

**TITLE 13        INSURANCE**  
**CHAPTER 4     LICENSING OF INSURANCE PROFESSIONALS**  
**PART 2 RESIDENT PRODUCERS AND OTHER RESIDENT LICENSES**

**13.4.2.1        ISSUING AGENCY:** New Mexico Office of Superintendent of Insurance, Producer Licensing Bureau (PLB).

[13.4.2.1 NMAC – Rp, 13.4.2.1 NMAC, 4/2/2018]

**13.4.2.2        SCOPE:** This rule applies to persons seeking licensure to engage in insurance-related activities as defined in Articles 1 and 7 of Section 59A NMSA 1978 and that shall be licensed pursuant to articles of the Insurance Code.

[13.4.2.2 NMAC – Rp, 13.4.2.2 NMAC, 4/2/2018]

**13.4.2.3        STATUTORY AUTHORITY:** Sections 28-2-1 et seq., 40-5A-1 et seq., 59A-1-13, 59A-1-14, 59A-2-8, 59A-2-8.1, 59A-2-9, 59A-6-1, 59A-7-1 et seq., 59A-11-1 et seq., 59A-11A-1 et seq., 59A-12-1 et seq., 59A-12B-1 et seq., 59A-12D-1 et seq., 59A-14-1 et seq., 59A-16-8, 59A-16-12, 59A-30-3, 59A-30-4, 59A-32A-1 et seq., 59A-44-1 et seq., 59A-46-1 et seq., 59A-48-1 et seq., 59A-49-1 et seq., 59A-50-1 et seq., 59A-60-1 et seq., 59A-61-1 et seq. NMSA 1978 and 18 U.S.C. Section 1033.

[13.4.2.3 NMAC – Rp, 13.4.2.3 NMAC, 4/2/2018]

**13.4.2.4        DURATION:** Permanent.

[13.4.2.4 NMAC – Rp, 13.4.2.4 NMAC, 4/2/2018]

**13.4.2.5        EFFECTIVE DATE:** April 2, 2018, unless a later date is cited at the end of a section.

[13.4.2.5 NMAC – Rp, 13.4.2.5 NMAC, 4/2/2018]

**13.4.2.6        OBJECTIVE:**

**A.        Covered by this rule.** The purpose of this rule is to implement Chapter 59A, Articles 11 and 12 NMSA 1978, and other articles within the Insurance Code that address licensing of insurance professionals by the superintendent of insurance. This rule establishes requirements for obtaining a license as a resident insurance producer, insurance consultant, producer for prepaid dental plans, producer for sales of membership in a health maintenance organization, producer for a fraternal benefit society, vendor selling portable electronics insurance, salesperson for prearranged funeral plans, title insurance producer, pharmacy benefit manager, reinsurance intermediary, managing general agent, registered motor club representative, rental car insurance producer or endorsee, temporary insurance producer or travel insurance producer. This rule also establishes requirements for qualifying examinations and the issuance, duration, continuation and termination of all such licenses, appointments and registrations, referred to herein as “licenses.”

**B.        Covered under other rules.** For licensing of bail bondsmen and their solicitors, refer to 13.20.2 NMAC. For licensing of surplus lines brokers, refer to Section 59A-14-1 et seq. NMSA 1978 and 13.4.4 NMAC. For licensing of resident annuity or securities salespersons, refer to Section 59A-35-1 et seq. NMSA 1978 and 13.3.6 NMAC. For licensing of staff, independent and public adjusters refer to Section 59A-13-1 et seq. NMSA 1978 and 13.4.8 NMAC. For licensing of third-party administrators, refer to 13.4.5 NMAC. For appointment of licensed producers to transact credit life and credit health insurance, refer to Section 59A-25-1 et seq. NMSA 1978 and 13.18.2 NMAC.

[13.4.2.6 NMAC – Rp, 13.4.2.6 NMAC, 4/2/2018]

**13.4.2.7        DEFINITIONS:** For the purposes of this rule:

**A.        “affiliate”** means a person that controls, is controlled by or is under common control with an insurance producer;

**B.        “appointment”** means official authorization by an insurer of a licensed producer to transact insurance on the insurer’s behalf upon application and the payment of required fees by the insurer to the superintendent;

**C.        “broker”** means a type of insurance producer who, not being an agent of the insurer, but as an independent contractor and on behalf of the insured, solicits, negotiates or procures insurance or annuity contracts or the renewal or continuation thereof for insureds or prospective insureds other than the broker. In any controversy between an insured or an insured’s beneficiary and the insurer issuing the insurance through its licensed insurance

producer at the request of a broker, the broker shall be held to be the agent of the insured unless under particular circumstances it is found that the broker is representing the insurer or in instances of fraud or attempted fraud by the insured. “Broker” does not include a surplus lines broker as defined in Chapter 59A, Article 14 NMSA 1978;

**D. “business entity”** means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity;

**E. “compensation”** means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement;

**F. “designated home state”** means a state in which an insurance producer is licensed and which the producer designates for purposes of compliance with licensing regulations;

**G. “designated responsible licensed producer” or “DRLP”** is as defined in Subsection B of 13.4.2.10 NMAC;

**H. “errors and omissions policy” or “professional indemnity insurance”** means a form of casualty insurance that helps to protect individuals and companies from costs of defending against a negligence claim based on allegations of loss caused by an error or omission in the service sold;

**I. “escrow”** means a transaction in which funds are delivered or given to a person not otherwise having any right, title or interest in them, to be held by that person for delivery or disbursement to another person upon the occurrence of a specified event or the performance of a specified condition;

**J. “home state”** means the District of Columbia or any state or territory of the United States which is the principal place of residence or principal place of business for an insurance producer and in which the producer is licensed to transact insurance;

**K. “insurance”** has the meaning set forth in Section 59A-1-5 NMSA 1978;

**L. “insurance consultant”** means a person who, under an agreement with an insured or potential insured, provides professional advice regarding a policy, annuity or other instrument of insurance in exchange for a fee, as set forth in Section 59A-11A-1 NMSA 1978.

**M. “insurance producer”** means a person required to be licensed in this state to sell, solicit or negotiate insurance. A licensed insurance producer appointed by an insurer shall, in any controversy between an insured or an insured’s beneficiary and the insurer, be held to be the agent of the insurer that issued the insurance solicited or applied for;

**N. “insurer”** has the meaning set forth in Section 59A-1-8 NMSA 1978;

**O. “license”** means a document issued by the superintendent of insurance authorizing a person to act as an insurance producer for the lines of authority specified in the document or to engage in other insurance transactions based on the type of license;

**P. “limited lines insurance”** means those lines of insurance as set forth in Sections 59A-12-18, 59A-12-18.1 and 59A-60-1 et seq. NMSA 1978, or any other line of insurance that the superintendent deems necessary;

**Q. “limited lines insurance producer”** means a licensed insurance producer who is qualified to solicit and sell limited lines insurance;

**R. “managing general agent”** means a specialized type of licensed insurance producer as defined in Subsection C of Section 59A-12B-2 NMSA 1978;

**S. “NAIC”** means the national association of insurance commissioners;

**T. “negotiate”** means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

**U. “offer and disseminate”** means providing general information, such as a description of coverage and price, processing applications, collecting premiums and performing other insurance-related activities for which a license is not required by this state;

**V. “pharmacy benefits manager”** means a person or its subsidiary that provides claims administration, benefit design and management, pharmacy network management, negotiation and administration of product discounts, rebates and other benefits or other prescription drug or device services to third parties, as further described in Subsection G of Section 59A-61-2 NMSA 1978;

**W. “prearranged funeral plan”** means a contract for future delivery of a funeral plan as defined in Subsections A, B and C of Section 59A-49-4 NMSA 1978;

**X. “prepaid dental plan”** means a contractual arrangement whereby a prepaid dental plan organization undertakes to directly provide or to arrange for the provision of prepaid dental services and to pay or make reimbursement for any remaining portion of such prepaid dental services on a prepaid basis through insurance

or otherwise;

**Y. “principal”** means a person who gives authority to another to act on the person’s behalf;

**Z. “rental car endorsee”** means a rental car agent’s employee who offers, sells, binds, effects, solicits or negotiates rental car insurance and who satisfies the requirements of Subsection C of 13.4.2.15 NMAC;

**AA. “rental car insurance”** means insurance sold in connection with and incidental to the rental of a vehicle and that applies only to the vehicle that is the subject of the rental agreement, and as further defined in Subsection E of Section 59A-32A-2 NMSA 1978;

**BB. “rental car producer”** means a person or entity in the business of renting rental cars to the public and that is licensed to offer, sell, bind, effect, solicit or negotiate rental car insurance;

