCO policy manual;

(c)

establish an accounting for each member's budget;

(d)

process and pay invoices for goods, services, and supports approved in the member's SDCB care plan and supported by required documentation; and

(e)

process all payroll functions on behalf of the member and EOR including:

(i)

collects and processes timesheets of employees in accordance with the MAD approved payment schedule;

(ii)

processes payroll, withholding, filing, and payment of applicable federal, state and local employment-related taxes and insurance;

(iii)

tracks and reports disbursements and balances of the member's budget and provides a monthly report of expenditures and budget status to the member and his or her support broker, and quarterly and annual documentation of expenditures to MAD;

(iv)

receives and verifies a provider's agreement, including collecting required provider qualifications;

(v)

monitors hours billed for services provided and the total amounts billed for all goods and services during the month;

(vi)

answers inquiries from the SDCB member and solves problems related to the FMA's responsibilities; and

(vii)

reports any concerns related to the health and safety of the member or when the member is not following his or her approved SDCB care plan to the MCO and MAD as appropriate.

**D. Budget:** The

member's MCO will determine the maximum annual budget allotment based on the member's CNA. The member may request a revision to the SDCB care plan and budget when a change in circumstances warrants such revisions, such as a change in health condition or loss of natural supports. All changes are subject to assessment and approval by the MCO.

**E. SDCB care plan:**

The support broker and the member shall work together to develop an annual SDCB care plan for the SDCB services the member is identified to need as a result of his or her CNA. The SDCB care plan will not exceed the MCO determined budget. The support broker and member shall refer to the rates specified by HSD in selecting payment rates for qualified

providers and vendors. The care plan for SDCB services shall be based upon the member’s assessed needs and approved by the member’s MCO. The support broker shall closely monitor the utilization of SDCB care plan services to ensure that the member does not exceed the approved annual budget.

**(1)** SDCB care plan review criteria: Services and goods identified in the member’s requested SDCB care plan may be considered for approval by the MCO if all of the following requirements are met:

**(a)** the services or goods must be responsive to the member’s qualifying condition or disability;

**(b)** the services or goods must address the member’s clinical, functional, medical or rehabilitative needs;

**(c)** the services or goods must facilitate the member’s ADL per his or her CNA;

**(d)** the services or goods must promote the member’s personal health and safety;

**(e)** the services or goods must afford the member an accommodation for greater independence;

**(f)** the services or goods must support the member to remain in the community and reduce his or her risk for institutionalization;

**(g)** the need for the services or goods must be approved and documented in the CNA and advance the desired outcomes in the member’s SDCB care plan;

**(h)** the services or goods are not available through another source;

**(i)** the service or good is not prohibited by federal regulations, applicable NMAC rules, supplements, the MAD MCO policy manual, service standards, and instructions;

**(j)** the proposed rate for each service is

within the MAD approved rate range for that chosen service;

**(k)** the proposed cost for each good is reasonable, appropriate and reflects the lowest available cost for that chosen good; and

**(l)** the estimated cost of the service or good is specifically documented in the member’s SDCB care plan.

**(2)** SDCB care plan revisions: The SDCB care plan may be revised based upon a change in the member’s needs or circumstances, such as a change in the member’s health status or condition or a change in the member’s support system, such as the death or disabling condition of an individual who was providing services. The member or the EOR is responsible for assuring that all expenditures are in compliance with the most current determination of need. SDCB care plan revisions involve requests to add new goods or services to a care plan or to reallocate funds from any line item to another approved line item. SDCB care plan revisions must be submitted to the member’s MCO for review and determination. Other than for critical health and safety reasons, SDCB care plan revisions may not be submitted to the MCO for review within the last 60 calendar days of the care plan year. Prior to submitting a SDCB care plan revision request, the member is responsible for communicating any utilization of services that are not in compliance with the care plan to the support broker. At the MCO’s discretion, a revision to the SDCB care plan may require another CNA. If the SDCB care plan revision includes a request for additional services, another CNA must be performed by the MCO to determine whether the change in circumstance or need warrants additional funding for additional services prior to SDCB care plan revision approval.

**F.** SDCB back-up plan: The support broker shall assist the member and his or her EOR in developing a back-up plan for the member’s SDCB services

that identifies how the member and EOR will address situations when a scheduled provider is not available or fails to show up as scheduled. The member’s support broker shall assess the adequacy of the member’s back-up plan at least on an annual basis and when changes in the type, amount, duration, scope of the SDCB or the schedule of needed services, or a change of providers (when such providers also serve as back-up to other members) or change in availability of paid or unpaid back-up providers to deliver needed care.

**G.** Member and EOR training: The member’s MCO shall require the member electing to enroll in the SDCB approach and his or her EOR to receive relevant training. The support broker shall be responsible for arranging for initial and ongoing training of the member and his or her EOR.

**(1)** At a minimum, self-direction training for member and his or her EOR shall address the following issues:

**(a)** understanding the role of the member and EOR with SDCB;

**(b)** understanding the role of the care coordinator, support broker, the MCO, and the FMA;

**(c)** selecting providers and vendors;

**(d)** critical incident reporting;

**(e)** member abuse and neglect prevention and reporting;

**(f)** being an employer, evaluating provider performance and managing providers;

**(g)** fraud and abuse prevention and reporting;

**(h)** performing administrative tasks, such as, reviewing and approving electronically captured visit information and timesheets and invoices; and

**(i)** scheduling providers and back-up planning.

(2) The member's MCO shall arrange for ongoing training for the member and his or her EOR upon request or if a support broker, through monitoring, determines that additional training is warranted.

**H.** Claims submission and payment: The member or EOR shall review and approve timesheets of the member's providers and invoices from the member's vendors to determine accuracy and appropriateness. No SDCB provider shall exceed 40 hours paid work in one work week per EOR. Timesheets must be submitted and processed on a two-week pay schedule according to the FMA's prescribed payroll payment schedule. The FMA shall be responsible for processing the member's timesheets and invoices for approved SDCB services and goods. [8.308.12.20 NMAC - Rp, 8.308.12.20 NMAC, 2/16/2017]

**8.308.12.21 TERMINATION FROM ABCB PCS/CDIRECTED OR SDCB:** The MCO may involuntarily terminate a member from the PCS/CDirected or the SDCB approach under any of the following circumstances.

**A.** The member, the member's authorized representative or his or her EOR refuses to follow NMAC rules, the MAD MCO policy manual, or his or her MCO policies after receiving focused technical assistance on multiple occasions and support from his or her care coordinator, PCS agency or FMA, which is supported by documentation of the efforts to assist the member. For purposes of this rule, focused technical assistance is defined as a minimum of three separate occasions where the member, authorized representative or his or her EOR have received training, education or technical assistance, or a combination of both, from the MCO, the FMA, the PCS agency or MAD.

**B.** There is an immediate risk to the member's health or safety by continued consumer direction or self-direction of services, i.e., the member is in imminent risk

of death or serious bodily injury. Examples include but are not limited to the following:

(1) the member refuses to include and maintain services in his or her PCS/CDirected or SDCB care plan that would address health and safety issues identified in the member's CNA or challenges the assessment after repeated and focused technical assistance and support from program staff, the care coordinator, PCS agency or the FMA;

(2) the member is experiencing significant health or safety needs and, refuses to incorporate the care coordinator's recommendations into his or her IPoC or care plan, or exhibits behaviors that endanger him or her or others;

(3) the member misuses his or her SDCB budget following repeated and focused technical assistance and support from the care coordinator and the FMA, which is supported by documentation;

(4) the member expends his or her entire SDCB budget prior to the end of the care plan year; or

(5) the member or authorized representative intentionally misuses the member's PCS/CDirected or SDCB services or goods.

**C.** The MCO shall submit to MAD any requests to terminate a member from the PCS/CDirected or the SDCB approach with sufficient documentation regarding the rationale for termination. Upon MAD approval, the MCO shall notify the member regarding termination in accordance with NMAC rules and MCO policies. The member shall have the right to appeal the determination by requesting a MCO appeal and, if the termination is still upheld by the MCO, an HSD administrative hearing. The MCO shall facilitate a seamless transition from the PCS/CDirected to PCS/CDelegated or SDCB to ABCB approach to ensure there are no interruptions or gaps in services. Involuntary termination

of a member from SDCB shall not affect a member's eligibility for ABCB covered services or continued MCO membership. However, a member that has been involuntarily terminated from SBCB must access PCS from the PCS/CDelegated model for at least one year. Involuntary termination of a member from PCS/CDirected shall not affect a member's eligibility for other CB services or PCS/CDelegated services.

**D.** A member who has voluntarily switched to PCS/CDelegated or ABCB or who has been involuntarily terminated from PCS/CDirected or from SDCB may request to be reinstated in the PCS/CDirected or the SDCB approach to his or her MCO. Such requests may not be made more than once in a calendar year. The member's PCS/CDirected or SDCB reinstatement when he or she was involuntarily terminated is at the discretion of his or her MCO. The care coordinator shall work with the member's PCS agency or FMA to ensure that the issues previously identified as reasons for termination have been adequately addressed prior to such reinstatement. A member shall be required to participate in SDCB training programs prior to his or her SDCB reinstatement. A member shall be required to participate in PCS/CDirected training programs and the MCO may request the member's PCP provide a signed statement that the PCS/CDirected approach is appropriate for the member prior to his or her PCS/CDirected reinstatement.

[8.308.12.21 NMAC - Rp, 8.308.12.21 NMAC, 2/16/2017]

**HISTORY OF 8.308.12 NMAC: [RESERVED]**

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**This is an amendment to 8.200.510 NMAC, Sections 8, 11 through 13, and 15, effective 03/01/2017.**

**8.200.510.8 [MISSION:** To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.]

**[RESERVED]**

[8.200.510.8 NMAC - Rp, 8.200.510.8 NMAC, 07/01/2015; A/E, 03/01/2017]

**8.200.510.11 COMMUNITY SPOUSE RESOURCE**

**ALLOWANCE (CSRA):** The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

**A.** Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CRSA is \$60,000.

**B.** On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

**C.** On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

**D.** On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

**E.** On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

**F.** On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

**G.** On or after January 1, 1995, the state minimum is \$31,290

and the federal maximum CSRA is \$74,820.

**H.** On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

**I.** On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

**J.** On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

**K.** On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

**L.** On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

**M.** On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

**N.** On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

**O.** On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

**P.** On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

**Q.** On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

**R.** On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

**S.** On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

**T.** On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

**U.** On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

**V.** On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**W.** On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**X.** On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

**Y.** On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

**Z.** On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.

**AA.** On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**BB.** On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**CC.** On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 07/01/2015; A/E, 1/1/2016; A/E, 03/01/2017]

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):**

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

**DEDUCTION AMOUNT**

**A.** Personal needs allowance for institutionalized spouse  
[~~\$69~~] \$69

**B.** Minimum monthly maintenance needs allowance (MMMNA) [~~\$1,991~~] \$2,002

**C.** The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:

**(1)** If allowable shelter expenses of the

community spouse exceed [~~\$597~~ \$600] deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

(2) Excess shelter allowance may not exceed a maximum of [~~\$990~~ \$1,021].

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

F. Non-covered medical expenses.

G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed [~~\$2,981~~ \$3,023].

[8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 07/01/2015; A/E, 03/01/2017]

**8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:** Costs of care are based on the date of application registration.  
**DATE AVERAGE COST PER MONTH**

A. July 1, 1988 - Dec. 31, 1989  
\$1,726 per month

B. Jan. 1, 1990 - Dec. 31, 1991  
\$2,004 per month

C. Jan. 1, 1992 - Dec. 31, 1992  
\$2,217 per month

D. Effective July 1, 1993, for application  
\$2,377 per month register on or after Jan. 1, 1993

E. Jan. 1, 1994 - Dec. 31, 1994  
\$2,513 per month

F. Jan. 1, 1995 - Dec. 31, 1995  
\$2,592 per month

G. Jan. 1, 1996 - Dec. 31, 1996  
\$2,738 per month

H. Jan. 1, 1997 - Dec. 31, 1997  
\$2,889 per month

I. Jan. 1, 1998 - Dec. 31, 1998  
\$3,119 per month

J. Jan. 1, 1999 - Dec. 31, 1999  
\$3,429 per month

K. Jan. 1, 2000 - Dec. 31, 2000  
\$3,494 per month

L. Jan. 1, 2001 - Dec. 31, 2001  
\$3,550 per month

M. Jan. 1, 2002 - Dec. 31, 2002  
\$3,643 per month

N. Jan. 1, 2003 - Dec. 31, 2003  
\$4,188 per month

O. Jan. 1, 2004 - Dec. 31, 2004  
\$3,899 per month

P. Jan. 1, 2005 - Dec. 31, 2005  
\$4,277 per month

Q. Jan. 1, 2006 - Dec. 31, 2006  
\$4,541 per month

R. Jan. 1, 2007 - Dec. 31, 2007  
\$4,551 per month

S. Jan. 1, 2008 - Dec. 31, 2008  
\$4,821 per month

T. Jan. 1, 2009 - Dec. 31, 2009  
\$5,037 per month

U. Jan. 1, 2010 - Dec. 31, 2010  
\$5,269 per month

V. Jan. 1, 2011 - Dec. 31, 2011  
\$5,774 per month

W. Jan. 1, 2012 - Dec. 31, 2012  
\$6,015 per month

X. Jan. 1, 2013 - Dec.

31, 2013  
\$6,291 per month

Y. Jan. 1, 2014 - Dec. 31, 2014  
\$6,229 per month

Z. Jan. 1, 2015 - Dec. 31, 2015  
\$6,659 per month

AA. Jan. 1, 2016 - Dec. 31, 2016  
\$7,786 per month

BB. Jan. 1, 2017

\$7,485 per month

[8.200.510.13 NMAC - Rp, 8.200.510.13 NMAC, 07/01/2015; A/E, 1/1/2016; A/E, 03/01/2017]

**8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:**

A. Jan. 2017  
\$840,000.

~~A.~~ B. Jan. 2016  
\$828,000.

