

TITLE 7 HEALTH
CHAPTER 5 VACCINATIONS AND IMMUNIZATIONS
PART 4 VACCINE PURCHASING FUND

7.5.4.1 ISSUING AGENCY: Public Health Division, Department of Health.
[7.5.4.1 NMAC - N, 8/28/15]

7.5.4.2 SCOPE: These regulations govern the procedures for establishing and administering a statewide vaccine purchasing program to purchase vaccines for all children in New Mexico (NM), including children eligible for the vaccines for children program and insured children.
[7.5.4.2 NMAC - N, 8/28/15]

7.5.4.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 24-5A-1 through 24-5A-9 of the Vaccine Purchasing Act, NMSA 1978; Section 9-7-6 of the Department of Health Act, NMSA 1978; and Section 24-1-3 of the Public Health Act, NMSA 1978.
[7.5.4.3 NMAC - N, 8/28/15]

7.5.4.4 DURATION: Permanent.
[7.5.4.4 NMAC - N, 8/28/15]

7.5.4.5 EFFECTIVE DATE: August 28, 2015, unless a later date is cited at the end of a section.
[7.5.4.5 NMAC - N, 8/28/15]

7.5.4.6 OBJECTIVE: The objective of this rule is to establish standards and administer a statewide vaccine purchasing program to:

- A.** expand access to childhood immunizations recommended by the advisory committee on immunization practices;
- B.** maintain and improve immunization rates;
- C.** facilitate the acquisition by providers of vaccines for childhood immunizations recommended by the advisory committee on immunization practices; and
- D.** leverage public and private funding and resources for the purchase, storage, and distribution of vaccines for childhood immunizations recommended by the advisory committee on immunization practices.

[7.5.4.6 NMAC - N, 8/28/15]

7.5.4.7 DEFINITIONS:

- A.** **“Advisory committee on immunization practices”** means the group of medical and public health experts that develops recommendations on how to use vaccines to control diseases in the United States, established under Section 222 of the federal Public Health Service Act.
- B.** **“Department”** means the department of health.
- C.** **“Fund”** means the vaccine purchasing fund.
- D.** **“Group health plan”** means an employee welfare benefit plan to the extent that the plan provides medical care to employees or their dependents under the Employee Retirement Income Security Act of 1974 directly or through insurance, reimbursement or other means.
- E.** **“Health insurance coverage”** means benefits consisting of medical care provided directly or through insurance or reimbursement or other means under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.
- F.** **“Health insurer”** means any entity subject to regulation by the office of the superintendent of insurance that:
 - (1) provides or is authorized to provide health insurance or health benefit plans;
 - (2) administers health insurance or health benefit coverage; or
 - (3) otherwise provides a plan of health insurance or health benefits.
- G.** **“Insured child”** means a child under the age of 19 who is eligible to receive health insurance coverage from a health insurer or medical care pursuant to a group health plan.
- H.** **“Office of the superintendent”** means the office of the superintendent of insurance.

I. “Policy” means any contract of health insurance between a health insurer and the insured and all clauses, riders, endorsements and parts thereof.

J. “Provider” means an individual or organization licensed, certified, or otherwise authorized or permitted by law to provide vaccinations to insured children.

K. “Vaccines for children program” means the federally funded program that provides vaccines at no cost to eligible children pursuant to Section 1928 of the federal Social Security Act.

[7.5.4.7 NMAC - N, 8/28/15]

7.5.4.8 DUTIES OF THE DEPARTMENT: The department shall:

A. purchase vaccines for children in New Mexico, including children eligible for the vaccines for children program and insured children;

B. invoice each health insurer and group health plan to reimburse the department for the cost of vaccines provided directly or indirectly by the department to such health insurer’s or group health plan’s insured children;

C. maintain a list of registered providers who receive vaccines for insured children that are purchased by the state and provide such list to each health insurer and group health plan with every invoice;

D. report the failure of a health insurer to reimburse the department within 30 days of the date of the invoice to the office of the superintendent in order for the office of the superintendent to pursue the proper sanctions or monetary penalties pursuant to their rules and the Vaccine Purchasing Act;

E. report the failure of a health insurer or group health plan to reimburse the department within 30 days of the date of the invoice to the office of the attorney general for collection of the invoice amount, including a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due;

F. credit all receipts collected from health insurers and group health plans pursuant to the Vaccine Purchasing Act to the fund;

G. no later than July 1, 2015, and July 1 of each year thereafter, the department shall estimate the amount to be expended annually by the department to purchase, store and distribute vaccines recommended by the advisory committee on immunization practices to all insured children in the state, including a reserve of 10% of the amount estimated; and

H. no later than September 1, 2015, and each quarter thereafter, the department shall invoice each health insurer and each group health plan for one-fourth of its proportionate share of the estimated annual amount and reserve calculated pursuant to Subsection E of 7.5.4.10 NMAC.