**CC. “resident of the state”** means an individual who maintains a principal home in New Mexico and holds no active resident insurance license in another state;

**DD. “sell”** means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer;

**EE. “service representative”** means an individual regularly employed and salaried by an insurer, group of insurers or managing general agent who assists insurance producers in soliciting, negotiating and effectuating insurance for the insurer, group or managing general agent and who, in the conduct of their business, receives no part of the commission on insurance written. A service representative is not required to be licensed, nor shall the service representative independently solicit or negotiate insurance or annuity contracts;

**FF. “solicit”** means to attempt to sell insurance or ask or urge a person to apply for a particular kind of insurance from a particular insurer;

**GG. “superintendent”** means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope of the superintendent’s official duties and with the superintendent’s authorization;

**HH. “terminate”** means to cancel the relationship between an insurance producer and the insurer or to terminate a licensed insurance professional’s authority to transact insurance;

**II. “title abstract plant”** is as defined in Section 59A-12-13 NMSA 1978;

**JJ. “title insurance policy”** means an insurance contract indemnifying against loss or damages, as set forth in Subsection H of Section 59A-30-3 NMSA 1978;

**KK. “title insurance business”** means the types of business set forth in Subsection C of Section 59A-30-3 NMSA 1978;

**LL. “title insurance producer”** is a person licensed in this state to engage in the business of title insurance and who has been appointed to perform escrow, closing and settlement functions of a real estate transaction by a title insurer;

**MM. “travel insurance policy”** means insurance coverage for personal risks incident to planned travel as defined in Paragraph (3) of Subsection H of Section 59A-12-18.1 NMSA 1978; and

**NN. “travel retailer”** means a business entity that makes, arranges or offers travel services. [13.4.2.7 NMAC – Rp, 13.4.2.7 NMAC, 4/2/2018]

#### **13.4.2.8 TYPES OF INSURANCE LICENSES:**

##### **A. License required.**

(1) No individual or business entity shall sell, solicit or negotiate insurance in this state unless licensed by the superintendent as an insurance producer for that line of insurance. Any person who is compensated for soliciting or accepting applications for health maintenance organization membership from the public shall be licensed as a health insurance producer in accordance with the provisions of Section 59A-46-17 NMSA 1978.

(2) A business entity that is licensed as an insurance producer shall employ licensed individual insurance producers to transact the types of insurance for which the business entity is licensed. Such an individual insurance producer shall hold a license of the same type as that of the business entity employer.

(3) Persons who engage in other transactions that are subject to the Insurance Code shall be licensed according to requirements set forth under relevant sections.

**B. Producer license types based on lines of authority.** An insurance producer may be qualified for one or more of the following lines of authority:

(1) casualty insurance, including coverage against legal liability, including for death, injury, disability or damage to real or personal property;

(2) property insurance, including coverage for direct or consequential loss or damage to property of every kind;

(3) accident and health or sickness insurance, including coverage for sickness, bodily injury or accidental death and may include benefits for disability income;

(4) life insurance, including coverage on human lives, benefits of endowment and annuities, and other benefits in the event of death or dismemberment by accident and may include benefits for disability income;

(5) variable life and variable annuity insurance, including contracts deemed to constitute securities that require that the producer also possess a license as a security salesman under other applicable state laws; and

(6) personal lines, including property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

**C. Producer licenses for limited lines.** An insurance producer may also be licensed for any of the following limited lines:

(1) credit insurance, as sold by individual producers who are employed full time by a vendor of merchandise or other property or by a financial institution that executes consumer loans which require credit life insurance, credit disability insurance, credit property insurance or credit involuntary unemployment insurance as set forth in Section 59A-25-1 et seq. NMSA 1978;

(2) travel insurance, as sold by producers who are qualified to solicit or sell travel insurance as set forth in Section 59A-12-18.1 et seq. NMSA 1978 and 13.4.2.14 NMAC;

(3) portable electronics insurance, as sold by vendors and their employees and representatives in accordance with the provisions of the Portable Electronics Insurance Act found at Section 59A-60-1 et seq. NMSA 1978 and as set forth in 13.4.2.21 NMAC;

(4) rental car insurance, as sold in connection with and incidental to the rental of vehicles by a rental car company and in accordance with the provisions of the Rental Car Insurance Limited Producer License Act found in Section 59A-32A-1 et seq. NMSA 1978 and as set forth in 13.4.2.15 NMAC;

(5) title insurance, as sold by title insurance business entities and the title insurance producers employed by them in accordance with the provisions of the New Mexico Title Insurance Law found in Section 59A-30-1 et seq. NMSA 1978 and as set forth in 13.4.2.13 NMAC; or

(6) motor club services, as sold by a registered representative and provided by a motor club holding a certificate of authority in this state in accordance with the provisions of the Motor Club Law found in Section 59A-50-1 et seq. NMSA 1978 and as set forth in 13.4.2.16 NMAC.

**D. Other licenses required.** Persons engaging in any of the following types of transaction under the insurance code shall also be licensed:

(1) persons acting as pharmacy benefits managers in accordance with provisions of the Pharmacy Benefits Manager Regulation Act found at Section 59A-61-1 et seq. NMSA 1978 and as set forth in 13.4.2.17 NMAC;

(2) persons offering membership in a prepaid dental plan in accordance with the provisions of the Prepaid Dental Plan Law found in Section 59A-48-1 et seq. NMSA 1978 and as set forth in 13.4.2.18 NMAC;

(3) persons engaged in the sale of prearranged funeral plans in accordance with the provisions of the Prearranged Funeral Plan Regulatory Law found in Section 59A-49-1 et seq. NMSA 1978 and as set forth in 13.4.2.19 NMAC;

(4) persons offering benefits to members through a fraternal benefit society as set forth in Section 59A-44-1 et seq. NMSA 1978 and 13.4.2.20 NMAC;

(5) persons acting as reinsurance intermediaries in accordance with the provisions of the Reinsurance Intermediary Law found at Section 59A-12D-1 et seq. NMSA 1978 and as set forth in 13.4.2.22 NMAC;

(6) persons selling services as insurance consultants in accordance with the provisions of Section 59A-11A-1 et seq. NMSA 1978 and as set forth in 13.4.2.23 NMAC;

(7) third-party administrators performing or providing any service, function, duty or activity in respect to any insurance plan, self-insurance or alternative to insurance in an administrative or management capacity in this state with respect to risks located or partially located in this state or on behalf of persons in this state in accordance with the provisions of Section 59A-12A-1 et seq. NMSA 1978 and as set forth in 13.4.5 NMAC;

(8) persons acting as independent, public and staff adjusters in accordance with the provisions of Section 59A-13-1 et seq. NMSA 1978 and as set forth in 13.4.8 NMAC; and

(9) persons acting as surplus lines brokers in accordance with the provisions of Section 59A-14-1 et seq. NMSA 1978 and as set forth in 13.4.4 NMAC.

[13.4.2.8 NMAC – Rp, 13.4.2.11 NMAC, 4/2/2018]

**13.4.2.9 LICENSING REQUIREMENTS FOR INDIVIDUALS:** The superintendent will issue, renew and continue resident licenses for individual insurance producers to transact the kinds of insurance as set forth in 13.4.2.8 NMAC.

**A. General requirements.**

- (1) An applicant shall be at least 18 years of age;
- (2) an applicant shall file an application electronically or as otherwise specified by the superintendent;
- (3) an applicant shall pay the fees required by Section 59A-6-1 NMSA 1978 as well as providing any additional bond, liability coverage or letter of credit that may be required by the license applied for;
- (4) an applicant shall not have committed an act that is a ground for license denial, suspension or revocation under the Insurance Code; and
- (5) an applicant shall have passed the examination required for each line of authority for which the license is sought, if examination is required by 13.4.2.11 NMAC.

**B. Application form.**

- (1) The application form may require the following information about the applicant:
  - (a) proof of the applicant's identity;
  - (b) name, date of birth, social security number and residence and business address;
  - (c) personal history;
  - (d) business experience, including experience, special training or education in the kind of business to be transacted under the license applied for;
  - (e) previous licensing information, including:
    - (i) whether the applicant was ever previously licensed to transact insurance in this state or elsewhere;
    - (ii) whether any license was ever refused, suspended or revoked;
    - (iii) whether any insurer claims that the applicant is indebted to it, and if so, the details of the claim; and
    - (iv) whether the applicant has ever had an insurance agency contract or appointment canceled and, if so, the facts of the cancellation;
  - (f) type of license applied for and kinds of insurance or transactions to be covered thereby;
  - (g) if the applicant will be adjusting workers' compensation claims, then an in-state physical address for the business entity;
  - (h) the NAIC number and name of the company holding a New Mexico certificate of authority that is sponsoring the applicant, if applicable;
  - (i) additional information relating to a particular type of license; and
  - (j) such other pertinent information and matters as the superintendent may reasonably require.
- (2) The superintendent may require any application to be in the applicant's handwriting and under the applicant's oath.