~~B.~~ C. Jan. 2015  
\$828,000.

~~C.~~ D. Jan. 2014  
\$814,000.

~~D.~~ E. Jan. 2013  
\$802,000.

~~E.~~ F. Jan. 2012  
\$786,000.

~~F.~~ G. Jan. 2011  
\$758,000.

~~G.~~ H. Jan. 2010  
\$750,000.

[8.200.510.15 NMAC - Rp, 8.200.510.15 NMAC, 07/01/2015; A/E, 1/1/2016; A/E, 03/01/2017]

**HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION**

**This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16, & 20, effective 3/1/2017.**

**8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION:**

The countable social security benefit without the COLA is calculated using the COLA increase table as follows:

A. divide the current

gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase;

**B.** divide the result from Subsection A above by the COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and

**C.** repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable social security benefit.

| COLA Increase and disregard table |                       |               |                  |
|-----------------------------------|-----------------------|---------------|------------------|
|                                   | Period and year       | COLA increase | = benefit before |
| <u>1</u>                          | <u>2017 Jan - Dec</u> | <u>0.3</u>    | <u>Jan 17</u>    |
| <del>[1]</del> <u>2</u>           | 2016 Jan - Dec        | 0             | Jan 16           |
| <del>[2]</del> <u>3</u>           | 2015 Jan - Dec        | 1.017         | Jan 15           |
| <del>[3]</del> <u>4</u>           | 2014 Jan - Dec        | 1.015         | Jan 14           |
| <del>[4]</del> <u>5</u>           | 2013 Jan - Dec        | 1.017         | Jan 13           |
| <del>[5]</del> <u>6</u>           | 2012 Jan - Dec        | 1.037         | Jan 12           |
| <del>[6]</del> <u>7</u>           | 2011 Jan - Dec        | 0             | Jan 11           |
| <del>[7]</del> <u>8</u>           | 2010 Jan - Dec        | 1             | Jan 10           |
| <del>[8]</del> <u>9</u>           | 2009 Jan - Dec        | 1             | Jan 09           |
| <del>[9]</del> - <u>10</u>        | 2008 Jan - Dec        | 1.058         | Jan 08           |
| <del>[10]</del> <u>11</u>         | 2007 Jan - Dec        | 1.023         | Jan 07           |
| <del>[11]</del> <u>12</u>         | 2006 Jan - Dec        | 1.033         | Jan 06           |
| <del>[12]</del> <u>13</u>         | 2005 Jan - Dec        | 1.041         | Jan 05           |
| <del>[13]</del> <u>14</u>         | 2004 Jan - Dec        | 1.027         | Jan 04           |
| <del>[14]</del> - <u>15</u>       | 2003 Jan - Dec        | 1.021         | Jan 03           |
| <del>[15]</del> - <u>16</u>       | 2002 Jan - Dec        | 1.014         | Jan 02           |
| <del>[16]</del> - <u>17</u>       | 2001 Jan - Dec        | 1.026         | Jan 01           |
| <del>[17]</del> - <u>18</u>       | 2000 Jan - Dec        | 1.035         | Jan 00           |
| <del>[18]</del> - <u>19</u>       | 1999 Jan - Dec        | 1.02          | Jan 99           |
| <del>[19]</del> - <u>20</u>       | 1998 Jan - Dec        | 1.013         | Jan 98           |
| <del>[20]</del> - <u>21</u>       | 1997 Jan - Dec        | 1.021         | Jan 97           |
| <del>[21]</del> - <u>22</u>       | 1996 Jan - Dec        | 1.029         | Jan 96           |
| <del>[22]</del> - <u>23</u>       | 1995 Jan - Dec        | 1.026         | Jan 95           |
| <del>[23]</del> - <u>24</u>       | 1994 Jan - Dec        | 1.028         | Jan 94           |
| <del>[24]</del> - <u>25</u>       | 1993 Jan - Dec        | 1.026         | Jan 93           |
| <del>[25]</del> - <u>26</u>       | 1992 Jan - Dec        | 1.03          | Jan 92           |
| <del>[26]</del> - <u>27</u>       | 1991 Jan - Dec        | 1.037         | Jan 91           |
| <del>[27]</del> - <u>28</u>       | 1990 Jan - Dec        | 1.054         | Jan 90           |
| <del>[28]</del> - <u>29</u>       | 1989 Jan - Dec        | 1.047         | Jan 89           |
| <del>[29]</del> - <u>30</u>       | 1988 Jan - Dec        | 1.04          | Jan 88           |
| <del>[30]</del> - <u>31</u>       | 1987 Jan - Dec        | 1.042         | Jan 87           |
| <del>[31]</del> - <u>32</u>       | 1986 Jan - Dec        | 1.013         | Jan 86           |
| <del>[32]</del> - <u>33</u>       | 1985 Jan - Dec        | 1.031         | Jan 85           |
| <del>[33]</del> - <u>34</u>       | 1984 Jan - Dec        | 1.035         | Jan 84           |
| <del>[34]</del> - <u>35</u>       | 1982 Jul - 1983 Dec   | 1.035         | Jul 82           |
| <del>[35]</del> - <u>36</u>       | 1981 Jul - 1982 Jun   | 1.074         | Jul 81           |

| COLA Increase and disregard table |                     |               |                  |
|-----------------------------------|---------------------|---------------|------------------|
|                                   | Period and year     | COLA increase | = benefit before |
| <del>[36]</del> -37               | 1980 Jul - 1981 Jun | 1.112         | Jul 80           |
| <del>[37]</del> -38               | 1979 Jul - 1980 Jun | 1.143         | Jul 79           |
| <del>[38]</del> -39               | 1978 Jul - 1979 Jun | 1.099         | Jul 78           |
| <del>[39]</del> 40                | 1977 Jul - 1978 Jun | 1.065         | Jul 77           |
| <del>[40]</del> -41               | 1977 Apr - 1977 Jun | 1.059         | Apr 77           |

[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8/2/2015; A/E, 1/1/2016; A/E, 3/1/2017]

**8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):**

| Year          | Individual | Institution | Individual | Couple  | Institution | Couple   |
|---------------|------------|-------------|------------|---------|-------------|----------|
|               | FBR        | FBR         | VTR        | FBR     | FBR         | VTR      |
| 1/89 to 1/90  | \$368      | \$30        | \$122.66   | \$553   | \$60        | \$184.33 |
| 1/90 to 1/91  | \$386      | \$30        | \$128.66   | \$579   | \$60        | \$193.00 |
| 1/91 to 1/92  | \$407      | \$30        | \$135.66   | \$610   | \$60        | \$203.33 |
| 1/92 to 1/93  | \$422      | \$30        | \$140.66   | \$633   | \$60        | \$211.00 |
| 1/93 to 1/94  | \$434      | \$30        | \$144.66   | \$652   | \$60        | \$217.33 |
| 1/94 to 1/95  | \$446      | \$30        | \$148.66   | \$669   | \$60        | \$223.00 |
| 1/95 to 1/96  | \$458      | \$30        | \$152.66   | \$687   | \$60        | \$229.00 |
| 1/96 to 1/97  | \$470      | \$30        | \$156.66   | \$705   | \$60        | \$235.00 |
| 1/97 to 1/98  | \$484      | \$30        | \$161.33   | \$726   | \$60        | \$242.00 |
| 1/98 to 1/99  | \$494      | \$30        | \$164.66   | \$741   | \$60        | \$247.00 |
| 1/99 to 1/00  | \$500      | \$30        | \$166.66   | \$751   | \$60        | \$250.33 |
| 1/00 to 1/01  | \$512      | \$30        | \$170.66   | \$769   | \$60        | \$256.33 |
| 1/01 to 1/02  | \$530      | \$30        | \$176.66   | \$796   | \$60        | \$265.33 |
| 1/02 to 1/03  | \$545      | \$30        | \$181.66   | \$817   | \$60        | \$272.33 |
| 1/03 to 1/04  | \$552      | \$30        | \$184.00   | \$829   | \$60        | \$276.33 |
| 1/04 to 1/05  | \$564      | \$30        | \$188      | \$846   | \$60        | \$282.00 |
| 1/05 to 1/06  | \$579      | \$30        | \$193      | \$869   | \$60        | \$289.66 |
| 1/06 to 1/07  | \$603      | \$30        | \$201      | \$904   | \$60        | \$301.33 |
| 1/07 to 1/08  | \$623      | \$30        | \$207.66   | \$934   | \$60        | \$311.33 |
| 1/08 to 1/09  | \$637      | \$30        | \$212.33   | \$956   | \$60        | \$318.66 |
| 1/09 to 1/10  | \$674      | \$30        | \$224.66   | \$1,011 | \$60        | \$337    |
| 1/10 to 1/11  | \$674      | \$30        | \$224.66   | \$1,011 | \$60        | \$337    |
| 1/11 to 1/12  | \$674      | \$30        | \$224.66   | \$1,011 | \$60        | \$337    |
| 1/12 to 1/13  | \$698      | \$30        | \$232.66   | \$1,048 | \$60        | \$349.33 |
| 1/13 to 1/14  | \$710      | \$30        | \$237      | \$1,066 | \$60        | \$355    |
| 1/14 to 1/15  | \$721      | \$30        | \$240      | \$1082  | \$60        | \$361    |
| 1/15 to 12/15 | \$733      | \$30        | \$244      | \$1,100 | \$60        | \$367    |
| 1/16 to 12/16 | \$733      | \$30        | \$244      | \$1,100 | \$60        | \$367    |
| 1/17 to 12/17 | \$735      | \$30        | \$245      | \$1,103 | \$60        | \$368    |

A. Ineligible child deeming allocation is \$350.00.

B. Part B premium is [~~\$121.80~~] \$134.00 per month.

C. VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on his or her own household but receiving support and maintenance from others.



**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 29 STANDARDS FOR EXCELLENCE  
PART 15 SPANISH LANGUAGE ARTS COMMON CORE STANDARDS**

**6.29.15.1 ISSUING AGENCY:** Public Education Department hereinafter referred to as the department.  
[6.29.15.1 NMAC - N, 07/01/2018]

**6.29.15.2 SCOPE:** All public schools, state educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.  
[6.29.15.2 NMAC - N, 07/01/2018]

**6.29.15.3 STATUTORY AUTHORITY:**  
**A.** Section 22-2-2 NMSA 1978 grants the department the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.

**B.** Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable.

**C.** Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.  
[6.29.15.3 NMAC - N, 07/01/2018]

**6.29.15.4 DURATION:** Permanent.  
[6.29.15.4 NMAC - N, 07/01/2018]

**6.29.15.5 EFFECTIVE DATE:** July 1, 2018, unless a later date is cited at the end of a section.  
[6.29.15.5 NMAC - N, 07/01/2018]

**6.29.15.6 OBJECTIVE:**

The New Mexico common core content standards for Spanish language arts are mandated for students in grades K-12 receiving required Spanish language arts instruction through participation in state-funded bilingual multicultural education programs.  
[6.29.15.6 NMAC - N, 07/01/2018]

**6.29.15.7 DEFINITIONS:**  
**A.** “Text” means written language, oral language, digital communications (written, oral, and graphic), and other forms of multimedia communications.  
**B.** “Heritage language” means a language other than English that is inherited from a family, tribe, community or country of origin.  
[6.29.15.7 NMAC - N, 07/01/2018]

**6.29.15.8 CONTENT STANDARDS FOR SPANISH LANGUAGE ARTS, Grades K-5:** All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the Spanish language arts common core state standards published by the national governor’s association center for best practices and the council of chief state school officers. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us) or are otherwise published and made available by the department. The common core state standards Spanish language version published by council of chief state school officers are incorporated in this rule by reference. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us) or are otherwise published and made available by the department.

**A.** The following standards are additional New Mexico Spanish language arts standards that shall be utilized for grades K-5 in conjunction with the common core state standards incorporated by reference to this regulation.

**B. Reading literature:**  
**(1)** Kindergarten students will identify the main topic, retell key details of a

text, and make predictions.  
**(2)** Grade 1 students will:

**(a)** identify the main topic, retell key details of a text, and make predictions;

**(b)** identify characters and simple story lines from selected myths and stories from around the world.

**(3)** Grade 2 students will:

**(a)** identify the main topic, retell key details of a text, and make predictions;

**(b)** use literature and media to develop an understanding of people, cultures, and societies to explore self-identity.

**(4)** Grade 3 students will:

**(a)** ask and answer questions and make predictions to demonstrate understanding of a text;

**(b)** develop an understanding of people, cultures, and societies and explore self-identity through literature, media, and oral tradition;

**(c)** understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.

**(5)** Grade 4 students will:

**(a)** develop an understanding of people, cultures, and societies and explore self-identity through literature, media, and oral tradition;

**(b)** understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.

**(6)** Grade 5 students will:

**(a)** develop an understanding of people, cultures, and societies and explore self-identity through literature, media, and oral tradition;

**(b)** understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.

**C.** Reading literature: Craft and structure. Grade 1 students will recognize repetition and predict repeated phrases.

**D.** Reading literature: Integration of knowledge and ideas. Grade 1 students will relate prior knowledge to textual information.

**E.** Writing standards: Production and distribution of writing.

**(1)**  
Kindergarten students will apply digital tools to gather, evaluate, and use information.  
**(2)** Grade 1 students will apply digital tools to gather, evaluate, and use information.

**(3)** Grade 2 students will:  
**(a)**  
apply digital tools to gather, evaluate, and use information;

**(b)**  
use digital media and environments to communicate and work collaboratively.

**F.** Writing standards: Text type and purposes. In grades 3, 4, and 5 students will use digital media environments to communicate and work collaboratively, including at a distance, to support individual learning and to contribute to the learning of others.

