

This rule was filed as 7 NMAC 1.3.

TITLE 7 HEALTH
CHAPTER 1 HEALTH GENERAL PROVISIONS
PART 3 HEALTH RECORDS

7.1.3.1 ISSUING AGENCY: New Mexico Department of Health.
[10/31/96; Recompiled 10/31/01]

7.1.3.2 SCOPE: All divisions, facilities and agencies within the department.
[10/31/96; Recompiled 10/31/01]

7.1.3.3 STATUTORY AUTHORITY: Sections 9-7-6 and 14-2-1 through 14-2-12 NMSA 1978.
[10/31/96; Recompiled 10/31/01]

7.1.3.4 DURATION: Permanent.
[10/31/96; Recompiled 10/31/01]

7.1.3.5 EFFECTIVE DATE: October 31, 1996 [unless a later date is cited at the end of a section].
[10/31/96; Recompiled 10/31/01]

7.1.3.6 OBJECTIVE: The objective of this part of Chapter 1, General Provisions, under Title 7, Health [now 7.1.3 NMAC], is to furnish guidance to the public and to employees of the New Mexico department of health in providing access to public records in the department's possession in accordance with the Inspection of Public Records Act, Section 14-2-1 to 14-2-12 NMSA 1978. This regulation establishes copying fees and supplies guidelines for determining whether an item is a public record. It also sets forth the procedures for allowing or denying access to requested records.
[10/31/96; Recompiled 10/31/01]

7.1.3.7 DEFINITIONS:

- A. "Custodian" means the person or persons designated by the secretary as responsible for the maintenance, care or keeping of the department's public records for purposes of the Inspection of Public Records Act, regardless whether the records are in such person's actual physical custody and control.
 - B. "Department" means the New Mexico department of health.
 - C. "Inspect" means to review public records of the department.
 - D. "Mail" or "Mailed" as used in these regulations in connection with determining the running of a time period, is the date on which the letter or document was placed in the U.S. mail, and is evidenced by the date of the postmark.
 - E. "Person" means any individual, corporation, partnership, firm, association or entity.
 - F. "Public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings, and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of the department and relate to public business, whether or not the records are required by law to be created or maintained.
 - G. "Secretary" means the secretary, or his/her designee, for the department.
- [10/31/96; Recompiled 10/31/01]

7.1.3.8 DESIGNATION OF CUSTODIAN: The employee in charge of the department's office of public information is designated as custodian of the department's public records for purposes of responding to requests for inspection of department records.

- A. Departmental employees receiving requests to inspect public records shall promptly forward the request to the office of public information.
- B. In response to specific situations, the secretary may designate other employees of the department as custodian for distinct parts of the department's public records.

C. Distinct parts of the department's records may include records actually located in specific offices, divisions, or facilities, or may be records of a distinct type, such as patient medical records, computer data records, or vital statistics.

D. Custodians designated by the secretary in specific situations for distinct parts of the department's public records are required to fulfill the duties of the custodian in responding to written requests.
[10/31/96; Recompiled 10/31/01]

7.1.3.9 REQUESTS FOR INSPECTION OF PUBLIC RECORDS: Any person may request orally or in writing to inspect the department's public records. However, the procedures in these regulations apply to written requests only. The failure to respond to an oral request is not actionable and is not subject to any penalty.
[10/31/96; Recompiled 10/31/01]

7.1.3.10 DUTIES OF CUSTODIAN: The custodian is responsible for responding to written requests to inspect the department's public records. If the custodian permits inspection in response to the written request within three (3) business days of the custodian's receipt of the request, the custodian is not required to respond in writing. If inspection is not permitted in response to the written request within three (3) business days, the custodian must provide a written response to the person making the written request.

A. The written response shall set out the time, location and manner for inspection of the identified public records.

B. The time for review should be immediately or as soon as practicable under the circumstances, but may not exceed fifteen (15) days. If the inspection is not permitted within three (3) business days from the day the custodian receives the request, the custodian shall explain in writing when the records will be available for inspection or when the department will otherwise respond to the request.

C. The custodian should identify or designate reasonable facilities to make or furnish copies of the public records requested during usual business hours.
[10/31/96; Recompiled 10/31/01]

7.1.3.11 WRITTEN REQUESTS FOR INSPECTION; REQUIREMENTS: Persons making written requests to inspect public records of the department are required to direct such requests to the custodian.

A. The written request must set out (1) the name, (2) address, and (3) telephone number of the person seeking access to the public records.