**C. Approval.** Before approving a license application and issuing a license the superintendent shall confirm that:

- (1) all of the applicant's answers to the questions on the application are complete, truthful and satisfactory, including acknowledgment and explanation of any prior criminal charges;
- (2) the applicant does not currently hold an active New Mexico resident or nonresident license or an active resident license in another state;
- (3) the applicant has provided at least five years of employment history without gaps in the employment record;
- (4) the applicant has provided an in-state residential or business address (a post office box does not satisfy this requirement);
- (5) the applicant's fingerprints have been submitted for purposes of a state and federal background check, and
  - (a) pursuant to 18 U.S.C. Section 1033, no individual who has been convicted of a felony involving dishonesty or a breach of trust may be licensed as a resident producer, unless the person has the written consent of the superintendent;
  - (b) pursuant to the Criminal Offender Employment Act found at Section 28-2-1 et

seq. NMSA 1978, any prior criminal record shall be considered in connection with application for any license under this article; and

(c) if the results of the background check have not been received or indicate a need for further investigation, the application will not be approved pending further review;

(6) the applicant has satisfied both the general and specific requirements and has provided any additional information necessary for the type of license requested or as required by the superintendent based the initial application answers;

(7) the applicant shall not use or intend to use the license solely to write insurance on the applicant's own life for the purpose of evading in spirit or intent the anti-rebate or anti-discrimination laws relating to insurance;

(8) if the applicant is a citizen of a foreign country, then the application shall include proof that the applicant is eligible to reside and work in the United States; and

(9) the applicant has passed any required examination based on the type of license requested, as set forth in 13.4.2.11 NMAC.

**D. Prohibitions.** Pursuant to Section 59A-12-11 NMSA 1978, the superintendent shall not license as an insurance producer or permit any such license to continue if the superintendent finds that an applicant for license intends to offer, give or sell stock or other ownership or participating interest in the agency or brokerage as inducement to or in connection with purchase of insurance or that the licensee has previously done so.

**E. Contents of license.** The contents of the license shall be consistent with the requirements set forth in Section 59A-11-9 NMSA 1978.

**F. Special licensing requirements.**

(1) Limited line credit insurance license applicants shall include evidence that the insurer will provide a program of instruction to include selling, soliciting and negotiating credit insurance that has been approved by the superintendent.

(2) Variable life and variable annuity or fraternal variable life and variable annuity license applications shall be deferred and reviewed manually by the superintendent. The applicant's FINRA and CRD numbers shall be supplied.

(3) Applicants shall apply for or actively hold a producer license for the life line of authority within the requested license class as follows:

(a) A variable life or a variable annuity producer license requires a life producer license.

(b) A variable life or a variable annuity consultant license requires a life insurance consultant license.

(c) A fraternal variable life or a variable annuity producer licenses requires a fraternal life producer license.

(d) A temporary variable life or a variable annuity producer license requires a temporary producer license.

(e) A viatical variable life or a variable annuity broker license requires a viatical life broker license.

(4) Surplus lines broker applicants shall actively hold both current property and casualty producer licenses prior to applying for a surplus lines broker license.

[13.4.2.9 NMAC – Rp, 13.4.2.8 NMAC, 4/2/2018]

**13.4.2.10 LICENSING REQUIREMENTS FOR BUSINESS ENTITIES:**

**A. General requirements.** A business entity acting as an insurance producer is required to obtain an insurance producer license pursuant to Sections 59A-11-3 NMSA 1978 and 59A-12-15 NMSA

(1) When licensing of a business entity is required, the application shall be filed by the business entity.

(2) The application shall be submitted electronically using the uniform business entity application or as otherwise specified by the superintendent.

(3) The business entity shall specify the business type as one of the following legal business types:

(a) partnership;

(b) limited liability company (LLC);

(c) limited liability partnership (LLP); or

(d) corporation.

A sole proprietorship may not apply for a business insurance producer license.

(4) The application shall be accompanied by payment of fees, as follows:

- (a) all fees required pursuant to Section 59A-6-1 NMSA 1978;
- (b) any bond or letter of credit required for the license applied for; and
- (c) an additional license application filing fee for each individual in excess of one

who is to exercise the license powers of the business entity, if not a general partner therein.

(5) The application shall be signed on behalf of the applicant by an authorized partner or

corporate officer, under oath if required by the superintendent.

(6) If the business is a firm, then each individual who is not a bona fide general partner and

who is to exercise license powers shall file an application for a producer license for the same kind or kinds of business as that applied for by the business entity.

(7) If the business is a corporation, then each individual, whether or not an officer, director,

stockholder or in other relationship to the corporation, who is to exercise license powers shall file an application for a producer license for the same kind or kinds of business as that applied for by the business entity.

(8) If the business is a partnership, then each individual who is not a general partner and who

is to exercise license powers shall file an application for a producer license for the same kind or kinds of business as that applied for by the business entity.

**B. Application form.** The application form may require information about the business entity as follows:

(1) the name, state of residence, proof of identity, business record, reputation and experience

of each partner, officer, member of the board of directors and controlling stockholder of the business entity, and any additional information required of an individual applicant for a producer license as the superintendent deems necessary;

(2) evidence satisfactory to the superintendent that transaction of the business proposed to be

transacted under the requested license is within the powers of the business entity as set forth in the entity's articles of incorporation, charter, bylaws, partnership, operating agreement or other governing documents;

(3) at least one individual is specified as the designated responsible licensed producer

(DRLP) who is actively licensed in this state as either a resident or nonresident producer for each of the lines of authority applied for by the business entity;

(a) The DRLP(s) designated by the business entity shall cumulatively be licensed

for all lines of authority of the business entity; except that

(b) business entities of the following types seeking a producer license are not

required to designate a DRLP: portable electronics, pharmacy benefits managers, rental car insurance producers and third party administrators; and

(4) such further information concerning the applicant, appointment of partners, corporate

officers, directors and stockholders as may be requested by the superintendent.

**C. Approval.** The superintendent shall review the application and confirm that:

(1) all answers to the questions on the application are complete, truthful and satisfactory;

(2) the applicant does not already hold an active resident or nonresident license in New

Mexico or an active resident license in another state;

(3) the business entity has paid the fees set forth in Section 59A-6-1 NMSA 1978, as well as

providing any additional bond, liability coverage or letter of credit that may be required by the type or types of license applied for;

(4) the business entity application lists at least one individual as an owner, officer, partner or director;

(5) the business entity has designated a licensed insurance producer responsible for the

business entity's compliance with the insurance laws of this state for every line of authority listed in the application;

(6) the application sets forth the names of all the members, officers and directors of the

business entity and the names of each individual who is to exercise the powers conferred by the license upon the business entity;

(7) the business entity license application uses the entity's legal name, unless an assumed

name has been previously approved in writing by the superintendent; and

(8) at least one licensed insurance producer who is to exercise license powers is affiliated by

submission of an application, and the application for affiliation was submitted with payment as required in Section 59A-6-1 NMSA 1978.

**D. Prohibitions, Contents of license, Special licensing requirements.** The provisions of

Subsections D, E and F of 13.4.2.9 NMAC apply also to business entities seeking a producer license.  
[13.4.2.10 NMAC – N, 4/2/2018]

**13.4.2.11 EXAMINATION OF APPLICANTS:**

**A. Applications requiring examination.**

(1) Individuals applying for the following types of resident licenses shall take and pass the examination required for issuance of the license by the superintendent:

- (a) insurance producer – producer examination;
- (b) independent, public or staff adjuster – adjuster examination;
- (c) insurance consultant – producer or consultant examination;
- (d) viatical broker – producer examination;
- (e) surplus lines broker – surplus lines broker examination; and
- (f) title insurance producer – title insurance producer examination.

(2) Separate exams may be required for different lines of insurance or license types and may be administered at different times and locations.

**B. Examination exemptions.**

(1) Pursuant to Section 59A-11-10 NMSA 1978, reexamination is not required for renewal or continuance of current resident licenses unless ordered by the superintendent.

(2) Reexamination is not required for resident applicants who have been licensed in this state within the five years prior to the date of the new application and who seek to be relicensed for the same line or lines of insurance. This exemption does not apply if the previous license was suspended or revoked, if continuation of the license was refused by the superintendent or if the applicant did not previously take and pass an exam in this state.