**G.** Writing standards: Research to build and present knowledge.

**(1)** Grade 3 students will:  
**(a)**  
gather relevant information from multiple sources, including oral knowledge;

**(b)**  
apply digital tools to gather, evaluate, and use information.

**(2)** Grade 4 students will:  
**(a)**  
gather relevant information from multiple sources, including oral knowledge;

**(b)**  
apply digital tools to gather, evaluate, and use information;

**(c)**  
demonstrate creative thinking, construct knowledge, and develop

innovative products and processes using technology.  
**(3)** Grade 5 students will:

**(a)**  
gather relevant information from multiple sources, including oral knowledge;

**(b)**  
apply digital tools to gather, evaluate, and use information;

**(c)**  
demonstrate creative thinking, construct knowledge, and develop innovative products and processes using technology.

**H.** Speaking and listening standards: Presentation of knowledge and ideas.

**(1)**  
Kindergarten students will:  
**(a)**  
demonstrate familiarity with stories and activities related to various ethnic groups and countries;

**(b)**  
with prompting and support: role play; make predictions; and follow oral and graphic instructions.

**(2)** Grade 1 students will:

**(a)**  
describe events related to the students' experiences, nations, and cultures;

**(b)**  
follow simple written and oral instructions.

**(3)** Grade 2 students will describe events related to the students' experiences, nations, and cultures.

**(4)** Grade 3, 4, and 5 students will:

**(a)**  
understand the influence of English in heritage language speech patterns;

**(b)**  
orally compare and contrast accounts of the same event and text;

**(c)**  
demonstrate appropriate listening skills for understanding and cooperation within a variety of cultural settings.

**I.** Language standards: Conventions of standard Spanish. Students in grades K, 1, and 2 will use letter formation, lines, and

spaces to create a readable document. [6.29.15.8 NMAC - N, 07/01/2018]

**6.29.15.9 CONTENT STANDARDS FOR SPANISH LANGUAGE ARTS, Grades**

**6-8:** All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the Spanish language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers. The standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us) or are otherwise published and made available by the department. The common core state standards Spanish language version published by council of chief state school officers are incorporated in this rule by reference. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us) or are otherwise published and made available by the department.

**A.** The following standards are additional New Mexico standards that shall be utilized in conjunction with the common core state standards incorporated by reference in this regulation.

**B.** Reading literature: Key ideas and details.  
**(1)** Grade 6 students will:

**(a)**  
analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

**(b)**  
analyze Hispanic and Native American texts by showing how they reflect the heritage, traditions, attitudes, and beliefs of the authors and how they apply to society;

**(c)**  
compare a cultural value as portrayed in literature with a personal belief or value.

**(2)** Grade 7 students will:

**(a)**  
analyze how a cultural work of

literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structures of the text contribute to society, past or present;

(b) analyze Hispanic and Native American texts by showing how they reflect the heritage, traditions, attitudes, and beliefs of the authors and how they apply to society;

(c) use oral and written texts from various cultures as evidence cited to support or negate understanding of a cultural value.

(3) Grade 8 students will:

(a) analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

(b) analyze Hispanic and Native American texts by showing how they reflect the heritage, traditions, attitudes, and beliefs of the authors and how they apply to society;

(c) use oral and written texts from various cultures as evidence cited to support or negate reader inference of a cultural value.

C. Reading literature: Range of reading and level of text complexity. Grade 8 students will, by the end of the school year, independently and proficiently read and comprehend significant works of 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> century literature including stories, dramas, and poems.

D. Reading standards for informational text: Integration of knowledge and ideas. Students in grades 6, 7, and 8 will:

(1) distinguish between primary and secondary sources;

(2) describe how the media use propaganda, bias, and stereotyping to influence audiences.

E. Speaking and listening standards: Presentation of knowledge and ideas. Students in

grades 6, 7, and 8 will:

(1) understand the influence of English in heritage language speech patterns;

(2) orally compare and contrast accounts of the same event and text;

(3) demonstrate appropriate listening skills for understanding and cooperation within a variety of cultural settings.

[6.29.15.9 NMAC - N, 07/01/2018]

**6.29.15.10 CONTENT STANDARDS FOR SPANISH LANGUAGE ARTS, GRADES**

**9-12:** All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the Spanish language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us) or are otherwise published and made available by the department. The common core state standards Spanish language version published by council of chief state school officers are incorporated in this rule by reference. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us) or are otherwise published and made available by the department.

A. The following standards are additional New Mexico standards that shall be utilized in conjunction with the common core state standards incorporated by reference in this regulation.

B. Reading literature: Key ideas and details. Students in grades 9, 10, 11, and 12 will:

(1) analyze and evaluate common characteristics of significant works of literature from various genres, including Hispanic and Native American oral and written texts;

(2) cite strong and thorough textual evidence to support analysis of British, world, and regional literatures, including various Hispanic and Native American oral

and written texts.

C. Reading standards for informational text: Integration of knowledge and ideas. Students in grades 9, 10, 11, and 12 will:

(1) analyze and evaluate common characteristics of significant works, including Hispanic and Native American oral and written texts;

(2) cite strong and thorough textual evidence to support analysis of significant works, including Hispanic and Native American oral and written texts.

[6.29.15.10 NMAC - N, 07/01/2018]

**6.29.15.11 CONTENT STANDARDS FOR SPANISH LANGUAGE ARTS**

**INSTRUCTION IN BILINGUAL MULTICULTURAL EDUCATION PROGRAMS, GRADES K-12:**

All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute whose students participate in state Spanish bilingual multicultural education programs pursuant to 22-23-1 NMSA 1978 and 6.32.2 NMAC are bound by the common core state standards Spanish language version published by council of chief state school officers are incorporated in this rule by reference. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us) or are otherwise published and made available by the department.

[6.29.15.11 NMAC - N, 07/01/2018]

**HISTORY OF 6.29.15 NMAC: [RESERVED]**

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 29 STANDARDS FOR EXCELLENCE PART 16 SPANISH LANGUAGE DEVELOPMENT**

**6.29.16.1 ISSUING AGENCY:** Public Education

Department hereinafter referred to as the department.

[6.29.16.1 NMAC - N, 07/01/2018]

**6.29.16.2 SCOPE:** All public schools, state educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

[6.29.16.2 NMAC - N, 07/01/2018]

**6.29.16.3 STATUTORY AUTHORITY:**

**A.** Section 22-2-2 NMSA 1978 grants the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

**B.** Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.

[6.29.16.3 NMAC - N, 07/01/2018]

**6.29.16.4 DURATION:** Permanent.

[6.29.16.4 NMAC - N, 07/01/2018]

**6.29.16.5 EFFECTIVE DATE:** July 1, 2018, unless a later date is cited at the end of a section.

[6.29.16.5 NMAC - N, 07/01/2018]

**6.29.16.6 OBJECTIVE:** The department-approved Spanish language development standards provide companion piece to the New Mexico content standards for Spanish language arts (6.29.15 NMAC). The approved standards shall guide second-language instruction for PreK-12 Spanish language learner students. The Spanish language learner population falls into three basic categories: students whose primary or home language (L1) is Spanish; students from heritage language groups needing enrichment and further development of academic Spanish,

some of whom maintain degrees of fluency in their heritage language; and any other students needing further development of academic Spanish. Because instruction must address the appropriate proficiency level of the individual student, which may vary greatly for any age, some consideration must be made for the student's maturity level.

[6.29.16.6 NMAC - N, 07/01/2018]

**6.29.16.7 DEFINITIONS:**

**A.** "Academic content standards" means statements that define the knowledge and skills students need to know and be able to demonstrate as proof of competency in the core content areas associated with schooling.

**B.** "Academic language" means the language used in academic content in formal schooling contexts, including specialized or technical language and discourse related to each content area.

**C.** "Discourse" means extended, connected language that may include explanations, descriptions and propositions.

**D.** "Heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin.

**E.** "Language domains" means the four main subdivisions of language: listening, speaking, reading and writing.

**F.** "Levels of Spanish language proficiency" means the arbitrary division of the second language acquisition continuum into stages of language development.

**G.** "Listening" means the ability to process, understand, interpret and evaluate spoken language in a variety of situations.

**H.** "Reading" means the ability to process, understand, interpret and evaluate written language, symbols and text with understanding and fluency.

**I.** "Spanish language learner" means a student who is not yet able to understand, speak, read or write Spanish at a level comparable to grade-level Spanish proficient peers and native Spanish speakers.

**J.** "Speaking" means oral communication used in a variety of situations for a variety of purposes and audiences.

**K.** "Writing" means written communication used in a variety of forms for a variety of purposes and audiences.

[6.29.16.7 NMAC - N, 07/01/2018]

**6.29.16.8 SPANISH LANGUAGE DEVELOPMENT STANDARDS GRADE SPANS:**

The Spanish language development standards established by the department are organized in grade levels as follows: PreK-12.

[6.29.16.8 NMAC - N, 07/01/2018]

**6.29.16.9 SPANISH LANGUAGE DEVELOPMENT STANDARDS PROFICIENCY LEVELS AND LANGUAGE DOMAINS:**

**A.** The Spanish language development standards have five general levels of Spanish language proficiency: "entering" (level 1), "emerging" (level 2), "developing" (level 3), "expanding" (level 4), "bridging" (level 5), "reaching" (level 6)."

**B.** Reading, writing, listening and speaking skills are addressed at each proficiency level.

[6.29.16.9 NMAC - N, 07/01/2018]

**6.29.16.10 CONTENT STANDARDS FOR SPANISH LANGUAGE DEVELOPMENT, GRADES PreK-12:** The world class instructional design and assessments (WIDA) Spanish language development standards distinguish five general standards: "social and instructional language," "the language of language arts," "the language of mathematics," "the language of science," and "the language of social studies." Reading, writing, listening and speaking skills are addressed in each standard.

**A.** Spanish language proficiency standard 1: PreK-12. Social and instructional language: Spanish language learners communicate for social and instructional purposes within the

school setting.

(1) Listening:

Process, understand, interpret and evaluate spoken language in a variety of situations.

(2) Speaking:

Engage in oral communication in a variety of situations for a variety of purposes and audiences.

(3) Reading:

Process, understand, interpret and evaluate written language, symbols, and text with understanding and fluency.

(4) Writing:

Engage in written communication in a variety of situations for a variety of purposes and audiences.

**B.** Spanish language proficiency standard 2: PreK-12. The language of language arts: Spanish language learners communicate information, ideas and concepts necessary for academic success in the content area of language arts.

(1) Listening.

(2) Speaking.

(3) Reading.

(4) Writing.

**C.** Spanish language proficiency standard 3: PreK-12. The language of mathematics: Spanish language learners communicate information, ideas and concepts necessary for academic success in the content area of mathematics.

(1) Listening.

(2) Speaking.

(3) Reading.

(4) Writing.

**D.** Spanish language proficiency standard 4: PreK-12. The language of science: Spanish language learners communicate information, ideas and concepts necessary for academic success in the content area of science.

(1) Listening.

(2) Speaking.

(3) Reading.

(4) Writing.

**E.** Spanish language proficiency standard 5: PreK-12. The language of social studies: Spanish language learners communicate information, ideas and concepts necessary for academic success in the content area of social studies.

(1) Listening.

(2) Speaking.

(3) Reading.

(4) Writing.

[6.29.16.10 NMAC - N, 07/01/2018]

**HISTORY OF 6.29.16 NMAC:  
[RESERVED]**

**PUBLIC EDUCATION  
DEPARTMENT**

**This is an amendment to 6.29.1 NMAC, Sections 9 and 11, effective 02/28/2017.**

**6.29.1.9 PROCEDURAL  
REQUIREMENTS:**

**A.** Duties and powers of the local board of education or governing body of a charter school. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the local board of education (or governing body of a charter school, where indicated) shall:

(1) review, approve and support the district's EPSS and each school site-level EPSS, or the charter school's EPSS;

(2) employ and evaluate the local superintendent or charter school administrator;

(3) develop a planned program of training annually, in which each member of the board participates, to assist in the performance of specified duties; this planned program shall align with the district's EPSS; training shall include the following requirements and procedures.

(a) All local school board members shall receive a total of five hours of annual training.

(b) Newly elected or appointed local school board members, who are in office for less than a year, shall receive three of the five hours from attending a training course developed by the department and sponsored by the New Mexico school boards association (NMSBA). The

additional two hours of annual training for new board members shall consist of sessions sponsored by the NMSBA and approved by the department.

(c)

All board members who have been in office for one or more years shall attend five hours of annual training sponsored by the NMSBA and approved by the department.

(d) In

order to be credited with attendance at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to September 1 of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's accountability report shall include the names of those local school board members who failed to attend annual mandatory training (see Section 22-2C-11(G) NMSA 1978);

(4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain from involvement in delegated administrative functions;

(6) review district or charter school policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual district or charter school budget;

(11) be responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate

with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

**B.** Duties and powers of the district superintendent or the administrator of a charter school. In addition to the powers and duties set out in Section 22-5-14 NMSA 1978 of the Public School Code, the local superintendent (or charter school administrator, where relevant) shall:

(1) administer local board's (or governing body of a charter school's) policies, state and federal requirements and applicable laws, including the Public School Code;

(2) be accountable for student achievement; budget management; expenditure of funds; dissemination of information; district or charter school communications; development, implementation and evaluation of the EPSS and all other district or charter school business;

(3) review, approve and support the district EPSS and each school site-level EPSS or the charter school's EPSS;

(4) attend all local board or governing body of a charter school's meetings or, when necessary, designate a licensed administrator to attend;

(5) ensure that school patrons and the public are informed and involved in the acquisition, planning and development of school facilities and that students are provided with adequate facilities which conform to state and federal mandates;

(6) be accountable for student safety (see 6.12.6 NMAC - *School District Wellness Policy*):

(a) ensure that all students are supervised while on school property and while attending or traveling to school events or activities on school-provided transportation;

(b)

ensure that all buildings, grounds and facilities provide a safe and orderly environment for public use (see Subsection O of 6.29.1.9 NMAC - *School Facilities and Grounds*; Paragraph (8) of Subsection D of 6.12.6.8 NMAC - *School District Wellness Policy* and 6.19.3 NMAC - *Unsafe School Choice Option*);

(7) administer and implement the district's or charter school's approved staff accountability plan and procedures;

(8) ensure that a process is in place to identify, train, assign and support the use of unlicensed content-area experts as resources in classrooms, team teaching, online instruction, curriculum development and other purposes as determined by the superintendent, which shall include, but not be limited to, the following:

(a) establish the specific expertise of the person;

(b) obtain a background check and fingerprint records;

(c) provide the person with a three-hour training, prior to entering a classroom, about how the school operates, appropriate teaching methods and expectations of principal and assigned teacher;

(d) establish a start date and ending date for the person;

(e) ensure that the person is under the direct supervision of the teacher assigned when students are present; and

(f) provide for an evaluation of services upon completion of the assignment;

(9) shall issue the following notifications in accordance with Section 22-10A-16 NMSA 1978, in addition to any other parental notification requirements contained in the No Child Left Behind Act of 2001 (PL 107-110, 20 US Code Section 6301 et seq.); a school district or charter school shall issue these notifications in English and, to the extent possible, in the language of

the parent or guardian (if it is known that the parent or guardian's primary language is not English); the district or charter school shall retain a copy of all notifications and shall ensure that information required under this paragraph is available to the public upon request.