[7.5.4.8 NMAC - N, 8/28/15]

7.5.4.9 PROVIDER PROHIBITIONS: To avoid duplication of payment, any providers who administer vaccines are prohibited from billing health insurers and group health plans for the cost of any vaccine which was provided to them by the department.

[7.5.4.9 NMAC - N, 8/28/15]

7.5.4.10 PROCESS AND PROCEDURES:

A. No later than July 1, 2015, and July 1 of each year thereafter, the department shall estimate the amount to be expended annually by the department to purchase, store, and distribute vaccines recommended by the advisory committee on immunization practices to all insured children in the state, including a reserve of 10% of the amount estimated.

B. By the due date established by the office of the superintendent, but no later than August 15, 2015, each health insurer and group health plan shall report to the office of the superintendent’s director of life and health, P.O. Box 1689, Santa Fe, NM 87504, the number of children it insured who were under the age of 19 as of December 31, 2014, excluding from such reports children who are enrolled in medicaid or in any medical assistance program administered by the department, or the human services department, and children who are American Indian or Alaska Natives. All such reports to the office of the superintendent shall be copied to the department at vpa.fund@state.nm.us.

C. By the due date established by the office of the superintendent, but no later than July 1 of each year subsequent to August 15, 2015, each health insurer and group health plan shall annually report to the office of the superintendent’s director of life and health, P.O. Box 1689, Santa Fe, NM 87504, the number of children it insures who will be under the age of 19 as of December 31 of the previous year, excluding from such reports children who are enrolled in medicaid or in any medical assistance program administered by the department, or the

human services department, and children who are American Indian or Alaska Natives. All such reports to the office of the superintendent shall be copied to the department at vpa.fund@state.nm.us.

D. Each health insurer and group health plan, when reporting number of children pursuant to this section, shall also provide a designated point of contact to the department and to the office of the superintendent to include: name, title, address, e-mail address, and office phone number no later than August 15, 2015, and by July 1 of each subsequent year. In the event that the point of contact changes prior to the billing cycle referenced in the table below, then an updated point of contact shall be provided to the department and the office of the superintendent as soon as practicable after the change occurs, but no later than 30 days after the change.

E. The annual amount to be reimbursed by each health insurer or group health plan shall be a fraction, the denominator of which is the total number of insured children reported by all health insurers and group health plans and the numerator of which is the number of insured children reported by such health insurer or group health plan, multiplied by the total amount as determined by the department to be expended annually in the corresponding year. Payments shall be remitted to the department's fiscal agent in the manner directed by the department in the invoice with a corresponding notification of remittance to vpa.fund@state.nm.us.

F. No later than September 1, 2015, and each quarter thereafter, the department shall invoice each health insurer and each group health plan for one-fourth of its proportionate share of the estimated amount and reserve calculated pursuant to Subsection E of 7.5.4.10 NMAC. The due dates are as follows:

Billing Cycle:	Department's Invoice Date:	Insurer's and Group Health Plan's Due Date:
July 1 to September 30	September 1	October 1
October 1 to December 31	December 1	January 1
January 1 to March 31	March 1	April 1
April 1 to June 30	June 1	July 1

[7.5.4.10 NMAC - N, 8/28/15]

7.5.4.11 AUTHORIZED USES OF THE VACCINE PURCHASING FUND:

A. Money in the fund shall be expended only for the purposes specified in the Vaccine Purchasing Act, by warrant issued by the secretary of finance and administration pursuant to vouchers approved by the secretary of health.

B. The fund shall be audited in the same manner as other state funds are audited, and all records of payments made from the fund shall be open to the public.

C. Any balance remaining in the fund shall not revert or be transferred to any other fund at the end of a fiscal year.

D. Money in the fund shall be invested by the state investment officer in accordance with the limitations in Article 12 Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund.

E. The fund shall be used for the purchase, storage, and distribution of vaccines, as recommended by the advisory committee on immunization practices, for insured children who are not eligible for the vaccines for children program.

F. The department may update its estimated amount to be expended annually and its reserve to take into account increases or decreases in the cost of vaccines or the costs of additional vaccines that the department determines should be included in the statewide vaccine purchasing program and adjust the amount invoiced to each health insurer and group health plan the following quarter.

G. The department shall credit any balance remaining in the fund at the end of the fiscal year toward the department's purchase of vaccines the following year; provided that the department maintains a reserve of 10% of the amount estimated to be expended in the following year.