(3) Examination is not required for:

- (a) Applicants seeking a limited lines license in order to transact credit, travel or portable electronics insurance;
- (b) Applicants seeking to be licensed as a life and annuity or accident and health insurance producer who hold the Chartered Life Underwriter (C.L.U.) designation by the American College of Life Underwriters;
- (c) Applicants seeking to be licensed as a property or casualty insurance producer who hold the designation of Chartered Property and Casualty Underwriter (C.P.C.U.) by the American Institute of Property and Casualty Underwriters;
- (d) Applicants seeking a rental car endorsement to transact rental car insurance under the supervision of a rental car producer that has previously provided a training course that has been submitted to and approved by the superintendent pursuant to Subsection D of Section 59A-32A-5 NMSA 1978;
- (e) Applicants for a temporary license; or
- (f) Applicants for registration as a motor club representative.

(4) Examination is not required for applicant who have taken and passed a similar examination and received a license for the same line or lines of authority in a state in which the reciprocal provisions of Section 59A-5-33 NMSA 1978 apply and:

- (a) the license in the other state is current, or
- (b) the application is received within 90 days after of cancellation of the previous license. If the license has been canceled, then the following is required:
  - (i) a certification from the reciprocal state that at the time of cancellation the applicant was in good standing in that state; or
  - (ii) records maintained by the NAIC indicate that the insurance producer is or was licensed in good standing for the line of authority requested.

(5) Examination is not required for an applicant currently licensed as an insurance producer in another state who moves to this state and applies to become a resident insurance producer within 90 days of establishing legal residence. For such applicants, the examination requirement is waived as to licensure for any line of authority previously held in the prior state, unless otherwise determined by the superintendent.

(6) Examination is not required for an applicant for a license who is a transportation ticket selling agent of a common carrier and who acts under the license only in reference to the issuance of health and accident insurance policies, or insurance on personal effects while being carried as baggage, in connection with the transportation provided by the transportation ticket.

**C. Conduct of examinations.**

(1) Applicants shall submit a nonrefundable examination fee as set forth in Section 59A-6-1



NMSA 1978.

(2) The superintendent may designate an outside testing service to register applicants and collect examination fees, develop and administer exams, and score and report exam results subject to these requirements:

(a) The activities of the testing service shall be supervised by the superintendent.

(b) Any examination that is developed by the testing service or other outside source shall be reviewed and approved by the superintendent before it is administered. Each examination question and answer shall be verified and approved as to correctness, relevance, content and other factors.

(3) Each examination, as a whole, shall provide a comprehensive test of the applicant's knowledge necessary for the type of license applied for, the duties and responsibilities of the licensee and the insurance laws and regulations of this state.

(4) All examinations shall be conducted in an appropriate setting.

(5) Each examination shall be offered to applicants for a particular license type at least once each month at places within this state designated by the superintendent.

(6) Registration for each offering of the required examinations shall be available online or as otherwise directed by the superintendent.

(7) All examinations shall be available in the Spanish language upon request.

(8) Examination site accommodations shall be available upon request.

**D. Examination scoring; pass and fail.**

(1) Each examination shall require examinees to answer questions.

(2) The examination shall be scored for all examinees in a fair, impartial and non-discriminatory manner using a consistent scoring process.

(3) An examinee shall achieve a minimum score of seventy percent in order to pass the examination.

(4) An applicant who registers to take an examination but fails to appear as scheduled or fails to pass the examination may reapply and shall resubmit all required fees and forms before being scheduled for another examination.

(5) Any applicant who fails to pass an examination may retake the examination at any subsequent scheduled examination date. However, an applicant who has taken and failed to pass the same examination four times shall not be entitled to take another examination until at least six months after the date of the last examination failed.

**E. Examination preparation.**

(1) The superintendent may prepare and make available a manual showing the general type and scope of all required examinations.

(2) Information and access to manuals will be provided through the OSI website or as otherwise determined by the superintendent.

[13.4.2.11 NMAC – Rp, 13.4.2.13 NMAC, 4/2/2018]

**13.4.2.12 COMMISSIONS AND COMPENSATION:**

**A. Payment of commissions and compensation.**

(1) An insurance company or insurance producer shall not pay to a person nor shall a person accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state unless that person is licensed as required by this state.

(2) Renewal and other deferred commissions may be subsequently paid to a person for selling, soliciting or negotiating insurance in this state if the person was licensed as required at the time of the transaction.

(3) An insurer or insurance producer shall not pay or assign commissions, service fees or other valuable consideration derived from insurance of risks in this state to an individual or business entity who is not licensed to sell, solicit or negotiate insurance in this state.

**B. Sharing of commissions and compensation.**

(1) Sharing in commissions and compensation between licensees shall be infrequent and shall not be used to avoid appointment of producers by insurers.

(2) A licensee shall not receive a share in commissions or compensation unless the licensee is licensed as to the type of transaction or kind of insurance placed.

(3) An insurance producer shall share commissions or compensation for or on account of the solicitation or negotiation of insurance on individuals, property or risks in this state only with a duly licensed

producer appointed by the insurer with which the insurance was placed, or with a duly licensed broker.

(4) The purchase price of a business entity may include ongoing payments or partial payments of accruing commissions to or on behalf of a former owner, whether or not the former owner maintains a current insurance producer license.

(5) Payment of commissions, compensation or other valuable consideration may be made to the personal representative, trust or beneficiary of a deceased insurance producer or broker, or to the deceased producer or broker's heirs or devisees if the estate has been distributed and the decedent would otherwise be entitled to the payment.

**C. Disclosure of compensation.**

When any insurance producer or any affiliate of the insurance producer receives any compensation from a customer for the placement of insurance or represents the customer with respect to placement of insurance, that producer or affiliate shall comply with the disclosure requirements set forth in Section 59A-12-29 NMSA 1978. [13.4.2.12 NMAC – N, 4/2/2018]

**13.4.2.13 LICENSING OF TITLE INSURANCE PRODUCERS, ESCROW OFFICERS AND TITLE ABSTRACT PLANTS:**

**A. License required.**

(1) Title agents and escrow officers shall be licensed as title insurance producers. In addition to the requirements in this section, they shall also comply with additional requirements set forth in Section 59A-30-1 et seq. NMSA 1978 and in 13.14.1 through 13.14.19 NMAC.

(2) An applicant for a title insurance producer license shall comply with the provisions of 13.4.2.9 NMAC for individual producers or 13.4.2.10 NMAC for business entities.

(3) All applications for a title insurance producer license shall contain a statement that the applicant owns, operates, controls or is affiliated with a licensed title abstract plant or is employed by an individual or entity that does.

(4) Applications shall specify only the county or counties that are supported by the title abstract plant and the title producer license shall permit the licensee to issue policies only on property located in the county or counties for which the licensee has the necessary title abstract plant.

**B. Title abstract plant defined.** The title abstract plant shall consist of a set of records in which an entry has been made for every document or matter that under the law imparts constructive notice affecting title to, interest in or encumbrances on real property, and that has been filed or recorded in the county for which the title abstract plant is maintained.

(1) The records shall cover a period of 20 years immediately prior to the date of application and shall consist of:

(a) an index or indices in which notations of or references to any documents that describe the property affected are posted, entered or otherwise included, sorted and filed according to the property described; or copies or briefs of all documents that describe the property affected which are sorted and filed according to the property described; and

(b) an index or indices in which all other documents are posted, entered or otherwise included, sorted and filed according to the name or names of the party or parties whose title to real property or any interest or encumbrance is affected.

(2) A title insurance producer license permits the licensee to issue title insurance only on property located in the county or counties for which the licensee has the necessary licensed title abstract plant.

(3) The title insurance producer shall be responsible for maintaining and updating the records of the title abstract plant within 30 days of the courthouse land update schedule.

**C. Plant inspections.** The title abstract plant shall be subject to inspection by the superintendent. During an inspection, the superintendent may inspect to ascertain that the plant's records are current and that all persons engaged in the business of transacting title insurance are properly licensed and have been appointed by all insurers for whom they transact business.

[13.4.2.13 NMAC – N, 4/2/2018]

**13.4.2.14 LICENSING OF LIMITED LINES TRAVEL INSURANCE PRODUCERS:**

**A. License required.**

(1) All applicants for travel insurance producer licenses shall comply with the provisions of 13.4.2.9 NMAC for individual producers or 13.4.2.10 NMAC for business entities.