(a)

Within sixty calendar days from the beginning of each school year, a school district or charter school shall issue a notice to parents informing them that they may obtain written information regarding:

(i) the professional qualifications of their child's teachers, instructional support providers and school principals or charter school administrators;

(ii) other descriptive information, such as whether their teacher has met all qualifications for licensure for the grade level and subjects being taught;

(iii) whether their child's teacher is teaching under a teaching or assignment waiver;

(iv) the teacher's degree major and any other license or graduate degree held by the teacher;

(v) the qualifications of any instructional support providers that serve their child.

(b)

When, by the end of a consecutive four-week period, a child is still being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement, the school district or charter school shall provide written notice to the parent or guardian that the child is being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement.

(c)

No class may be taught by a substitute teacher, in lieu of a licensed teacher under contract, for more than forty-five (45) school days during a school year.

(d)

The secretary shall consider deviations from the requirements of

Subparagraph (c) of Paragraph (9) of Subsection B of 6.29.1.9 NMAC when a written request by a local superintendent or charter school administrator is submitted. The request shall include:

- (i) the size of the school district;
- (ii) the geographic location of the district;
- (iii) demonstrated efforts to employ an appropriately-licensed person in the area(s) of need;
- (iv) the historical use of substitutes in the district; and
- (v) an estimation of the number of days that a substitute will be utilized that exceed the forty-five (45) day limit.

**C. Licensed staff and administrators.**

(1) The licensed staff shall exercise duties specified in law and those assigned by the local district or charter school.

(2) As required by state and federal law, all licensed staff and administrators shall be evaluated on an annual basis.

(3) The detection and reporting of child abuse or neglect is required by both the Children’s Code (32A-4-3 NMSA 1978) and the Public School Code (22-5-4.2 NMSA 1978). Abuse of a child under the Children’s Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children’s Code, failure to report abuse or neglect of a child is a misdemeanor. The terms “abuse” and “neglect” are defined in detail in Section 32A-4-2 NMSA 1978 of the Children’s Code. There is also the crime of child abuse, which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation of endangerment to the child’s life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and reporting of child abuse or neglect in public schools:

(a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;

(b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land;

(c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described in Subparagraph (a) of Paragraph (3) of Subsection C of 6.29.1.9 NMAC;

(d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;

(e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately - i.e., the same day - report their observations to one of the offices designated in Subparagraph (b) of Paragraph (3) of Subsection C of 6.29.1.9 NMAC;

(f) all licensed school personnel, including substitute teachers, educational assistants, school nurses, school counselors, school psychologists and other instructional service providers shall complete training provided by the department in the detection and reporting of child abuse or neglect, within their first year of employment by, or providing services to, a school district or charter school;

(g) all persons who have never received training required under Subparagraph (f) of Paragraph (3) of Subsection

C of 6.29.1.9 NMAC shall make arrangements to receive training before the end of their current school year;

(h) the department shall develop a training program to detect child abuse or neglect, in coordination with the New Mexico human services department and the New Mexico department of health. This program shall be made available to all colleges, school districts and charter schools in the state offering teacher preparation courses;

(i) nothing in Paragraph (3) of Subsection C of 6.29.1.9 NMAC shall be interpreted as preventing a school district or charter school from developing and providing its own training for all staff to detect and report suspected child abuse or neglect, in addition to the training offered by the department.

**D. Student intervention system.** The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If data from universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level.

(2) In tier 2, a properly-constituted SAT at each school, which includes the student’s parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing

curriculum-based measures. As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. The SAT shall create no undue delay for full initial evaluation to determine eligibility for special education for a student who is identified as homeless or in foster care under the state's foster care system or based on criteria to assess housing stability status under the federal McKinney-Vento Act and the 2015 ESSA Title IV, Part B, due to the high mobility of this specific population group. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.

(3) In tier 3, a student has been identified as a student with disability or gifted under the state criteria for giftedness deemed eligible for special education and related services, and an IEP is developed by a properly-constituted IEP team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.

(4) The department's manual, *the student assistance team and the three-tier model of student intervention*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

E. Records and reports.

(1) Each district and charter school shall maintain and treat all personally identifiable educational records in accordance with the Family

Educational Rights and Privacy Act (FERPA), the implementing regulations set forth at 34 Code of Federal Regulations, Part 99 and Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) All records shall be safe from fire and theft and stored in a retrievable manner. All student records, including disciplinary and grading records, shall be retained and disposed of pursuant to 1.20.2 NMAC.

(3) Transcripts and copies of pertinent records of students transferring from one school to another, including disciplinary records with respect to suspension and expulsion, shall be forwarded promptly upon written request by the receiving school.

(4) Local school boards and governing bodies of charter schools shall establish policies providing for inspection of education records by students and parents.

(5) Effective July 1, 2009, after the administration of the eleventh grade SBA, school districts and charter schools are required to record test results on each student's official transcript. The information recorded shall include the following:

(a) district and high school administering the examination;

(b) date of examination administration;

(c) results of the examination for each subject area tested; and

(d) reports of the results in a format and language that is understandable to parents.

F. Organization of grade levels and establishing/closing schools. Any change in a school district or charter school's organizational pattern, including the establishment or closing of a school, shall have the secretary's approval prior to implementation. Requests for change shall be submitted using the department's *organization of grade*

*levels and establishing/closing school waiver request form.* This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. The waiver request shall outline the expected educational benefits.

G. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

(1) The individual class load for elementary school teachers shall not exceed 20 students for kindergarten, provided that any teacher in kindergarten with a class load of 15 to 20 students shall be entitled to the assistance of an educational assistant.

(2) The average class load for elementary school teachers at an individual school shall not exceed 22 students when averaged among grades one, two and three, provided that any teacher in grade one with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant.

(3) The average class load for an elementary school teacher at an individual school shall not exceed 24 students when averaged among grades four, five and six.

(4) The daily teaching load per teacher for grades seven through twelve shall not exceed 160 students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed 135, with a maximum of 27 students per class; and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed 150 students, with a maximum of 30 students per class. The teaching load for teachers assigned to laboratories and shops

shall adhere to the current workplace safety codes of the industry.

(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

(6) The secretary may waive the individual school class load requirements established in this section. Waivers shall be applied for annually, and a waiver shall not be granted for more than two consecutive years. Requests for class load waivers shall be submitted using the department's *class size waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Waivers may only be granted if a school district or charter school demonstrates:

- (a) no portable classrooms are available;
- (b) no other available sources of funding exist to meet the need for additional classrooms;
- (c) the district or charter school is planning alternatives to increase building capacity for implementation within one year; and
- (d) the parents of all children affected by the waiver have been notified in writing of the statutory class

load requirements; that the school district or charter school has made a decision to deviate from these class load requirements; and of the school district's or charter school's plan to achieve compliance with the class load requirements.

(7) If a waiver is granted pursuant to Paragraph (6) of Subsection G of 6.29.1.9 NMAC to an individual school, the average class load for elementary school teachers at that school shall not exceed 20 students in kindergarten and grade one, and shall not exceed 25 students when averaged among grades two, three, four, five and six.

(8) Each school district or charter school shall report to the department the size and composition of classes subsequent to the 40th day report and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's or charter school's budget by the secretary.

(9) The department shall report to the legislative education study committee by November 30 of each year regarding each school district's or charter school's ability to meet class load requirements imposed by law.

(10) Notwithstanding the provisions of Paragraph (6) of Subsection G of 6.29.1.9 NMAC, the secretary may waive the individual class load and teaching load requirements established in this section upon demonstration of a viable alternative curricular plan and a finding by the department that the plan is in the best interest of the school district or charter school; and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee. Requests for alternative curricular plans shall be submitted using the department's *collaborative school improvement programs waiver request form*. This form shall include:

name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request.

H. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed ten percent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than fifty percent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided fifty percent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. [~~This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.~~]

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. [~~This includes children who will turn three at any time during the school year, and who are determined to be eligible. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.~~]

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

I. Length of school day and year.

(1) The district or charter school shall be in compliance with length of school day and year requirements as defined in Section 22-2-8.1 NMSA 1978. Within statutory requirements, the local board or governing body of a charter school determines the length of the school year, which includes equivalent hours. The local board or governing body of a charter school may delegate this authority to the superintendent or charter school administrator who, in turn, may delegate to others.

(2) Time for home visits/parent-teacher conferences. The local board or governing body of a charter school may designate a prescribed number of hours within the school year for home visits, to develop next-step plans for students or parent-teacher conferences up to the following maximum hours: kindergarten: 33 hours; grades 1 through 6: 22 hours; and grades 7 through 12: 12 hours.

(3) All students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(a) kindergarten, for half-day programs: two and one-half hours per day or 450 hours per year; or, for full-day programs: five and one-half hours per day or 990 hours per year;

(b) grades one through six: five and one-half hours per day or 990 hours per year; and

(c) grades seven through twelve: six hours per day or 1,080 hours per year.

(4) Testing and assessments are considered part of instructional hours. One group of students cannot be dismissed while another group of students is testing, unless the students being dismissed

already have approved extended-day plans in place for participating in the minimum instructional hours required.

(5) Dismissing students or closing school for staff development and participation in other non-instructional activities does not count toward the minimum instructional hours required. This time is to be built into a district and school schedule as an add-on. Early-release days may be built into a district or charter school calendar when the minimum instructional hours' requirement is otherwise being met.

(6) The student lunch period each day shall be at least thirty (30) minutes. Lunch recess shall not be counted as part of the instructional day.

(7) Districts or charter schools may request a waiver from the secretary if the minimum length of school day requirement creates an undue hardship. Such requests shall be submitted using the department's *instructional hours waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Requests shall provide documentation that the following conditions exist:

(a) the educational, societal or fiscal consequences of operating the minimum length of a school day/year significantly impede the district's ability to provide a quality educational program; and

(b) the district or charter school has thoroughly investigated alternatives other than shortening the length of a school day/year in order to address the identified concerns.

(8) When an emergency arises and the emergency affects the required hours, the local

superintendent or charter school administrator shall request in writing approval from the secretary regarding the manner in which the lost instructional hours will be made up, or requesting an exemption from the required instructional hours.

**J. Graduation requirements.**

**(1)** The New Mexico eleventh grade SBA. The district or charter school shall be in compliance with requirements as specified in Section 22-13-1.1 NMSA 1978 and Subsection L of Section 66-7-506 NMSA 1978 (offering driver education, service learning and financial literacy as electives). The department specifies that students shall meet all graduation requirements in order to be eligible to receive a diploma. This includes the requirement of passing the eleventh grade SBA.

**(2)** The next step plan. Each student shall complete a next step plan for each high school year. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan. The next step plan requires that:

**(a)** each grade-level next step plan shall be completed within the last 60 school days of the preceding school year (for example, the 9th grade interim next step plan shall be made before the end of the 8th grade year);

**(b)** only one grade-level next step plan shall be completed for a student each year;

**(c)** the development of the next step plan shall include the student, the student's parent or guardian and the advisor, but may include additional relevant parties;

**(d)** to write the next step plan, the advisor shall consult with the student and the student's parent or guardian on academic choices that target the student's interests and meet graduation requirements;

**(e)** the next step plan shall address

career clusters in career and technical education, academic support and study skills, extracurricular experiences and out-of-school activities, exposure to post-secondary education and career options, family and social supports, assessments, credentials and any other relevant information; as part of the next step plan, the advisor shall disseminate and share information concerning advanced placement, honors, dual-credit and distance learning programs;

**(f)** the next step plan determines whether or not the student is on track with graduation requirements; the plan ensures that gaps in courses and test-taking are filled;

**(g)** the next step plan may be made in large-group, small-group or individual student settings;

**(h)** the advisor has the responsibility to see that the student is reasonably informed about curricular and course options, opportunities available that lead to broader post-high school options, and alternative opportunities available if the student does not finish a planned curriculum;

**(i)** the next step plan shall be signed by the student, the student's parent or guardian and the advisor;

**(j)** the completed next step plan shall be filed with the school principal or charter school administrator and only the final next step plan shall be filed in the student's cumulative file upon graduation;

**(k)** during the development of the student's next step plan for the eleventh grade and no later than the spring of the tenth grade, a plan allowing the student to complete a fourth mathematics course other than algebra 2 may be developed using data from the student's high school short-cycle assessments, the student's most recent SBA score in mathematics, other relevant assessment scores and coursework grades and educational career plans recorded in the student's next step

plan;

**(l)** for the student to take four mathematics courses that contain a lesser content than that recommended for inclusion in algebra 2 or its equivalent, the student's parent shall provide written, signed permission on the student's next step plan; parental signature on the next step plan for the eleventh grade indicating the mathematics courses the student will take shall serve as the required signed permission.