[7.5.4.11 NMAC - N, 8/28/15]

7.5.4.12 UNAUTHORIZED USES OF THE VACCINE PURCHASING FUND: The fund shall not be used:

A. for the purchase, storage, and distribution of vaccines for children who are eligible for the vaccines for children program;

B. for administrative expenses associated with the statewide vaccine purchasing program; or

C. to pass through a federally negotiated discount pursuant to 42 U.S.C. 1396s.

7.5.4.13 INITIAL ADMINISTRATIVE REVIEW OF INVOICE BY THE DEPARTMENT:

A. Each health insurer or group health plan shall have the right to request an initial administrative review of their invoice by the department in the event of a dispute over the invoice amount only. Any other grievances shall be initiated with the office of the superintendent pursuant to their rules. Criteria for the initial administrative review of the invoice shall be available from the department of health immunization program. Any informal hearing or administrative review of the invoice pursuant to the office of the superintendent's rules can only be commenced after the department's initial administrative review of the invoice is completed and the health insurer or group health plan receives notification by mail that the administrative review request has been completed by the department.

B. The health insurer or group health plan may submit a letter requesting an initial administrative review of the invoice and any supporting documents to the immunization program manager or designee within 10 working days of receipt of the department's invoice. Such requests shall be submitted to the immunization program manager at P.O. Box 26110, Santa Fe, NM 87502-6110, and via email at vpa.fund@state.nm.us. The health insurer or group health plan shall send a copy of the request to the office of the superintendent of insurance.

C. Within 10 working days of receipt of the request for an initial administrative review of the invoice, the department of health's immunization program manager or designee shall review the request for an initial administrative review of the invoice and any supporting documents. After the administrative review is complete the department's immunization program manager or designee shall notify the health insurer or group health plan by mail if the invoice amount will remain unchanged or modified.

D. If a modified invoice is issued by the department then payment is due within five days of receipt of the modified invoice or on the due date identified in the original invoice, whichever is later. Payment is due regardless of whether the health insurer or group health plan intends to further pursue an administrative review or informal hearing of the invoice with the office of the superintendent or an appeal to district court. Failure to remit payment will result in the department reporting the failure of a health insurer or group health plan to reimburse the department to the office of the attorney general for collection of the invoice amount, including a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due.

E. If the invoice remains unchanged then the invoice amount is due within five days of receipt of the department's decision or on the due date identified in the original invoice, whichever is later. Payment is due regardless of whether the health insurer or group health plan intends to further pursue an administrative review or informal hearing of the invoice with the office of the superintendent or an appeal to district court. Failure to remit payment will result in the department reporting the failure of a health insurer or group health plan to reimburse the department to the office of the attorney general for collection of the invoice amount, including a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due.

F. If the health insurer or group health plan continues to dispute the invoice amount, then it may request an informal hearing or administrative review with the office of the superintendent pursuant to the office of the superintendent's rules as authorized by the Vaccine Purchasing Act. The health insurer or group health plan shall notify the immunization program manager if they are pursuing an informal hearing or administrative review of the invoice with the office of the superintendent via email at vpa.fund@state.nm.us.

[7.5.4.13 NMAC - N, 8/28/15]

7.5.4.14 RIGHT TO AN INFORMAL HEARING OR ADMINISTRATIVE REVIEW WITH THE OFFICE OF THE SUPERINTENDENT AND THE RIGHT TO APPEAL; PENALTIES:

A. A health insurer aggrieved pursuant to the Vaccine Purchasing Act may request an informal hearing or an administrative review with the office of the superintendent pursuant to their rules. The health insurer shall notify the immunization program manager if they are pursuing an informal hearing or administrative review with the office of the superintendent via email at vpa.fund@state.nm.us.

B. A health insurer aggrieved pursuant to the Vaccine Purchasing Act may appeal from an order of the superintendent made after an informal hearing or an administrative hearing pursuant to Section 59A-4-20, NMSA 1978. The appeal from the office of the superintendent's order shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. A health insurer or group health plan that fails to file a report pursuant to Subsections B and C of 7.5.4.10 NMAC shall pay a late filing fee of five hundred dollars (\$500) per day for each day from the date the report was due.

D. The office of superintendent may require a health insurer or group health plan subject to the

Vaccine Purchasing Act to produce records that were used to prepare the report required under Subsections B and C of 7.5.4.10 NMAC. If the office of superintendent determines that there is other than a good faith discrepancy between the number of insured children reported and the number of insured children that should have been reported, the health insurer or group health plan shall pay a civil penalty of five hundred dollars (\$500) for each report filed for which the office of superintendent determines there is such a discrepancy.

E. Failure of a health insurer or group health plan to make timely payment of an amount invoiced pursuant to the Vaccine Purchasing Act and this rule shall subject the health insurer or group health plan to a civil penalty of five hundred dollars (\$500) for each day from the date the payment is due.
[7.5.4.14 NMAC - N, 8/28/15]

HISTORY OF 7.5.4 NMAC: [RESERVED]