(2) Upon licensure, the travel insurance producer shall create a register with information

about each travel retailer that offers travel insurance on the producer's behalf as set forth in Paragraph (2) of Subsection B of Section 59A-12-18.1 NMSA 1978. The register shall be updated at least annually and made available to the superintendent upon request.

(3) The travel insurance producer shall select a licensed individual insurance producer employee as its designated responsible producer who shall be responsible for the travel insurance producer's compliance with the travel insurance laws and rules of this state.

(4) The designated responsible producer, president, secretary, treasurer and any other officers or persons who direct or control the travel insurance producer's operations shall comply with the fingerprinting and criminal background check requirements of Paragraphs (3) and (4) of Subsection B of Section 59A-12-12 NMSA 1978.

(5) The travel insurance producer shall pay all applicable fees set forth in Section 59A-6-1 NMSA 1978.

(6) The travel insurance producer shall require training of employees and representatives of the retailer as set forth in Paragraph (6) of Subsection B of Section 59A-12-18.1 NMSA 1978.

**B. Travel insurance producer and travel retailer responsibilities.**

(1) A travel insurance producer shall be responsible for acts of the travel retailer and shall reasonably ensure that the travel retailer complies with the requirements set forth in Section 59A-12-18.1 NMSA 1978.

(2) A travel retailer may offer travel insurance under the license of a travel insurance producer only if:

(a) the travel insurance producer or travel retailer provides to prospective purchasers of travel insurance the items required by Subsection C of Section 59A-12-18.1 NMSA 1978; and

(b) no travel retailer employee or authorized representative who is not licensed as an insurance producer shall provide certain services as set forth in Subsection D of Section 59A-12-18.1 NMSA 1978.

(3) A travel retailer's employees and authorized representatives whose insurance-related activities are limited to the offering and disseminating of travel insurance on behalf and under the direction of a licensed travel insurance producer may receive compensation for those activities.

(4) Travel insurance may be placed as an individual, group or master policy.

**C. Travel insurance vending machines.**

(1) A licensed insurance producer may solicit for and issue personal travel accident insurance policies of an authorized insurer by means of mechanical vending machines supervised by the insurance producer and placed at airports and other places of convenience to the traveling public if the superintendent finds that:

(a) the travel insurance policy provides reasonable coverage and benefits and is suitable for sale and issuance by vending machine and that use of such a machine in a proposed location would be of material convenience to the public;

(b) the type of machine proposed to be used is reasonably suitable for the purpose;

(c) reasonable means are provided for informing prospective purchasers of policy coverages and restrictions;

(d) reasonable means are provided for the refund of money inserted in defective machines and which insurance so paid for is not received; and

(e) the cost of maintaining such a machine at a particular location is reasonable.

(2) For each travel insurance vending machine the superintendent shall issue a special vending machine license.

(a) The license shall state the name and address of the insurer and insurance producer, the name of the policy to be sold and the serial number, type and operating location of the machine.

(b) The license shall be subject to biennial continuation and to expiration, suspension or revocation coincidental with the license of the insurance producer.

(c) The superintendent shall revoke the license for any vending machine if the superintendent finds that license qualifications no longer exist.

(d) Proof of existence of a vending machine license shall be displayed on or about each machine in use in the manner that the superintendent reasonably requires.

[13.4.2.14 NMAC – N, 4/2/2018]

**13.4.2.15 LICENSING OF LIMITED LINES RENTAL CAR INSURANCE PRODUCERS AND ENDORSEES:**

**A. License required.**

(1) No rental car company nor its officers, director, employees or agents shall offer, sell, bind, effect, solicit or negotiate the purchase of rental car insurance unless that company is licensed as an insurance producer pursuant to Section 59A-32A-1 et seq. NMSA 1978.

(2) A rental car company may only act on behalf of an insurer that is authorized to write such insurance in this state.

(3) Rental car insurance may not be offered, except in connection with and incidental to a rental agreement.

(4) Neither a rental car insurance producer nor an endorsee shall represent itself as qualified or licensed as an insurance producer beyond the scope of the limitations set forth in Subsection B of Section 59A-32A-7 NMSA 1978.

(5) A rental car company may not compensate any person, including any of its employees, based solely on placement of rental car insurance.

**B. Rental car insurance producer license requirements.**

(1) All applicants for rental car insurance producer licenses shall comply with the provisions of 13.4.2.10 NMAC for business entities.

(2) The application shall include a list of all the locations within the state where the rental car insurance producer intends to offer, sell, bind, effect, solicit or negotiate rental car insurance.

(3) The rental car insurance producer license application shall include:

(a) a certificate filed by an insurer indicating that the insurer has reviewed the applicant's training program and believes that it satisfies the requirements of Subsection D of 59A-32A-5 NMSA 1978; and

(b) the insurer intends to appoint the applicant to act as its rental car insurance producer if a license is granted to the applicant by the superintendent.

(4) A rental car insurance producer shall be responsible for establishing a training program for its employees that satisfies the requirements of Subsection D of Section 59A-32A-5 NMSA 1978. The program shall be submitted to and approved by the superintendent prior to its use.

(5) At the time of application, a rental car insurance producer license applicant shall establish, in a format prescribed by the superintendent, a list of its endorsees that also identifies a manager or supervisor for each of the applicant's locations. The list shall be updated quarterly and retained for three years by the applicant. The list shall be provided to the superintendent for inspection upon request.

(6) A rental car insurance producer shall ensure that the actions of its endorsees are properly supervised at all of its locations and shall be held responsible for the actions of its endorsees.

**C. Rental car insurance endorsee requirements.**

(1) An endorsee shall be at least 18 years of age and an employee of a rental car insurance producer.

(2) An endorsee shall complete the rental car insurance producer's approved training program prior to transacting any rental car insurance.

(3) An endorsee shall act on behalf of the rental car insurance producer under the direct supervision of the manager or supervisor at the location where employed.

(4) An endorsee's authorization expires upon termination of employment with the rental car insurance producer.

(5) The rental car insurance endorsee may offer, sell, bind, effect, solicit or negotiate rental car insurance on behalf of the rental car insurance producer subject to the above provisions and additional provisions set forth in Section 59A-32A-1 et seq. NMSA 1978.

[13.4.2.15 NMAC – N, 4/2/2018]

**13.4.2.16 REGISTRATION OF MOTOR CLUB REPRESENTATIVES:**

**A. Registration required.** No individual shall represent a motor club in this state unless that person is registered with the superintendent by a motor club holding a current certificate of authority issued pursuant to Section 59A-5-1 NMSA 1978.

**B. Qualifications for registration.** An applicant for registration as a motor club representative shall, at a minimum:

- (1) be at least 18 years of age;
- (2) be of good personal and business reputation;
- (3) not previously have had registration refused or revoked;
- (4) be suitable and competent to act as such a representative; and

(5) intend in good faith to act and hold him- or herself out as such a representative.

**C. Procedures for registration.**

(1) Applications for motor club representative registrations are handled in the same manner as applications for casualty insurance producer licenses, except that no examination is required.

(2) Continuations, terminations, denials, suspensions and cancellations of motor club representative registrations are handled in the same manner as those for insurance producer licenses as set forth in 13.4.2.27 and 13.4.2.28 NMAC.

(3) Fees for motor club representative registrations and continuations are as set forth in Section 59A-6-1 et seq. NMSA 1978.  
[13.4.2.16 NMAC – N, 4/2/2018]

**13.4.2.17 LICENSING OF PHARMACY BENEFITS MANAGERS:**

**A. License required.** No person shall operate as a pharmacy benefits manager in this state unless licensed by the superintendent in accordance with Section 59A-61-1 et seq. NMSA 1978, nor shall a licensed pharmacy benefits manager transact insurance on behalf of an insurer that is not authorized in this state.

**B. License requirements.** The superintendent will consider an applicant for licensure as a pharmacy benefits manager upon receipt of the following:

(1) payment, in advance, of the fees prescribed in section 59A-6-1 NMSA 1978; and

(2) a completed application in the format required by the superintendent containing:

(a) the name of the pharmacy benefits manager;

(b) the name and business address of the contact person for the pharmacy benefits manager; and

(c) the federal employer identification number for the pharmacy benefits manager, if applicable.

**C. Denial, suspension or revocation of license.**

(1) The superintendent shall enforce the provisions of the Pharmacy Benefits Manager Regulation Act set forth in Section 59A-61-1 et seq. NMSA 1978 and may suspend, revoke or deny an application for or renewal of a pharmacy benefits manager's license for failure to comply with the requirements of the Pharmacy Benefits Manager Regulation Act.