**(3)** Transfer of credits. For students enrolling or re-enrolling in public schools, local school boards or governing bodies of charter schools will establish policies as follows.

**(a)** Credits shall be transferable with no loss of value between schools that are accredited by a state board of education in the United States, United States territories, Puerto Rico, the freely-associated states and outlying areas of the United States, department of defense schools or other authorized body.

**(b)** Policies of the local school board or the governing body of a charter school, for students transferring from home schools, private schools or foreign schools to the public schools, will be in accordance with Subsection D of Section 22-1-4 NMSA 1978.

**(c)** Acceptance of credits earned through correspondence extension study, foreign study, home study courses or non-department accredited, non-public schools is determined by the policy of the local school board or the governing body of a charter school.

**(4)** Correspondence courses. For students currently enrolled in public schools, local school boards or governing bodies of charter schools will establish policies addressing the use of correspondence courses to meet graduation requirements.

**(a)** Policies should be based on the following circumstances:

**(i)**

when road conditions or distance from access to school transportation prohibit regular daily attendance;

(ii) when a student cannot attend school due to prolonged illness or recovery from injury, as part of the individual plan to address the student’s educational needs developed in accordance with applicable state and federal regulations governing the education of students with disabilities;

(iii) when the occupation of the parent or student requires prolonged periods of time away from the school district;

(iv) when a student is housed in a long-term residential facility; or

(v) to enhance or supplement graduation requirements based on a student’s individual need(s).

(b) Schools counting credit for correspondence courses for enrolled students shall ensure that such courses are part of the student’s individual plan for graduation. If applicable, such courses are part of the IEP developed in accordance with applicable state and federal regulations governing the education of students with disabilities, and schools shall ensure that assistance is available to students as needed to complete the correspondence courses.

(c) Correspondence courses used to provide graduation credit to currently enrolled students shall be provided by:

- (i) a school accredited by the state board of education of the state in which the school is located, or
- (ii) a college or university with regional accreditation to perform such function.

(5) Dual credit program. “Dual credit program” means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or

developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

(6) Distance learning courses. “Distance learning” means the technology and the educational process used to provide instruction for credit or for a grade, when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching. Any program involving distance learning shall be governed by the department’s distance learning rule, found at 6.30.8 NMAC.

(7) Standardized grading system. A standardized grading system is required to be implemented by each district and charter school. The system shall include the following components:

- (a) a written report to parents regarding the performance of their children tested with the New Mexico standards-based assessments;
- (b) for grades 3-12, a standardized alphabetic grading system, based on the 4.0 scale (i.e., a minimum of 4.0 or higher=A, 3.0=B, 2.0=C, 1.0=D); certain courses may be assigned a weighted score according to local policy;
- (c) alignment of all district and school curriculum to the New Mexico content standards with benchmarks and performance standards; and
- (d) all school report cards shall include the results of standards-based assessments and may augment the standardized grading system with a narrative or other method that measures a student’s academic, social, behavioral or other skills.

(8) Final examination. A final examination shall be administered to all students in all courses offered for credit.

(9) Credit. Credit cannot be earned twice for the same course.

(10) Other elective credit. Elective credit courses shall meet all New Mexico content standards with benchmarks and performance standards, and shall:

- (a) include a written, sequential curriculum;
- (b) be taught by an instructor who is appropriately licensed and endorsed to teach the course;
- (c) include a final examination; and
- (d) be reviewed and approved by the local board of education or governing body of a charter school.

(11) Alternative credit. Local districts, charter schools or state educational institutions may design elective courses, known as alternative credit courses, to satisfy any of the specified credits required for graduation.

(a) The process includes:

- (i) review of the licensure and endorsements of affected staff;
- (ii) review of required course content standards with benchmarks and performance standards with the proposed elective course, and summary of alignment between the two courses;
- (iii) determination of the amount of credit that will be generated;
- (iv) publication of information regarding what course is available for alternative credit and identification of STARS course number;
- (v) inclusion of the availability of alternative credit in all next-step plans;
- (vi) note on the student transcript that the graduation requirement course was completed using the named alternative credit course;
- (vii)

review and preliminary approval by the local board of education or governing body of a charter school.

**(b)**

Once the process has been completed, the district superintendent or administrator of a charter school or state educational institution shall submit a written request, with appropriate documentation, to the secretary for approval.

**(12) Excuses**

from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department's *physical education waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation, district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.

**(13) Graduation**

requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of

transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

**(a)**

The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).

**(b)**

A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

**(i)**

A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection J of 6.29.1.9 NMAC) with or without reasonable

accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the district.

**(ii)**

A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. ~~[In addition, a student shall take the current state graduation examination(s) administered pursuant to Section 22-13-1.1(K) NMSA 1978, under standard administration or with state-approved accommodations, and achieve a level of competency pre-determined by the student's IEP team; the student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team.]~~ In addition, a student shall take the current state graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations as determined by the SEA. Once the student has attempted the state graduation examination and is unable to meet the minimum requirements on all sections of the assessments and achieve a level of competency, the IEP team can set the minimum passing scores. The student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined

by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurships related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.

(iii)

An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1[(K)] NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the

student's IEP team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP team.

(c)

The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.

(d)

By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.

(e)

A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

(f)

Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

(g)

To establish a level of proficiency on the current graduation examination

or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.

(h)

Changes in programs of study.

(i)

Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. Districts and charter schools are obligated to

meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team

(ii)

Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii)

The IEP team shall not change the program of study for a student entering the final year of high school (not the cohort with which the student entered high school) from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(iv)

~~Beginning with students entering the 10th grade, districts and charter schools shall maintain an accurate accounting of graduation programs of study for students with IEPs. Districts and charter schools shall~~

~~ensure that 80% or more of students with IEPs are in the standard program of study, no more than 10-15% of students with IEPs shall graduate in the career readiness program of study, and no more than 1-3% of students with IEPs shall graduate in the ability program of study. Districts or charter schools exceeding the above maximum percentages shall submit a request for a waiver regarding each student affected. The request for waiver shall include the district name, the high school name, a list of all students on the alternate program of study exceeding the maximum percentage (including student demographics, unique student identifiers and the justification for changing each student's program of study). The waiver request shall be signed and submitted by the superintendent or charter school administrator to the secretary.]~~

(i)

A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i)

the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii)

prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii)

the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;

(iv)

the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v)

the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;

(vi)

the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

(j)

A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout.

(k)

A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.

(l)

Graduation plans shall be a part of all IEPs:

(i)

by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;

(ii)

when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

(iii)

when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.

(m)

Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

(n)

At the exit IEP meeting, the team shall review the student’s transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school administrator, using the students’ identification numbers. This list shall be ~~totalled~~ totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.

**(o)**

Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

**(p)**

The receipt of a diploma terminates the service eligibility of students with special education needs.

**(q)**

All diplomas awarded by a school district or charter school shall be

identical in appearance, content and effect, except that symbols or notations may be added to individual students’ diplomas to reflect official school honors or awards earned by students.

**(14)**

Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.

**K. Statewide**

accountability program.

**(1)**

Educational accountability. The local board of education or charter school governing body and the district superintendent or charter school administrator are responsible for providing educational services that support student learning. Educational accountability has two mechanisms and three indicators which impact the approval of the district’s budget and accreditation status. The accountability mechanisms are accreditation and the program/budget review process. These two mechanisms shall align directly with the district or charter school’s EPSS. The indicators are community representation, local accountability indicators and statewide accountability indicators.

**(2)**

Accountability mechanisms.

**(a)**

Accreditation. Accreditation will be conducted in accordance with Subsection F of Section 22-2-2 NMSA 1978. Verification of the district or charter school’s EPSS and student progress will occur on a regular basis. State and federal regulations which fall within the scope of accreditation will also be monitored.

**(b)**

Program/budget review and approval.

The program/budget review and approval process, including assessment and evaluation, occurs annually. Its purpose is to link the district or charter school’s program needs directly with budgetary resources. In order for a district or charter school to obtain an approved budget, the district shall:

charter school governing body’s determination of needs as defined in its EPSS (Section 22-8-18 NMSA 1978);

**(ii)**

document minimum budget requirements (Section 22-8-9 NMSA 1978);

**(iii)**

document parent involvement in budget preparation (Section 22-8-11 NMSA 1978);

**(iv)**

complete the annual program/budget questionnaire; and

**(v)**

comply with requirements specified in Section 22-8-5 NMSA 1978.

**(3)**

Accountability indicators.

**(a)**

Community representation. Community representatives shall be involved in the budget preparation process, the EPSS process, the EPSS evaluation (including the establishment of local student performance indicators) and the accreditation process. Community representatives include parents, students and other community members who reflect the composition of the student population. Evidence shall be provided to verify different forms of representation.

**(b)**

Local student performance indicators. Local student performance indicators shall:

**(i)**

be identified by the local school district or charter school in conjunction with students, parents, community members and businesses;

**(ii)**

be part of the local EPSS evaluation;

**(iii)**

measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;

**(iv)**

demonstrate student progress toward identified EPSS goals/focus areas (performance indicators);

**(v)**

be included as an integral part of the accreditation and program/budget

**(i)**

document the local board or

review processes; and

(vi)

use any other indicators the district or charter school shall choose for its students.

(c)

Statewide student performance indicators. Statewide student performance indicators shall:

(i)

be included as an integral part of the accreditation and program/budget review processes;

(ii)

be part of the local EPSS evaluation;

(iii)

measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;

(iv)

communicate clearly to parents and the general public the students' progress toward meeting the goals established by the district and school, or charter school; and

(v)

describe performance levels across the grade levels and across the curriculum.

**L.** Statewide student assessment system. As stated in 22-2-8.13 NMSA 1978, students' knowledge and skills are assessed and evaluated through the New Mexico content standards with benchmarks and performance standards, the New Mexico standards-based assessments (SBA) and local measures. All public schools, state educational institutions and educational programs conducted in state institutions other than New Mexico military institute, as noted in the scope of this rule, shall participate in the statewide student assessment system.

(1)

The statewide student assessment system. All public school students, with the exceptions indicated below, shall participate in the SBA, which includes standards-based assessments in grades 3 through 8 and grade 11 and other tests, including short-cycle assessments in grades 9 and 10.

(2)

Exceptions. Exceptions include special provisions and requirements

for the assessment of English language learners and students with IEPs.

(a)

English language learners. Students who have limited English language skills (i.e., students who are "English language learners" as determined by the department's language assessment instrument (the New Mexico English language proficiency assessment - NMELPA)) shall participate in the statewide testing program. The following considerations specify how assessment shall be conducted.

(i)

Length of enrollment in U.S. schools. The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U. S. public schools. For students who are new to U.S. schools, the following applies: If the student has not been in the school for a full academic year at the time of testing, the student's test results will not be included in the performance data used to determine the AYP of the school. Students who are enrolled for the first year in a U.S. school may receive a language exemption from the SBA for the reading subtest only. In this situation, the student's score on the NMELPA, if available, will be substituted for the reading subtest and will count toward the district or school's required 95 percent participation rate. If this option is chosen for a student, the language exemption for reading only indicator shall be completed on the SBA's student biogrid sheet. In all other content areas of the SBA, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school's team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection L of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that

are provided, if any, shall be indicated on the student biogrid sheet. Students who have been in U.S. schools for less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the English-language version of the assessment without accommodations; the student may participate in the English-language version of the assessment with appropriate accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate. Locally developed portfolio assessments are not permitted, under the terms of federal law.

(ii)

Waivers for home language assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations, unless a waiver request to continue the testing of the student in the home language of Spanish is approved by the secretary. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the secretary to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the secretary for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall take the form of a memorandum that includes: student name, student state identification number, school in which the student is currently enrolled, student's grade level, student's

English language proficiency scores (from the NMELPA) and date(s) of most recent NMELPA administration, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

(iii)

Accommodations. Districts and charter schools shall provide accommodations to English language learners after consideration of their appropriateness for the individual student. To determine the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL-endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school

test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English language proficiency, student's current English language proficiency, including the student's experience and time in U. S. schools, student's expected date for exiting English language learner accommodations, student's familiarity with the accommodation under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

(b)

Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

(c)

Waiver of the eleventh grade SBA (graduation requirement assessment).

(i)

With the approval of the local board of education or charter school governing body, the local superintendent or charter school

administrator may request written approval from the secretary to award a diploma to a student who has not passed the eleventh grade SBA. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's *eleventh grade SBA waiver request* form. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy, list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

(ii)

With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the eleventh grade SBA.

**M. Indigent identification and guidelines.**

(1) A student

who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent

or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

**N. Emergency drills and practiced evacuations.**

(1) Emergency

drills shall be conducted in each

public school and private school in the state, as follows:

(a) at least once per week during the first four weeks of the school year, and at least once per month during the remainder of the school year;

(b) two of these drills shall be shelter-in-place drills;

(c) one of these drills shall be an evacuation drill;

(d) nine of these drills shall be fire drills, with one fire drill required each week during the first four weeks of school;

(e) in locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism;

(f) it shall be the responsibility of the person in charge of a school to carry out the provisions related to emergency drills.

(2) Requirements to comply and penalties for non-compliance:

(a) It shall be the responsibility of the superintendent of a school district, a charter school administrator or private school counterpart(s) to ensure that each school under the person's authority follows the requirements set forth in Subsection N of 6.29.1.9 NMAC.

(b) In the event that the person responsible for complying with Subsection N of 6.29.1.9 NMAC fails or refuses to comply with this subsection, the department may, in the case of a public school, take any action designed to ensure prompt corrective action or future compliance, including reporting the non-compliance to either the state fire marshal or to a local fire department. In the case of a private school, the department will report the non-compliance to either the state fire marshal or to a local fire department and may consider adverse licensure action.

(c) Failure or refusal to comply with the requirements in Subsection N of 6.29.1.9 NMAC for holding emergency drills shall constitute grounds to suspend or revoke the license of the person responsible for compliance. The due process procedures under the Uniform Licensing Act (Sections 61-1-1 through 61-1-31 NMSA 1978) shall apply.