B. The written request must identify the records sought with reasonable particularity.
[10/31/96; Recompiled 10/31/01]

7.1.3.12 REQUESTS MADE TO NON-CUSTODIAN: If a written request is made to an employee of the department, the request should be promptly sent to the custodian in the office of public information. The employee forwarding the request to the department custodian must also respond to the person requesting the inspection of the records, stating the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.
[10/31/96; Recompiled 10/31/01]

7.1.3.13 WRITTEN RESPONSE TO REQUESTS; CONTENTS: When inspection of public records is not permitted within three (3) business days of the custodian's receipt of the written request, the custodian must prepare a written response to a written request to inspect the department's public records, as required by Section 14-2-8 NMSA 1978. The custodian may consult with other department employees concerning the records identified in the written request, and may authorize an appropriate person in the employment of the department, for example, an attorney, a computer data specialist, or a medical records administrator, to respond to a specific request.
[10/31/96; Recompiled 10/31/01]

7.1.3.14 PROCEDURE FOR INSPECTION; SEPARATION OF EXEMPT INFORMATION: Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing nonexempt public records or information may be furnished in lieu of an entire database.

[10/31/96; Recompiled 10/31/01]

7.1.3.15 LOCATION FOR INSPECTION; MAIL: The inspection may take place at the location within the department where the records are actually maintained, or, in the discretion of the custodian, in any other location within the department that is reasonable and responsive to the needs of the department or the person making the written request. A person making the written request for copies of public information, and by following the fee payment procedures herein, may have a copy of the requested public records provided by mail or other reasonable delivery method, without first inspecting.

[10/31/96; Recompiled 10/31/01]

7.1.3.16 FEES: The custodian may charge reasonable fees for copying public records, payable in advance, and, upon request, shall provide a receipt. Unless a different fee is otherwise prescribed by law or regulation, the following apply.

A. Where redacting is not required:

(1) for copies of twenty (20) or less documents, eleven by seventeen inches in size or smaller, fifty cents (\$.50) per copy;

(2) for copies of twenty to one hundred (20 to 100) documents, eleven by seventeen inches in size or smaller, forty cents (\$.40) per copy;

(3) for copies of one hundred one (101) or more documents, eleven by seventeen inches in size or smaller, thirty cents (\$.30) per copy;

(4) for written copies of computer data, printed on paper larger than eight by eleven inches in size, fifty cents (\$.50) per copy;

(5) for written copies of computer data, printed on paper eight by eleven inches in size, forty cents (\$.40) per copy;

(6) for electronic or digital copies of computer data, twenty five cents (\$.25) per page, plus two dollars (\$2.00) for each standard 3- inch floppy disk required.

B. Where redacting is required, one dollar (\$1.00) per page regardless of the number or size of copies and regardless of the medium.

C. No copies will be provided by digital transfer methods, other than by transfer to floppy disk from department computers, unless, in the discretion of the custodian, in consultation with department staff, such copying is technically safe, may be reasonably and efficiently accomplished with existing and available software and hardware, and with available department personnel, and is cost effective. In such case the fee is the same as for digital copies using floppy disks.

[10/31/96; Recompiled 10/31/01]

7.1.3.17 EXCESSIVELY BURDENSOME OR BROAD REQUESTS: A written request for inspection may be determined by the custodian to be excessively burdensome or broad. An additional reasonable period of time is allowed to comply with such requests determined by the custodian to be excessively burdensome or broad. The length of this additional time is determined based upon whether negotiation occurs. A fifteen-day additional period is available to the custodian, without negotiation, upon written notification to the requester. A post-negotiation reasonable period of time is available to the custodian and is determined based on discussions with the requester.

A. The custodian shall provide written notification to the requester within fifteen days of the custodian's receipt of the written request. The notification must state that additional time will be needed to respond because the request is determined to be excessively burdensome or broad. This notification is required whether the custodian relies upon the "no negotiation" provision (fifteen days) of section 17.2 [now Subsection B of 7.1.3.17 NMAC], or the "negotiation" (reasonable time) provision of section 17.3 [now Subsection C of 7.1.3.17 NMAC]. The custodian may use this notification as an opportunity to confirm any negotiated agreement providing additional time or any agreement that modifies the request.

B. The "no negotiation" additional period of time allowed to respond to a request determined to be excessively burdensome or broad, without negotiation, shall not exceed fifteen (15) days.