(2) If the license of a pharmacy benefits manager is revoked:

(a) the pharmacy benefits manager shall proceed immediately following the effective date of the order of revocation to wind up its affairs and conduct no further business except as may be essential to the orderly conclusion of its affairs; except that

(b) the superintendent may permit further operation of the pharmacy benefits manager if the superintendent finds it is in the best interest of patients to do so.

(3) A person whose pharmacy benefits manager license has been denied, suspended or revoked may seek review pursuant to the provisions of Section 59A-4-1 et seq. NMSA 1978.

**D. Renewal of license.** A pharmacy benefits manager applying for license renewal shall submit the required annual report and fees, including the annual continuation fee, as set forth in Section 59A-6-1 NMSA 1978. Failure to comply with these requirements shall result in cancellation of the license. Instructions for completing the annual report, which is due on or before March 1, are available on the OSI website.

[13.4.2.17 NMAC – N, 4/2/2018]

**13.4.2.18 LICENSING OF PREPAID DENTAL PLAN MEMBERSHIP PRODUCERS:**

**A. License and appointment required.** No person shall solicit membership in a prepaid dental plan unless that person has been licensed by the superintendent as a health insurance producer and appointed by the prepaid dental plan organization to act in this state on the plan's behalf, pursuant to Section 59A-48-14 NMSA 1978. These persons shall comply with insurance producer licensing requirements.

**B. Qualifications for licensing.** Individuals shall be licensed as producers as described in 13.4.2.9 NMAC and business entities shall be licensed as producers as described in 13.4.2.10 NMAC. Individual licensees shall comply with the examination and continuing education requirements for health insurance producers.

**C. Fees and renewals.** Both individual producers and business entities that are licensed as producers and acting on behalf of a prepaid dental plan shall comply with the fee and renewal schedules set forth in Section 59A-6-1 NMSA 1978.

[13.4.2.18 NMAC – N, 4/2/2018]

#### **13.4.2.19 LICENSING OF PREARRANGED FUNERAL PLAN PRODUCERS:**

**A. License required.** Any person engaged in the sale of prearranged funeral plans shall be licensed by the superintendent as a life insurance producer. Individuals shall be licensed as producers as described in 13.4.2.9 NMAC and business entities shall be licensed as producers as described in 13.4.2.10 NMAC. The licensee may have no association with the funeral service provider pursuant to Section 59A-49-5 NMSA 1978.

**B. Handling of funds.** Funds received in connection with sale of a prearranged funeral plan shall be deposited and withdrawn from a trustee subject to the fiduciary duties set forth in Subsection B of 13.4.2.23 NMAC. Strict controls shall be placed over sale of funeral plans and management of collected funds due to the longer anticipated time between the sale of a plan and delivery of the services. The trustee's records and accounting of funds shall be subject to review by the superintendent upon reasonable request.  
[13.4.2.19 NMAC – N, 4/2/2018]

#### **13.4.2.20 LICENSING OF FRATERNAL BENEFIT SOCIETY PRODUCERS:**

**A. License required.** Individuals shall be licensed as producers as described in 13.4.2.9 NMAC and business entities shall be licensed as producers as described in 13.4.2.10 NMAC, except as follows:

(1) Fraternal benefit society producers are not required to fulfill the continuing education requirements set forth in 13.4.7 NMAC.

(2) Fraternal benefit society producers may be exempt from the qualifying examination requirements of 13.4.7.11 NMAC if they do not receive commissions or compensation based on sales as set forth in Subsection B of Section 59A-44-33 NMSA 1978.

**B. Continuation, suspension, revocation and termination of licenses.** General provisions pertaining to the continuation, suspension, revocation and termination of producer licenses shall also apply to licenses issued to fraternal benefit society producers as set forth in 13.4.2.27 and 13.4.2.28 NMAC.  
[13.4.2.20 NMAC – N, 4/2/2018]

#### **13.4.2.21 LICENSING OF PORTABLE ELECTRONICS INSURANCE VENDORS:**

**A. License required.** A vendor of portable electronics shall not sell or offer insurance covering portable electronics unless licensed as a limited lines producer in accordance with Subsection B of Section 59A-12-18 NMSA.

(1) A vendor's application shall identify an individual employee or officer of the vendor's organization as the compliance officer with respect to requirements of the Portable Electronics Insurance Act, as set forth in Section 59A-60-1 et seq. NMSA 1978. The application shall also provide the address of the vendor's home office.

(2) Any employee or authorized representative of a licensed vendor may offer and sell insurance covering portable electronics to eligible customers at any location at which the vendor sells portable electronics without obtaining a separate license from the superintendent. These employees and representatives may not represent themselves as personally licensed as a limited lines producer.

(3) The insurer issuing the insurance or its designee shall be responsible for supervising the activities of the vendor's employees and administration of the insurance program.

(a) The insurer shall develop and deliver a training program for the vendor's employees or authorized representatives who offer or sell insurance covering portable electronics.

(b) The training program shall comply with all of the requirements set forth in Paragraph (2) of Subsection D of Section 59A-60-4 NMSA 1978.

(4) A vendor shall maintain a list of its locations that are authorized to sell portable electronics insurance in this state. The list shall be made available to the superintendent upon reasonable notice and request.

(5) Compensation of employees who offer or sell portable electronics insurance on behalf of the vendor shall be in accordance with Section C of Section 59A-60-4 NMSA 1978.

**B. Offer and sale of insurance.** A licensed vendor shall sell or offer portable electronics insurance only as incidental to the purchase or lease of portable electronics or related services sold or offered by the vendor. A licensed vendor shall provide all required insurance-related information to customers and prospective customers as set forth in Subsection A of Section 59A-60-4 NMSA 1978.

**C. Handling of payments and funds.** Payments for portable electronics insurance and handling of funds shall be consistent with the requirements of Subsection C of Section 59A-60-4 NMSA 1978. Funds received by a vendor for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer as set forth in Subsection B of 13.4.2.23 NMAC.

**D. Penalties, fines and actions against the license.** The superintendent may impose fines or suspend or revoke a vendor's right to transact portable electronics insurance at specific locations where a violation has occurred or may suspend the rights of an individual employee or representative for violation of the Portable Electronics Insurance Act.  
[13.4.2.21 NMAC – N, 4/2/2018]

#### **13.4.2.22 LICENSING OF REINSURANCE INTERMEDIARIES:**

##### **A. License required.**

(1) With respect to the Reinsurance Intermediary Law set forth at Section 59A-12D-1 et seq. NMSA 1978 and this section, "producer" means a licensed producer, broker or reinsurance intermediary. A reinsurance intermediary is as defined in Subsection E of Section 59A-12D-2 NMSA 1978.

(2) Any person acting as either a reinsurance intermediary-broker or as a reinsurance intermediary-manager in this state and either domiciled or with an office located directly or indirectly in this state shall be licensed as a producer in this state.

(a) Typically, an intermediary-broker represents the insurer who is seeking to cede risk to a reinsurer and solicits offers on behalf of the ceding insurer.

(b) Typically, an intermediary-manager acts on behalf of and with authority to bind the reinsurer.

(c) The intermediary's knowledge is imputed to the principal, which may result in adverse consequences to the principal in resolving a dispute.

(3) Any person acting as either a reinsurance intermediary-broker or intermediary-manager in this state and with an office located in another state may be licensed as a producer in that state, if that state's licensing law is substantially similar to the Reinsurance Intermediary Law set forth at Subsection D of Section 59A-12D-1 et seq. NMSA 1978. Otherwise, that person shall be licensed as a producer in this state.

##### **B. Licensing requirements.**

(1) A reinsurance intermediary must file and maintain either a fidelity bond or an errors and omissions policy for the protection of the reinsurer. The fidelity bond or the errors and omissions policy must be issued by an admitted insurer or an eligible surplus lines insurer, be in an amount or at an aggregate limit equal to at least \$1,000,000 for the benefit of each reinsurer with whom the reinsurance intermediary contracts, and must provide that the superintendent be notified prior to its cancellation or nonrenewal.

(2) The superintendent may issue a reinsurance producer license to an individual or a business entity as follows:

(a) to an individual who has complied with the producer licensing requirements described in 13.4.2.9 NMAC or to a business entity that has complied with the producer licensing requirements described in 13.4.2.10 NMAC;

(b) that has complied with the requirements of the Reinsurance Intermediary Law set forth in Section 59A-12D-1 et seq. NMSA 1978; and

(c) if a business entity, that has named in its application its members, officers, and designated employees who shall act on behalf of the reinsurance intermediary in this state.