O. School facilities and grounds. Pursuant to Subsection B of 6.29.1.9 NMAC (*Duties of the Superintendent*); Subsection D of 6.12.6.8 NMAC (*School District Wellness Policy*); and 6.19.3 NMAC (*Unsafe School Choice Option*), each school district or charter school shall ensure that all buildings, facilities and grounds provide a safe and orderly environment for public use; i.e., that they shall be:

(1) safe, healthy, orderly, clean and in good repair;

(2) in compliance with the Americans with Disabilities Act-Part III and state fire marshal regulations, Sections 59A-52-1 through 59A-52-25 NMSA 1978;

(3) safe for conducting experiments and school projects in all school laboratories and shops, as established in written school safety procedures which are reviewed annually; these procedures include, but are not limited to:

(a) personal protective equipment;

(b) adequate ventilation and electrical circuitry;

(c) material safety data sheets;

(d) body and eye washes; and

(e) training appropriate for each teaching situation;

(4) the maximum number of occupants in a laboratory or shop teaching space shall be based on the following:

(a) the number of work stations;

(b)

the building and fire safety codes;

(c) the design of the laboratory or shop teaching facility;

(d) appropriate supervision and the special needs of students; and

(e) all applicable OSHA regulations;

(5) appropriate procedures for the storing, handling and removal of toxic or dangerous substances shall be established and implemented; all school programs (including those areas noted above and custodial areas, art room, library and cafeteria) shall comply with standard safety practices and all applicable state and federal regulations;

(6) use of pesticides by districts and charter schools will be governed by the following standards:

(a) Definitions as used in this section:

(i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(ii) "Pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, which is declared to be a pest pursuant to the Pesticide Control Act, Sections 76-4-1 through 76-4-39 NMSA 1978.

(b) Districts and charter schools will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to, the following:

(i) No pesticide may be applied to public school property and no pest control device, as defined in the New Mexico Pesticide Control Act, may be used on public school property except

those pesticides and devices currently registered for legal use in the state by the New Mexico department of agriculture.

(ii)

No pesticide may be applied to public school property except by those persons certified in the applicable category and currently licensed by the New Mexico department of agriculture or by employees under their direct supervision.

(iii)

Pesticides will only be applied in or on the outside of school buildings when a pest is present, and will not be applied on a regular or calendar basis unless it is to treat an infestation and is a part of a pest management system being implemented to address a particular target pest. A pest is considered to be present when it is observed directly or can reasonably be expected to be present based on finding evidence, such as droppings, body parts, or damage that is typically done by the pest. This section of the regulation does not apply to pre-construction termite treatments or the use of outdoor herbicides.

(iv)

Pesticides that are applied in a liquid, aerosolized or gaseous form through spraying, aerosol cans, bombs, fumigation or injections into the ground, foundation or plants will not be applied on public school property when students, staff or visitors are present, or may reasonably be expected to be present within 6 hours of the application. In emergency cases, where a pest infestation threatens the health or safety of the occupants of public school property, and which requires the immediate application of a pesticide to remediate, students, staff and other school occupants will be removed from the treatment area prior to the application. Small amounts of gel or liquid pesticides applied to cracks and crevices or baits used to treat pest infestation are exempt from this section.

(v)

At the beginning of each year, and when new students register, schools will develop a list of parents and

guardians who wish to be notified prior to pesticide application during the school year. These parents/guardians will be notified in writing prior to pesticide application. General notification of anticipated pesticide applications will occur by posting or dissemination of notices, by oral communication or other means of communication. In emergency cases where a pest infestation threatens the health or safety of the occupants of public school property, no pre-notification is required. Immediately following the application of a pesticide in emergency cases, signs will be posted indicating an application was made.

(vi)

Written records of pesticide applications will be kept for three years at each school site and be available upon request to parents, guardians, students, teachers and staff.

(vii)

If any part of Paragraph (6) of Subsection O of 6.29.1.9 NMAC is found to be in conflict with the provisions of the Pesticide Control Act, the remainder of the regulation will remain in full force and effect.

**P.** School district budgeting. Section 22-8-4 NMSA 1978 requires the department to prescribe forms for, supervise and control the preparation of all budgets of all public schools and school districts, and to compile accurate information concerning public school finance and administration. Sections 22-8-5 through 22-8-12.1 NMSA 1978 set out specific budget preparation and submission requirements for the department, public schools and public school districts. Regulations governing budgeting and accounting for New Mexico public schools and school districts are set out in 6.20.2 NMAC.

**Q.** Final course and other student grade changes. Any changes to students' course or other grades shall be governed by the state rule, "*Final Course and Other Student Grade Changes*" (6.30.10 NMAC).

[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6-30-2009; A, 02-12-2010;

A, 10-31-2011; A, 02/28/2017]

**6.29.1.11 PROGRAM REQUIREMENTS:**

**A.** Curriculum.

(1) Local

curricula shall be aligned with the applicable New Mexico content standards with benchmarks and performance standards. In accordance with Section 22-13-1.6 NMSA 1978, each school district shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area. Each school district's aligned grade level and subject area curricula shall be in place for mathematics by the 2009-2009 school year.

(2) Adopted

instructional materials shall support the aligned local curricula. The state standards revision cycle, the local curriculum cycle and the instructional materials cycle shall be aligned and sequenced to provide standards-based curricula that are supported by aligned instructional materials. At the completion of each standards revision cycle, the standards-based state assessment program shall be reviewed to determine the need for realignment.

(3) All courses

offered for credit shall have written, delivered, assessed and sequential curriculum.

(4) Written

and delivered curricula shall be congruent, state what students should know and be able to do, and include an assessment process.

(5) The

curricula shall be assessed as part of the EPSS process.

(6) The curricula shall support the EPSS.

**B.** Subject areas.

The district or charter school shall be in compliance with subject area requirements as specified in Section 22-13-1 NMSA 1978.

(1) The

department shall require instruction in specific subject areas as provided

in Paragraphs (2) through (7) of Subsection B of 6.29.1.11 NMAC. Any public school or school district failing to meet these minimum requirements shall not be accredited by the department.

(2) All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension; and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

(3) All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content standards, benchmarks and performance standards shall be provided in science, social studies, physical education and health education.

(4) In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

- (a) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;
- (b) mathematics;
- (c) a language other than English;
- (d) communication skills;
- (e) science;
- (f) art;
- (g) music;
- (h) social studies;
- (i) New Mexico history;
- (j)

- United States history; (k)
- geography; (l)
- physical education; and (m)
- health education. (5) In eighth grade, algebra I shall be offered in regular classroom settings, through online courses or agreements with high schools.
- (6) In fourth through eighth grades, school districts and charter schools shall offer electives that contribute to academic growth and skill development, and provide career and technical education.
- (7) In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education, including:
  - (a) age appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proved to be effective;
  - (b) lifesaving skills training that follows nationally recognized guidelines for hands-on, compression only, psychomotor skills (skills that use hands-on practice to support cognitive learning) cardiopulmonary resuscitation training including:
    - (i) use of a course curriculum, which allows for demonstration of competency in performing cardiopulmonary resuscitation and associated skills; (ii)
    - training that conforms to the most recent, national, evidence-based guidelines established by the American heart association, the American red cross, or another nationally recognized, NM public education department-approved non-profit organization; (iii)

- training to recognize the signs of a heart attack; (iv)
- training on use of an automated external defibrillator; and (v)
- training on how to perform the Heimlich maneuver for choking victims; (c)
- lifesaving skills training that may use the following instructors if qualified to teach hands-on psychomotor skills cardiopulmonary resuscitation training: (i)
- school nurses; (ii)
- health teachers; (iii)
- athletic department personnel as instructors; and (iv)
- any qualified volunteers, as defined by 6.50.18.8 NMAC, providing training at no cost to the school district that the school district determines to be eligible to offer instruction as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC including, but not limited to, emergency medical technicians, paramedics, police officers, firefighters, representatives of the American heart association or the American red cross, or other similarly qualified individuals; (d)
- training and instructional materials related to Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC in both English and Spanish to include: (i)
- materials, equipment and services that are needed as part of the instruction obtained on loan from state-recognized organizations, such as the New Mexico heart institute; and (ii)
- materials, equipment and services received by schools as in-kind donations; and (e)
- combined instruction, whereby school districts and charter schools may work with other school districts and charter schools to provide the training or with

a regional education cooperative to provide or facilitate the training.

**(8)** The requirements as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education shall not be required for students in grades nine through 12 who are enrolled in a virtual charter school.

**(9)** A school district or charter school may submit a waiver request to the department for the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education for a student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act in grades nine through 12 with a disability as documented through an individualized education program (IEP) if the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC cannot be reasonably met with accommodations for a given student.

~~(8)~~ **(10)** In every grade, inquiry-based laboratory components are at the core of the science program, and shall be woven into every lesson and concept strand. For required science units in grades nine through twelve, “laboratory component” means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students shall have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results and discuss their findings. The laboratory component comprises at least 40 per cent of the unit’s instructional time. All science classes that include dissection activities as part of the curriculum shall provide virtual dissection techniques as alternative activities for any student who is opposed to real dissections for ethical, moral, cultural or religious

reasons. Alternative techniques shall approximate the experience of real dissection activities as closely and appropriately as possible. A virtual dissection technique means carrying out dissection activities using computer two-dimensional or three-dimensional simulations, videotape or videodisk simulations, take-apart anatomical models, photographs or anatomical atlases.

**C.** Bilingual multicultural education. Bilingual multicultural education shall be provided to meet the identified educational and linguistic needs of linguistically and culturally different students, including Native American children, and other students who may wish to participate, in grades K-12, with priority to be given to programs in grades K-3. These programs shall:

**(1)** provide services in accordance with the Bilingual Multicultural Act (Sections 22-23-1 through 6 NMSA 1978) and the Bilingual Education Regulation (Sections 6.32.2.7 through 6.32.2.11 NMAC);

**(2)** be implemented in accordance with the identified needs of qualifying culturally and linguistically different students and ensure equal educational opportunities;

**(3)** be assessed as part of the EPSS process; and

**(4)** support the local curriculum and EPSS.

**D.** Career and technical education (CTE). Career and technical education programs for both elementary and secondary levels shall:

**(1)** be in accordance with Section 22-14-1 through 22-14-30 NMSA 1978 and the Carl Perkins Act;

**(2)** provide exploratory and skill development program offerings;

**(3)** ensure students’ mastery of the New Mexico career and technical education content standards with benchmarks and performance standards;

**(4)** include competency-based applied learning;

**(5)** be assessed as part of the EPSS process; and **(6)** support the local curriculum and the EPSS.

**E.** School health. School health programs provide opportunities for all students to develop healthy behaviors. Districts and charter schools shall provide or make provisions for school health programs that address the health needs of students and staff. Districts and charter schools shall provide the following programs: health education, physical education, health services and school counseling. Additional programs may include: nutrition, staff wellness, family-school-community partnerships, healthy environment and psychological services. These programs shall:

**(1)** be in accordance with Section 22-10A-34 and Section 24-5-1 through 24-5-6 NMSA 1978;

**(2)** provide education and skill development program offerings;

**(3)** provide community partnerships which help to achieve the goal of healthy students and staff;

**(4)** be assessed as part of the EPSS process; and

**(5)** support the local curriculum and EPSS.

**F.** Special education. Special education is specially-designed instruction that is provided at no cost to parents to meet the unique needs of a student with a disability, as defined in the IDEA regulations (34 CFR Part 300 and state special education regulations (6.31.2 NMAC). Special education programs shall:

**(1)** provide specially-designed instruction in career and technical education and travel training for students whose IEPs require such services;

**(2)** provide instruction to students placed on homebound services as per their IEP; and

**(3)** provide instruction in state-supported

educational programs, hospitals, institutions and other settings. As set forth in the state special education regulations at Paragraph (15) of Subsection C of 6.31.2.7 NMAC, special education may include speech-language pathology services consisting of specially-designed instruction that is provided to enable a student with a disability, as recognized under IDEA, to have access to the general curriculum and to meet the educational standards of the public agency that apply to all children;

(4) provide instruction, in accordance with Section 22-13-1 (D) NMSA 1978, for the unique needs of gifted and talented students;

(5) be assessed as part of the EPSS process; and

(6) support the local curriculum and EPSS.

**G. Supplemental programs.** Programs which supplement, but do not replace, state operational programs may include, but are not limited to: Title I - Improving the Academic Achievement of the Disadvantaged (NCLB); Title II - Preparing, Training and Recruiting High Quality Teachers and Principals (NCLB); Title III - Language Instruction for Limited English Proficient and Immigrant Students (NCLB); Title IV, Part A - Safe and Drug Free Schools and Communities (NCLB); Title V - Promoting Informed Parental Choice and Innovative Programs (NCLB); Title VI - Flexibility and Accountability (NCLB), Title VII - Indian, Native Hawaiian and Alaska Native Education (NCLB), Title VIII - Impact Aid Program (NCLB), the Johnson-O'Malley Act and Individuals with Disabilities Education Improvement Act (IDEA, 2004). Supplemental programs shall:

(1) provide services as required by federal laws and assurances, including Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA) of 1974;

(2) be assessed as part of the EPSS process; and

(3) support the local curriculum and EPSS.

**H. Support services.** Districts and charter schools shall provide support service programs which strengthen the instructional program. Required support service programs are: library media, school counseling and health services.

Support services shall:

(1) have a written, delivered and assessed program, K-12;

(2) provide licensed staff to develop and supervise the program;

(3) be assessed as part of the EPSS process; and

(4) support the local curriculum and EPSS.

**I. Technology in education.** The Technology for Education Act establishes a fund and a system for equal distribution of funds based upon final funded student membership within each school district and charter school. The Technology for Education Act requires annual review and approval of each school district and charter school's educational technology plan, through which every school district and charter school reports to the department the fiscal distributions received, expenditures made and educational technology obtained by the district or charter school, and other related information. As districts and charter schools develop, refine and implement strategic long-range plans for utilizing educational technology, each plan shall:

(1) be in accordance with Section 22-15A-10 NMSA 1978;

(2) be assessed as part of the EPSS process; and

(3) support the local curriculum and EPSS.