C. The "negotiation" additional period of time is that period of additional time agreed to by the custodian and the requesting person, or, in the event no agreement is reached, as determined to be reasonable by the custodian after at least one good faith effort to negotiate with the person making the request. The custodian, as part of the good faith effort to negotiate, should describe the circumstances that cause the request to be excessively

burdensome or broad, and suggest possible modifications to the request that would decrease the burdensome or broad nature of the request on the department, and should suggest an additional reasonable amount of time for responding to the request.

[10/31/96; Recompiled 10/31/01]

7.1.3.18 DENIED REQUESTS; PROCEDURE: A written request for inspection may be denied by written response from the custodian. A written request for inspection also may be deemed denied, except in cases where a written request for inspection of public records determined to be excessively burdensome or broad, if inspection has not been permitted within fifteen days of receipt by the custodian.

A. When responding to deny a request for inspection, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

- (1) provide a description of the records sought;
- (2) provide the names and titles or positions of each person responsible for the denial; and
- (3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.

B. If the custodian does not deliver or mail a written explanation or denial within fifteen days after receipt of a written request for inspection, the requesting party may bring an enforcement action against the custodian in accordance with the provisions of the Inspection of Public Records Act.

[10/31/96; Recompiled 10/31/01]

7.1.3.19 EXEMPTED RECORDS: All records of the department are public records unless the record is exempted under state or federal law or regulation. The following constitute a common listing of sources of exemptions which may pertain to a department record; it is not intended to be exclusive and failure to specifically list an otherwise applicable source of law establishing an exemption does not affect the applicability of the exemption. The following may not be included in the department's public records:

A. Medical or confidential records under:

- (1) the Inspection of Public Records Act, Section 14-2-1(A) NMSA 1978;
- (2) the Hospital Records Provisions of Section 14-6-1 NMSA 1978;
- (3) the Community Mental Health Services Act, Section 23-7-12(E) NMSA 1978;
- (4) the Drug Abuse Treatment Act, Section 26-2-12 and 14 NMSA 1978;
- (5) the Mental Health and Developmental Disabilities Code, Section 43-1-19 NMSA 1978;
- (6) the Alcohol Abuse Treatment Act, Section 43-2-11 NMSA 1978;
- (7) the Children's Mental Health and Developmental Disabilities Act, Section 32A-6-15 NMSA 1978;
- (8) the Review Organization Immunity Act, Section 41-9-5 NMSA 1978;
- (9) the Public Health Act, Section 24-1-9.4 and 20 NMSA 1978;
- (10) the Vital Records Act, Section 24-14-27 NMSA 1978;
- (11) Confidentiality of Alcohol and Drug Abuse Patient Records, 42 U.S.C. Section 290dd-2 and 290ee-3; and 42 CFR 2.1 to 2.67;
- (12) HIV Test Act, Section 24-2B-1 et seq. NMSA 1978;
- (13) DWI Tests Results, Section 24-11-6 NMSA 1978;
- (14) Health Information Systems Act, Section 24-14A-8 NMSA 1978;
- (15) the Health Maintenance Organization Law, Section 59A-46-26 and 27 NMSA 1978.

B. Other sources of law which may affect whether a record is a public record include:

- (1) Public Health Act, Section 24-1-5(M) NMSA 1978;
- (2) Juvenile Records Provisions of Section 32A-2-32; 32A-3B-22; and 32A-4-33 NMSA 1978;
- (3) Traffic Safety Act, Section 66-7-507 and 508 NMSA 1978;
- (4) provisions of Medicaid Law and Regulation, including but not limited to, 42 U.S.C. Section 1396a (a) and 42 CFR Section 431.300.

C. Records subject to attorney-client privilege; or, records that are attorney work product; or, records to which privileges recognized under New Mexico law apply.

D. Letters of reference concerning employment, licensing or permits.

E. Letters or memorandums which are matters of opinion in personnel files or students' cumulative files.

F. Law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime.

G. Documents covered by the Confidential Materials Act, Section 14-3A-1 to 2 NMSA 1978.

H. Documents not otherwise exempted under state or federal law or regulations and for which a strong public policy exists for nondisclosure under *Newsome v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977).

I. Information or a record that comes into the possession of the department through the department's normal course of business or through its lawful operations, and which information or record would otherwise be exempt or confidential under applicable law, does not lose its exempt or confidential status because of the department's possession of such information or record.

[10/31/96; Recompiled 10/31/01]

HISTORY OF 7.1.3 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center: HED 78-11-1, Regulations - Governing Public Access to Department Records, 11/21/78.

History of Repealed Material: [RESERVED]