**C. Denial, suspension or revocation of license.** The superintendent may refuse to issue, suspend or revoke a reinsurance intermediary's license in accordance with 13.4.2.27 and 13.4.2.28 NMAC. Furthermore, the superintendent may refuse, suspend or revoke a reinsurer's right to transact business in this state based on the acts of its reinsurance intermediaries done within the scope of their actual or apparent authority.

**D. Exception from licensing.** Attorneys holding a current license to practice law in this state are not required to be licensed as reinsurance producers when acting in their professional capacity.

##### **E. Duties of a reinsurance intermediary.**

(1) **Required contract provisions between insurers or reinsurers and reinsurance intermediaries.** A reinsurance intermediary may not transact reinsurance in this state except pursuant to a written contract detailing the responsibilities and agreement between the reinsurance intermediary and the principal.

(a) The contract shall be as set forth in Section 59A-23D-7 NMSA 1978 and shall be filed with the superintendent for approval at least thirty days in advance of its effective date.

(b) **Duty of care and loyalty.** The contract shall clearly set forth the reinsurance intermediary's duty to clearly communicate the terms of a proposed reinsurance agreement, to disclose facts and circumstances including material information pertaining to underlying risks that may reasonably be expected to impact the obligations of the insurer or reinsurer, to negotiate terms and conditions of a contract for reinsurance, to assist in memorializing the agreement and to maintain records.

(c) **Program of reinsurance.** Depending on the terms of the written contract, a reinsurance intermediary's duties may extend to developing a program of reinsurance on behalf of the insurer that includes modeling to estimate probabilities of potential loss outcomes, estimating costs of alternate programs, identifying a pool of potential reinsurers, presenting an information packet to reinsurers on behalf of the insurer, negotiating terms of a contract and assisting in drafting and execution of a contract for reinsurance.

(2) **Fiduciary duty.** A reinsurance intermediary may act as a conduit between the insurer and reinsurer, including for collection and transmission of premiums, communication of loss and claim information, and collection of funds from a reinsurer on behalf of the insurer. A reinsurance intermediary has a fiduciary duty with respect to any funds held in trust by or transmitted through the reinsurance intermediary by either the insurer or reinsurer.

(3) **Record-keeping requirements.** A reinsurance intermediary shall annually file with the reinsurer a statement of its financial condition as set forth in Subsection K of Section 59A-12D-7 NMSA 1978. The reinsurance intermediary shall be subject to semi-annual review and inspection of its operations by the reinsurer. A reinsurance intermediary shall maintain complete records of all contracts and transactions for a minimum of ten years following the expiration of each contract for reinsurance.

[13.4.2.22 NMAC – N, 4/2/2018]

### **13.4.2.23 LICENSING OF INSURANCE CONSULTANTS:**

**A. License required.** No person shall examine or offer to examine in exchange for a fee an insurance policy, annuity, endowment contract or other insurance document in order to offer advice, counsel, a recommendation or other information as described in Subsection A of Section 59A-11A-1 unless licensed as an insurance consultant. Neither may a person offer such services through advertisements or any other means that indicate the person is in business for that purpose, unless licensed as an insurance consultant.

**B. Qualifications.**

(1) Individual applicants for an insurance consultant license shall apply as though for an individual producer's license as set forth in 13.4.2.9 NMAC.

(2) An applicant shall pay the examination application fee as set forth in Section 59A-6-1 NMSA 1978 and shall pass either the insurance producer license examination or the insurance consultant examination required by 13.4.2.11 NMAC.

(3) The applicant shall demonstrate competence and knowledge of insurance contracts and practices of the insurance industry in the lines of insurance for which the license is applied.

**C. Limitations, exemptions and conflicts.**

(1) A licensed insurance producer may offer customary advice without holding an insurance consultant license.

(2) A licensee shall not receive compensation as either a producer or as a broker if the licensee receives a fee as a consultant for the same transaction as the subject of the consulting service provided.

(3) An attorney or a public accountant licensed to practice in this state is exempt from the insurance consultant licensing requirement when acting within the scope of their practice.

**D. Renewal of license.** The insurance consultant license is subject to biennial renewal according to the schedule set forth in 13.4.2.26 NMAC, and to suspension or revocation as set forth in 13.4.2.27 NMAC.

**E. Contracts and agreements; collection of consulting fees.**

(1) An insurance consultant shall not enforce an agreement to provide advice, counsel or a recommendation in exchange for a fee unless a written agreement has been executed between the insurance consultant and the advisee.

(2) At a minimum, the written agreement shall:

- (a) be signed by the advisee;
- (b) be executed in duplicate, with one copy retained by the advisee;
- (c) state the amount paid by the advisee for the service if payment is made in advance, or the amount to be paid if payment is due following delivery of the service;
- (d) state the terms of payment agreed upon by the parties if payment is not due immediately upon delivery of the service;
- (e) specify the documents to be reviewed by the insurance consultant, and a copy of those documents shall be attached to the agreement, if available;
- (f) specify the services to be delivered by the insurance consultant and the format in which delivery shall be made to the advisee;
- (g) state the date and method by which the services shall be delivered; and



(h) provide any other information required by the superintendent.  
(3) At a minimum, the insurance consultant shall provide the following upon delivery of the agreed services:

(a) a signed statement specifying the advice, counsel, recommendation or information provided to the advisee;  
(b) a receipt for the fee paid or a statement indicating the fee to be paid to the consultant.

**F. Recordkeeping requirements.**

(1) An insurance consultant shall maintain records consistent with good business practices and shall furnish records of business methods, policies and transactions of the licensee within ten days of a request by the superintendent.

(2) An insurance consultant shall, upon a request by the superintendent, furnish both the standard written agreement form used to document an agreement between the insurance consultant and an advisee and examples of executed agreements that confirm the insurance consultant's business practices.

[13.4.2.23 NMAC – N, 4/2/2018]

**13.4.2.24 LICENSING OF MANAGING GENERAL AGENTS:**

**A. License required.**

(1) No person shall act as a managing general agent on behalf of any insurer with respect to risks located in this state unless licensed as a producer in this state.

(2) No person shall act as a managing general agent on behalf of an insurer domiciled in this state with respect to risks located outside this state unless licensed as a producer in this state.

(3) The superintendent may issue a producer license to an individual managing general agent or a business entity acting as a managing general agent as follows:

(a) to an individual who has complied with the producer licensing requirements described in 13.4.2.9 NMAC or to a business entity that has complied with the producer licensing requirements described in 13.4.2.10 NMAC; and

(b) that has complied with the requirements of the Managing General Agents Law as set forth at Section 59A-12B-1 et seq. NMSA 1978.

**B. Examination and penalties.**

(1) The superintendent may refuse to issue, suspend or revoke a managing general agent's license in accordance with 13.4.2.27 and 13.4.2.28 NMAC.

(2) Actions of a managing general agent are considered to be those of the insurer on whose behalf the managing general agent is acting.

(3) The superintendent may examine a managing general agent as if examining the insurer on whose behalf the managing general agent is acting.

(4) If the superintendent determines that a managing general agent, an insurer or another person has failed to comply with the requirements of the Managing General Agents Law as set forth at Section 59A-12B-1 et seq. NMSA 1978, the superintendent may impose any of the penalties set forth in Subsection A of Section 59A-12B-7 NMSA 1978 or any other penalties permitted under the Insurance Code.

**C. Required contract provisions.** A managing general agent shall not act on behalf of an insurer except as pursuant to a written contract detailing the responsibilities and agreement between the managing general agent and the insurer as set forth in Section 59A-23B-4 NMSA 1978. The contract between a managing general agent and an insurer shall not be assigned by a managing general agent.

**D. Record-keeping requirements.** A managing general agent shall maintain complete records of all contracts and transactions for a minimum of seven years following the expiration of each written agreement. The superintendent shall have access to the records for the purpose of examination, audit and inspection. The insurer shall have access sufficient to permit the insurer to fulfill its contractual obligations to insured persons.

**E. Duties of insurers.** An insurer that has contracted with one or more managing general agents shall comply with the requirements as set forth in Section 59A-12B-5 NMSA 1978, including but not limited to those pertaining to inspection and oversight of the managing general agent's processes and records and those requiring specific notifications to the superintendent.

[13.4.2.24 NMAC – N, 4/2/2018]

**13.4.2.25 OBTAINING A TEMPORARY INSURANCE PRODUCER LICENSE:**

**A. Necessity and duration of license.** The superintendent may issue a temporary insurance producer

license to an individual for a period not to exceed 180 days without requiring an examination if the superintendent determines that the temporary license is necessary for the servicing of an insurance business in the following situations:

- (1) to the surviving spouse or court-appointed personal representative of a licensed individual insurance producer who dies or becomes mentally or physically disabled, in order to allow adequate time for the sale of the producer's insurance business, for the producer's recovery and return to the business or to provide for the training and licensing of new personnel to operate the insurance producer's business;
- (2) to an individual who is a member or employee of a business entity upon the death or disability of an individual who is a DRLP with respect to the business entity;
- (3) to the designee of a licensed insurance producer entering active service in the armed forces of the United States; or
- (4) in any other circumstance in which the superintendent determines that the public interest will best be served by issuance of the license.