[6.29.1.11 NMAC - Rp, 6.30.2.11 NMAC, 6-30-2009; A, 02/28/2017]

**REGULATION AND LICENSING DEPARTMENT  
DENTAL HEALTH CARE,  
BOARD OF**

**This is an amendment to 16.5.1 NMAC, Sections 7, 15, 16, 24 and 28, effective 3/15/2017.**

**16.5.1.7 DEFINITIONS:**

**A. "Act"** means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

**B. "Assessment"** means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment.

**C. "Authorization"** means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

**D. "CITA"** means the council of interstate testing agencies, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**E. "Close personal supervision"** means a New Mexico licensed dentist directly observes, instructs and certifies in writing the training and expertise of New Mexico licensed or certified employees or staff.

**F. "Consulting dentists"** means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee.

**G. "CRDTS"** means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee

in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**H. "Current patients of record"** means the New Mexico licensed dentist has seen the patient in the practice in the last 12 months.

**I. "Dental hygiene-focused assessment"** means the documentation of existing oral and relevant systemic conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment.

**J. "Dental record"** means electronic, photographic, radiographic or manually written records.

**K. "Diagnosis"** means the identification or determination of the nature or cause of disease or condition.

**L. "Direct supervision"** means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed;
- (3) evaluates and approves the procedure performed before the patient departs the care setting; and
- (4) is capable of responding immediately if any emergency should arise.

**M. "Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**N. "Extenuating circumstances"** are defined as a serious, physician-verified illness or death in immediate family, or military service. The extenuating circumstances must be presented for the board's consideration on a case-by-case basis.

**O. "General supervision"** means the authorization

by a dentist of the procedures to be used by a dental hygienist, dental assistant, expanded function dental auxiliary, dental student, or community dental health coordinator and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by the rules of the board.

**P. "Impaired Act"** means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11 NMSA 1978.

**Q. "Indirect supervision"** means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student as defined in 61-5A-3 NMSA 1978.

**R. "Jurisprudence exam"** means the examination given regarding the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

**S. "Licensee"** means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

**T. "NERB/ADEX"** means the north east regional board of dental examiners, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**U. "Mobile dental facility"** means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

**[H] V. "Non-dentist owner"** means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental

hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in Subsection G of 61-5A-5 NMSA 1978.

**[W] W. "Palliative procedures"** means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems.

**X. "Portable dental unit"** means a non-facility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

**[W] Y. "Professional background service"** means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

**[X] Z. "Protective patients stabilization"** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely.

**[Y] AA. "Provider"** means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

**[Z] BB. "Specialist"** means a specialty is an area of dentistry that has been formally recognized by the board and the American dental association as meeting the specified requirements for recognition of dental specialists.

**[AA] CC. "SRTA"** means the southern regional testing agency, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

**[BB] DD. "Supervising dentist"** means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes

of authorization, has examined that patient within the previous 11 months or will examine that patient within 30 days of giving authorization.

[~~EE~~] **EE.**

“**Supervision**” means the dentist shall adequately monitor the performance of all personnel, licensed or unlicensed, that he or she supervises. The dentist is ultimately responsible for quality patient care and may be held accountable for all services provided by administrative and clinical individuals that the dentist supervises.

[~~DD~~] **FF.**

“**Teledentistry**” means a dentist’s use of health information technology in real time to provide limited diagnostic treatment planning services in cooperation with another dentist, a dental hygienist, a community health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist.

[~~EE~~] **GG.**

“**Third Party payer**” means an organization other than the patient (1<sup>st</sup> party) or the health care provider (2<sup>nd</sup> party) involved in the financing of personal health services.

[~~FF~~] **HH.**

“**WREB**” means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant’s competence to practice in New Mexico.

[~~GG~~] **II.**

“**Written authorization**” means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[3/11/1989, 5/31/1995, 9/30/1996, 12/15/1997; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12/14/2000; A, 06/14/2001; A, 03/29/2002; A, 03/06/2005; A, 07/16/2007; A, 07/17/2008; A, 07/19/2010; A, 01/09/2012; A, 06/14/2012; A, 07/17/2013; A, 01/04/2014; A, 01/15/2015; A, 3/15/2017]

**16.5.1.15 GUIDELINES FOR APPROVAL OF CONTINUING EDUCATION:**

**A.** Approved courses and providers. The following providers and courses are approved for continuing education credits. Professional training programs used by dental assistants for certification preparation in expanded functions are considered to be “approved training programs.” The credit hours for approved training programs may also be used to meet continuing education requirements such as:

(1) scientific meetings or sessions sponsored or recognized by a local, state, regional, national, or international dental, dental hygiene, dental assisting or medical related professional organization;

(2) any dental related course sponsored by an institution accredited by the United States department of education;

(3) courses that are primarily in relationship to maximizing income, billing, or marketing in the dental or dental hygiene practice shall be limited to eight hours per triennial period;

(4) courses presented by approved study clubs as further defined in Subsection B of 16.5.1.15 NMAC;

(5) on-line and self-study as further defined in Subsection C of 16.5.1.15 NMAC;

(6) original presentation by a licensee who has submitted to the board an outline, date, place, and sponsor of the presentation; a maximum of eight hours will be allowed each triennial period in this category;

(7) any course not sponsored by a recognized provider may be approved by the secretary-treasurer or delegate of the board; the application for approval must include the course outline, date, location, hours, names and qualifications of presenters;

(8) medical education courses that are accredited by the American council for continuing medical education

(ACCME) shall be limited to eight hours per triennial period;

(9) clinical examiners for regional boards shall be allowed up to 24 hours per triennial period;

(10) a non-board or non-committee licensee volunteering for the board or committee may receive up to 10 hours of continuing education for board approved activities; including serving as a hearing officer, investigator, mentor, or monitor;

(11) participation in a board or dental hygiene committee board approved charitable event to include a post-event survey; charitable event credits shall be limited to eight hours per triennial period.

**B.** Approved study clubs. The board may approve study clubs which meet the following criteria:

(1) composed of not less than five licensees with elected officers, written bylaws, and regular meetings;

(2) organized for the purpose of scientific study;

(3) the approved club must keep records of continuing education information or material presented the number of hours and the members in attendance; films, cassettes, or similar media produced or distributed by approved providers may be used; guest speakers may also be used to present educational material.

**C.** Allowable on-line, webinars, or self-study.

(1) A self-study course of instruction designed to directly enhance the licensee’s or certificate holder’s knowledge, skill, or competence in providing care to the dental consumers.

(2) A course that includes a post study course examination must be completed and returned for grading by the course provider.

(3) The hours of credit must be listed on the certificate.

(4) A

maximum of 30 credits per triennial period will be allowed in the category of on-line, webinar, or self-study.

(5) A license or certificate holder may take the board's open book jurisprudence examination, up to once a year, and be granted three hours of continuing education credit for successfully passing the exam with a score of [75%] seventy-five percent or above. There will be a [\$25] twenty-five dollar (\$25) fee for the exam to cover the cost of handling.

(6) Basic life support (BLS) or cardiac pulmonary resuscitation (CPR) is not allowed thru a self-study course, a hands-on course is required.

**D. Credit hours.**

(1) One hour of credit will be granted for every hour of contact instruction. This credit shall apply to either academic or clinical instruction. Eight hours shall be the maximum number of continuing education credits granted in a single day.

(2) Courses which are presented in institutions of higher education for the purpose of receiving a degree, advanced degree or certificate will earn the licensee or certificate holder 10 hours for every semester credit hour assigned a course as specified in the catalogue of the institution presenting the course.

**E.** Courses not allowed. Courses dealing largely with money management, personal finances or personal business matters, and courses in basic educational or cultural subjects that are not taught in direct relationship to dental care may not be used to fulfill continuing education requirements.

**F.** Verification of course attendance. The following documents, or combination of documents, may be used to verify attendance/participation in the required continuing education:

(1) course certificate with the course title, content, presenter, sponsor and units/hours;

(2) pamphlet of course with same information as

requested on certificate along with canceled check;

(3) course attendance sheet submitted from the sponsor;

(4) course code or statement of attendance from presenter or sponsor of licensee attendance;

(5) for out of state courses and meetings when certificates or sign-in sheets are not available, the licensee may provide a copy of the registration form, with a copy of courses in printed form which were offered, identify the ones attended, along with information regarding travel and lodging accommodations for the meeting; and

(6) licensee is responsible for maintaining records of all CEUs for one year following the renewal cycle.

[11-21-75, 5-21-93, 5-31-95; 3-11-89, 9-30-96, 12-15-97, 1-1-99; 16.5.1.15 NMAC - Rn & A, 16 NMAC 5.1.15, 12-14-00; A, 07-19-10; A, 01-09-12; A, 07-17-13; A, 01-15-15; A, 3/15/2017]

**16.5.1.16 CONTROL AND PREVENTION OF BLOODBORNE INFECTIONS:**

The following rules are enacted to prevent transmission of the human immunodeficiency virus (HIV), hepatitis B infectious state (i.e. acute infection and chronic carriers only) (HBV), the hepatitis C virus (HCV), and other blood borne infections.

**A.** Requirements for providers. Any provider licensed or certified by the New Mexico board of dental health care must comply with the guidelines established in this rule. A provider who fails to use appropriate infection control techniques and sterilization procedures to protect patients may be subject to disciplinary action by the board.

**B.** Infection control as a standard of care. In offices and facilities providing dental services, compliance with the following policies and procedures are required to further reduce the low risk of infection:

(1) implementation of policies and procedures to minimize occupational exposure to potentially infectious materials (e.g. blood); guidelines or recommendations of the American dental association, American dental hygienists' association, center for disease control, and the occupational safety and health administration must be followed;

(2) strict adherence to infection control practices and universal barrier precautions are mandatory in all dental care settings and shall include sterilization of instruments and hand pieces, after each use, by any acceptable sterilization technique as currently recognized by the center for disease control; and

(3) policies and procedures must be implemented to report and manage patient [~~and~~ ~~or~~] and provider exposure to blood; affected individuals must be notified when exposure may constitute a significant risk of transmission of blood borne infection; the notification must include the nature of possible infection, but need not include the identity of the provider should the provider be the known source of infection.

**C.** Infection control training. All providers shall have formal training in infection control techniques. Training is a requirement for licensure, as well as for renewal of all licenses and certificates. The course must be approved in accordance with Section 16.5.1.15 NMAC or sponsored by the occupational safety and health administration.

**D.** Evaluation of provider with blood borne infection.

(1) Counseling and testing recommended. The board and committee strongly recommend counseling and testing of any provider for HIV, HBV, HCV and other blood borne infections.

(2) Evaluation of individual cases. Providers who have transmissible blood borne infections and who perform invasive procedures which might

cause increased risk of transmission are strongly urged to submit to a voluntary evaluation process established by the New Mexico department of health. Individual evaluations conducted under the auspices of the New Mexico department of health will be strictly confidential unless that agency recommends practice restrictions. The New Mexico department of health will notify the board [and/or] and committee of recommended practice restrictions. Any violation of practice restrictions will be considered grounds for disciplinary action by the board and committee.

(3) Impairment evaluation. If a dental health care provider licensed or certified by the board has a functional impairment due to blood borne infection or other medical impairment, they must contact the impaired committee of the board.

E. Confidentiality for dental health care workers.

(1) The board and committee recognize providers are not required to disclose blood borne infections to patients or employers unless they cannot perform the essential duties of their job or practice, or unless the provider poses a danger to patient safety.

(2) Any retrospective studies of New Mexico providers shall be carried out under the guidance and direction of the New Mexico department of health. [4-12-92...5-31-95, 9-30-96; 16.5.1.16 NMAC - Rn, 16 NMAC 5.1.16, 12-14-00; A, 3/15/2017]

**16.5.1.24 RECORD**

**KEEPING:** All records of patient treatment must be maintained for at least six years. If a dentist or non-dentist owner retires or is no longer practicing in New Mexico, the dentist or non-dentist owner must provide the following documentation to the board office:

- A. actual date of retirement or date of no longer practicing in New Mexico;
- B. proof of written notification to all patients currently

under active treatment; and

C. the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients in the 12 previous months to the date of closing practice, the notification to the board must include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.1.24 NMAC - N, 07/17/2013; A, 3/15/2017]

**16.5.1.28 MOBILE DENTAL FACILITIES AND PORTABLE DENTAL UNITS:**

Dentists and dental hygienists that perform services in mobile dental facilities or use portable dental units shall use the following guidelines:

A. Maintain all records, either paper or electronic in a secure form or location.

B. Provide to the board, upon request, all treatment records and locations of treatment.

C. Provide to the board, upon request, the name, address, and contact information of the owner/operator of the mobile dental facility.

D. Provide each patient, parent, or guardian with the name(s) of the dentist or hygienist providing treatment and contact information immediately after treatment.

E. Have agreements in place with New Mexico licensed dentists for any immediate follow-up care.

F. Dentists and hygienists shall display a copy of their license and registration within or directly outside the mobile dental facility or areas in which portable dental units are utilized. Exceptions:

(1) occasional services provided to a patient of record of a fixed dental office who is treated outside of the dental office;

(2) services publicly funded and provided solely as a public health measure;

(3) services provided to a patient by an accredited

dental or dental hygiene school;

(4) services by a dentist, physician, or CRNA providing sedation in a dental office;

(5) collaborative hygienists in compliance with rules established in 16.5.17 NMAC.

[16.5.1.28 NMAC - N, 3/15/2017]

**REGULATION AND LICENSING DEPARTMENT DENTAL HEALTH CARE, BOARD OF**

**This is an amendment to 16.5.9 NMAC, Section 8, 10, 11 and 12 effective 3/15/2017.**

**16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER:**

To employ and contract for dental services, a non-dentist owner shall apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board.

A. unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

B. the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

C. if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

D. non-dentist owner shall notify the board in writing

within 30 days of any changes in ownership;

**E.** non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

**F.** non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);

**G.** non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

**H.** non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

**I.** the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

**J.** the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

**K.** no person other than ~~another~~ a New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment, including, referrals or prescriptions of laboratory services;

**L.** non-dentist owners shall maintain patient records for a minimum of six years; and

**M.** a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

**N.** the non-dentist owner shall be subject to the

provisions of 16.5.58 NMAC.

[16.5.9.8 NMAC - N, 03/06/2005; A, 07/16/2007; A, 01/09/2012; A, 09/14/2012; A, 07/17/2013; A, 01/15/2015; A, 3/15/2017]

(Subsection H of 16.5.9.8 NMAC (effective 01/09/2012) was set aside by the New Mexico Court of Appeals' decision in *Pacific Dental Services, Inc. v. New Mexico Board of Dental Health Care (In re New Mexico Board of Dental Health Rule Hearing)*, case number 31,836 (June 1, 2012).

**16.5.9.10 DOCUMENTATION REQUIREMENTS:** Each applicant for a non-dentist owner license shall submit a completed application obtained from the board office with the required fees and the following documentation:

**A.** completed application signed and notarized by the individual that is the non-dentist owner or by the president of the parent corporation; applications are valid for one year from the date of receipt;

**B.** the board requires a level II board designated professional background service report; the application for this service will be included application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporation entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporation in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

**C.** passed the jurisprudence examination with a

score of at least [75] seventy-five percent;

**D.** non-dentist owner(s) shall comply with Subsection C of this section within six months of the effective date of the rule;

**E.** verification of licensure in all states where the non-dentist owner holds or has held a license, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form; and

**F.** the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public. [16.5.9.10 NMAC - N, 03-06-05; A, 07-16-07; A, 01-09-12; A, 3/15/2017]

#### **16.5.9.11 LICENSURE**

**PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

**A. Initial license:** Non-dentist owner licenses are issued for a period not to exceed three years. The licensee shall apply for renewal on a triennial bases.

**B. Posting:** The license and subsequent renewal certificates shall be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

**C. License:** This license is non-transferable.

**D. Renewal:** After the initial license period, non-dentist owner licenses expire every three

years on July 1. Licenses not renewed by July 1 are considered expired.

(1) A completed renewal application with appropriate fees shall be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration.

**E. Late renewals:**

Renewal applications post-marked after July 1 and prior to August 1 of the renewal year shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of [~~\$10~~] ten dollars (\$10) per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

[16.5.9.11 NMAC - N, 03-06-05; A, 01-09-12; A, 07-17-13; A, 3/15/2017]

**16.5.9.12 PREREQUISITES FOR NON-DENTIST OWNER:**

Each applicant for licensure as a non-dentist owner shall possess the following:

A. shall be a United States citizen or United States legal resident;

B. shall be a resident of New Mexico or a corporation registered in New Mexico; and

C. non-dentist

owner(s) or agent of corporation shall pass the New Mexico jurisprudence examination with [75] seventy-five percent.

[16.5.9.12 NMAC - N, 01-09-12; A, 3/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
DENTAL HEALTH CARE,  
BOARD OF**

**This is an amendment to 16.5.16 NMAC, Section 10, effective 03/15/2017.**

**16.5.16.10 GUIDELINES:**

The board shall use the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient's records and x-rays within 15 business days regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience, including:

(a) an owner dentist or supervisor causing an employee dentist to make a referral for dental treatment based on contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by referral to another practitioner, and failure to notify the patient of such contractual obligations for referrals;

(b) an owner dentist or supervisor causing an employee dentist to use a dental laboratory due to contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by the use of another dental laboratory.

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with the following advertising guidelines, no person shall:

(a) practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;

(b) practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;

(c) fail to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist's names(s), address and telephone number or direct reference where the name of the dentist(s) can be found as defined in 16.5.16.7 NMAC;

(d) advertise a practice in a false, fraudulent or misleading manner;

if the name of the practice or office contains one of the American dental association recognized specialties and only a general dentists performs that service, the advertisement, signage, or broadcast media must say “services provided by a general dentist”, so as not to imply that a specialist is performing such procedures; and

(e)

advertise as a specialist unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post-graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by commission on dental accreditation (CODA) in one of the specialty areas of dentistry recognized by the American dental association.

(7) failure

to use appropriate infection control techniques and sterilization procedures;

(8) deliberate

and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;

(9) accept

rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe,

dispense or administer drugs outside the scope of dental practice;

(11)

charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual

misconduct;

(13) breach

of ethical standards, an inquiry

into which the board will begin by reference to the code of ethics of the American dental association;

(14) the use

of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing

abusive billing practices;

(16) fraud,

deceit or misrepresentation in any application;

(17) violation

of any order of the board, including any probation order;

(18) injudicious

prescribing, administration, or dispensing of any drug or medicine;

(19) failure to

report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent

supervision of a dental hygienist or dental assistant;

(21) cheating

on an examination for licensure; or

(22) failure to

comply with the terms of a signed collaborative practice agreement;

(23) failure

of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient’s care under 16.5.17 NMAC;

(24) assisting a

health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to

make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency

facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient’s well-being;

(26) conviction

of either a misdemeanor or a felony punishable by incarceration;

(27) aiding

and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;

(28) patient

abandonment;

(29) habitually

addicted as defined in Paragraph (4) and (6) of Sections 61.5A-21 or Subsection C and D of Section 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act 30-31-1 NMSA 1978 habitual or excessive use or abuse of alcohol;

(30) failure

of the licensee to furnish the board within 10 business days of request, its investigators or representatives with information requested by the board;

(31) failure

to appear before the board when requested by the board in any disciplinary proceeding;

(32) failure to

be in compliance with the Parental Responsibility Act Section 40-5A-3 seq., NMSA 1978;

(33) fraudulent

record keeping;

(34) failure to

properly install amalgam separator as defined in 16.5.58 NMAC;

(35) failure

to properly operate and maintain amalgam separator as defined in 16.5.58 NMAC; and

(36) failure to

properly dispose of amalgam waste as defined in 16.5.58 NMAC.

[9/13/1969, 10/21/1970, 4/11/1981, 3/9/1989, 3/11/1989, 10/16/1992, 5/31/1995, 6/4/1996, 2/14/2000; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12/14/2000; A, 07/16/2007; A, 07/19/2010; A, 01/09/2012; A, 06/14/2012; A, 07/17/2013; A, 01/04/2014; A, 01/15/2015; A, 03/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
DENTAL HEALTH CARE,  
BOARD OF**

**This is an amendment to 16.5.28 NMAC, Section 9, effective 3/15/2017.**

**16.5.28.9 CERTIFICATION BY CURRICULUM OR EXAMINATION:**

Applicants for certification in local anesthesia by curriculum or exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

**A. Qualifications:**

- (1) a current active license in good standing to practice dental hygiene in New Mexico;
- (2) successful completion of an [approved] educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program as part of the regular curriculum for the dental hygiene degree, and successfully pass a board approved written local anesthesia exam administered by western regional examining board (WREB), or other board approved written exam; the results of the western regional examining board (WREB) exam or other board approved written exam are valid in New Mexico for a period not to exceed five years; or

**(3)**

[successfully pass a written and clinical local anesthesia examination administered by WREB; the results of the WREB exam are valid in New Mexico for a period not to exceed five years;] successful completion of a board approved educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training, and successfully pass a written and clinical local anesthesia examination administered by western regional examining board (WREB), or other board approved written and clinical exam, the results of the western regional examining board (WREB) exam or other board

approved written and clinical exam are valid in New Mexico for a period not to exceed five years.

**B. Documentation:**

- (1) copy of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross or the American safety and health institute (ASHI); cannot be a self-study course;
- (2) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia as required per Paragraph (9) of Subsection A of 16.5.28 NMAC; and
- (3) certificate or score card from WREB or other board approved exam indicating successful completion and date of local anesthesia exam, as required per Paragraph (9) of Subsection A of 16.5.28 NMAC. [3/14/1973, 4/10/1981, 5/31/1995, 12/15/1997; 16.5.28.9 NMAC - Rn, 16 NMAC 5.28.9, 04/17/2006; A, 04/16/2008; A, 07/17/2008; A, 09/18/2010; A, 01/09/2012; A, 3/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
DENTAL HEALTH CARE,  
BOARD OF**

**This is an amendment to 16.5.57 NMAC, Section 10, effective 3/15/2017.**

**16.5.57.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

[The intent of requiring participation in the PMP is to assist dentists in balancing the safe use of controlled substances with the need to impede illegal and harmful activities involving these pharmaceuticals:

- A.** A dentist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the

board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A dentist shall

before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12-months when one of the following exists:

**(1)** the patient

is a new patient of the dentist, in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III and IV drugs are prescribed for a period greater than 10 days; and

**(2)** during

the continuous use of controlled substances by established patients a PMP shall be requested a minimum of once every six months.] The intent of the New Mexico board of dental health care in requiring participation in the PMP is to assist dentists in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

**A.** Any dentist who

holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in the PMP inquiry and reporting.

**B.** A dentist may

authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a dentist's delegate may obtain a report from the state's prescription monitoring program, the dentist is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of the report in the patient's medical record.

**C.** Before a dentist

prescribes or dispenses for the first time a controlled substance in Schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days

or more, the dentist shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the dentist shall review similar reports from adjacent states. The dentist shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The dentist shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a dentist from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** A dentist does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V;

~~(1) for a period of four days or less; or~~  
~~(2) to a patient in a nursing facility; or~~  
~~(3) to a patient in hospice care.~~

**F.** Upon review of a prescription monitoring report for a patient, the dentist shall identify and be aware of a patient currently:

~~(1) receiving opioids from multiple prescribers;~~  
~~(2) receiving opioids and benzodiazepines concurrently;~~  
~~(3) receiving opioids for more than 12 consecutive weeks;~~  
~~(4) receiving more than one controlled substance analgesic;~~  
~~(5) receiving opioids totaling more than 90 morphine milligram equivalents per day;~~  
~~(6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for~~

specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Paragraph (10) of Subsection F of 16.5.57 NMAC, the dentist shall refer to the guidelines outlined in 16.5.57.8 NMAC

[16.5.57.10 NMAC - N, 07/17/2013; A, 3/15/2017]

**REGULATION AND LICENSING DEPARTMENT OPTOMETRY, BOARD OF**

**This is an amendment to 16.16.15 NMAC, Section 10, effective 03-10-2017.**

**16.16.15.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:**

[The intent of the optometry board requiring participation in the PMP is to assist optometrists in balancing the safe use of controlled substances with the need to impede illegal and harmful activities involving these pharmaceuticals:

**A.** An optometrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** An optometrist shall, before prescribing, ordering, administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following exists:

~~(1) for a new patient of the optometrist, a patient PMP report for the previous 12 months shall only be required when Schedules III or IV drugs are prescribed for a period greater than 10 days; and~~

~~(2) for an established patient during the continuous use of controlled substances, a PMP shall be requested~~

a minimum of once every six months.

~~C. Optometrists qualified and certified by the board may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:~~

~~(1) may prescribe hydrocodone and hydrocodone combination medications;~~

~~(2) may administer epinephrine auto-injections to counter anaphylaxis; and~~

~~(3) shall not prescribe any other controlled substances classified in Schedule I or II pursuant to the Controlled Substances Act, Chapter 30, Article 31 NMSA-1978.] The intent of the New Mexico (NM) board of optometry in requiring participation in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.~~

**A.** Any licensed NM optometrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A licensed NM optometrist may authorize delegate(s) to access the PMP report consistent with board of pharmacy regulation 16.19.29 NMAC and document the receipt and review of a report in the patient's medical record.

**C.** Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, or IV to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substances for 30 days of more, the practitioner shall review a PMP report for the patient for preceding 12 months and document the review and receipt of the reports in the patient's medical record.

**D.** A PMP report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in

Schedule II, III, or IV for each patient and document these reports in the patient's medical record.

**E.** A practitioner does not have to obtain and review a PMP report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, or IV:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

**F.** Upon review of a PMP report for a patient, the practitioner shall identify and be aware of patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than 12 consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day; or
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, request for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Paragraph F, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems of risks that may result in opioid misuse, abuse or overdose. These steps may involve prescription and training for naloxone.

[16.16.15.10 NMAC - N, 04-24-2014; A, 03-02-2016; A, 03-10-2017]

---

**End Of Adopted Rules**

# 2017 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXVII, Issues 1-24

| Issue    | Submittal Deadline | Publication Date |
|----------|--------------------|------------------|
| Issue 1  | January 5          | January 17       |
| Issue 2  | January 19         | January 31       |
| Issue 3  | February 2         | February 14      |
| Issue 4  | February 16        | February 28      |
| Issue 5  | March 2            | March 14         |
| Issue 6  | March 16           | March 28         |
| Issue 7  | March 30           | April 11         |
| Issue 8  | April 13           | April 25         |
| Issue 9  | April 27           | May 16           |
| Issue 10 | May 18             | May 30           |
| Issue 11 | June 1             | June 13          |
| Issue 12 | June 15            | June 27          |
| Issue 13 | June 29            | July 11          |
| Issue 14 | July 13            | July 25          |
| Issue 15 | July 27            | August 15        |
| Issue 16 | August 17          | August 29        |
| Issue 17 | August 31          | September 12     |
| Issue 18 | September 14       | September 26     |
| Issue 19 | September 28       | October 17       |
| Issue 20 | October 19         | October 31       |
| Issue 21 | November 2         | November 14      |
| Issue 22 | November 16        | November 28      |
| Issue 23 | November 30        | December 12      |
| Issue 24 | December 14        | December 26      |

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us/nmregister>. For further information, call 505-476-7942.