**B. Limitations.**

- (1) An applicant will not be issued a temporary license unless supervised by a suitable sponsor who is a licensed insurance producer or by an insurer who assumes responsibility for all acts of the temporary licensee.
- (2) The superintendent may impose other limitations on the authority of any temporary licensee to protect insureds and the public.
- (3) The superintendent may revoke a temporary insurance producer license if the interest of insureds or the public are endangered.
- (4) A temporary license shall not continue after the owner or personal representative disposes of the business.

**C. Application granted.** Upon application for a temporary insurance producer license, the insurer and the applicant may assume that the license will be issued in due course, effective as of the date the application was filed with the superintendent, unless the superintendent notifies the insurer to the contrary within 15 days after the date of application.

[13.4.2.25 NMAC – N, 4/2/2018]

**13.4.2.26 OTHER DUTIES OF LICENSEES:**

**A. Place of business.**

- (1) A resident licensed insurance producer shall have and maintain a place of business within this state that is accessible to the public and where the licensee transacts business under the license.
- (2) With the exception of title insurance producers, a licensee's place of business may be in the licensee's residence.
- (3) A licensee shall inform the superintendent in the format prescribed by the superintendent of a change in the licensee's legal name or address within 20 days of the change. Failure to timely inform the superintendent of a change in legal name or address shall result in a penalty of \$50 pursuant to Subsection G of Section 59A-12-17 NMSA 1978.

**B. Fiduciary duties.**

- (1) All funds of others received by a licensee shall be held in a fiduciary capacity. A licensee who diverts or appropriates such funds for personal use or takes or secretes such funds with intent to embezzle without the consent of the person entitled to the funds is guilty of larceny by embezzlement.
- (2) Subject to the terms of any agreement between a licensee and the licensee's principal or obligee, each licensee who does not make immediate remittance of funds to the insurer or other person entitled to them shall elect and follow one of the following methods:
  - (a) remit insurance charges or premiums collected (less applicable commissions, if any) and return premiums to the insurer or person entitled thereto within 15 days after receipt; or
  - (b) establish and maintain one or more fiduciary bank accounts separate from accounts holding personal, firm or corporate funds, and promptly deposit and retain therein all funds of others pending transmittal to the insurer or person thereto entitled.
    - (i) Funds belonging to more than one principal may be as deposited and held in the same account so long as the amount held for each principal is readily ascertainable from the records of the licensee.
    - (ii) The licensee may commingle with such fiduciary funds in a particular account such additional funds as the licensee deems prudent for advancing premiums, reserves for the payment of

return commissions or for other contingencies arising in the business of receiving and transmitting premiums or return premiums.

(3) The licensee may commingle with the licensee's own funds those funds of a particular principal who has expressly waived the segregation requirement in writing and in advance.

(4) Permitted commingling of the funds of others with funds of the licensee shall not alter the fiduciary duties of the licensee as to the others' funds.

(5) When requirements for handling of funds contained in other sections are in conflict with the requirements contained in this section, then those other requirements shall prevail as follows:

(a) Third-party administrators shall handle funds and pay, adjust and settle claims pursuant to the requirements of Sections 59A-12A-9 through 59A-12A-11 NMSA 1978.

(b) Title insurance producers shall manage escrow and other funds held in trust pursuant to the requirements of Section 59A-12-22 NMSA 1978 and 13.14.4 NMAC.

(c) Payments received in connection with the sale of prearranged funeral plans shall be subject to additional controls and shall be handled as set forth in 13.4.2.19 NMAC.

(d) Funds received by rental car insurance producers for the purchase of rental car insurance are not required to be treated as fiduciary funds or held in separate accounts.

**C. Recordkeeping requirements.**

(1) The requirements contained in this section apply generally to all licensees. However, where these rules differ from the recordkeeping requirements that are applicable to specific types of insurance producers the insurance producer shall also comply with the duties imposed by other rules, where applicable.

(2) An insurance producer shall keep complete records of transactions made under the license in the insurance producer's place of business. For each insurance policy placed by or through the licensee, the record shall include:

(a) the names of the insurer and insured;

(b) the number and expiration date;

(c) the premium payable;

(d) the names of all other persons from whom business is accepted or to whom commissions are promised or paid;

(e) all premiums collected; and

(f) additional information as the superintendent may require.

(3) The records shall be available for the superintendent's examination, and the superintendent may at any reasonable time require the licensee to furnish any information kept or required to be kept in such records.

(4) Records shall be maintained for the statutory duration.

(a) Records of each insurance policy shall be retained for a minimum of three years after the policy's expiration, unless a longer period is required.

(b) Records pertaining to title insurance policies shall be retained for a minimum of 15 years after the issuance of the title insurance policy pursuant to Section 59A-30-11 NMSA 1978.

(c) Complete records of reinsurance transactions shall be retained by reinsurance intermediaries for at least ten years after the expiration of each contract, pursuant to Section 59A-12D-5 NMSA 1978.

(d) A third-party administrator shall keep adequate books and records of all transactions between it, insurers and insured persons in its administrative office for the duration of its contractual duties and for five years thereafter, pursuant to Section 59A-12A-6 NMSA 1978.

(e) Licensees may be required to manage and retain additional records for a differing stated duration based on the provisions of the Insurance Code.

(5) Books and records shall be maintained in accordance with prudent standards of insurance record keeping.

**D. Duty to report any administrative actions, and civil and criminal prosecution.**

(1) A licensee shall report to the superintendent any administrative action taken against the licensee in any jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. The report shall include a copy of the order, consent to order or other relevant legal documents.

(2) A licensee shall report to the superintendent any criminal prosecution of the licensee taken in any jurisdiction within 30 days after the initial pretrial hearing date. The report shall include a copy of the initial complaint filed, any order resulting from the hearing and other relevant legal documents.

(3) A licensee shall report to the superintendent the filing and progress of any civil complaint

filed against the licensee in any jurisdiction. The initial report shall include a copy of the complaint. Subsequent reports shall be filed as the case progresses, and the final report shall include the final order, if any, and any other relevant legal documents.

(4) Title insurance producers shall report to the superintendent in compliance with the requirements set forth in 13.14.4.12 NMAC.

**E. Duty to report license cancellation.** A licensee whose out-of-state resident or non-resident license is canceled through either the action or inaction of the licensee shall report the cancellation to the superintendent within 30 days.

**F. Duty to report fraud.**

(1) A licensed insurance professional that has a reasonable belief that an act of insurance fraud will be, is being or has been committed shall report to the superintendent pursuant to Section 59A-16C-6 NMSA 1978 and shall cooperate fully with any investigation conducted by the superintendent,

(2) Failure to comply with this duty to report actual or suspected fraud shall constitute grounds for the superintendent to impose an administrative penalty pursuant to Section 59A-1-18 NMSA 1978 in addition to any applicable suspension, revocation or denial of a license.

[13.4.2.26 NMAC – N, 4/2/2018]

#### **13.4.2.27 CONTINUATION, TERMINATION AND REINSTATEMENT OF LICENSES:**

**A. Continuation of producer licenses.** An insurance producer license is continuous, subject to payment of renewal fees as set forth in Section 59A-6-1 NMSA 1978 and completion and submission on or before the due date of the continuing education requirements described in 13.4.7 NMAC, unless the license is canceled, revoked, suspended or otherwise terminated.

(1) A licensed insurance producer who is unable to comply with license renewal requirements due to military service or other extenuating circumstance may request a waiver using forms available on the OSI website or as otherwise directed by the superintendent. An insurance producer in such circumstances may also request a waiver of an examination requirement or of a fine or sanction imposed for failure to comply with renewal procedures.

(2) For licenses issued to individuals:

(a) For licenses issued on or after July 1, 2017, biennial renewal fees shall be paid on or before the last day of the second occurrence of the individual's birth month following issuance of the license.

(b) For licenses issued before July 1, 2017, details pertaining to biennial continuation and renewal of licenses are available on the OSI website for renewals due on March 1, 2018. Thereafter, the license shall be renewed according to the biennial schedule implemented on July 1, 2017.

(c) Continuing education requirements shall be satisfied during the 24 months immediately preceding the renewal date of the license. Additional information pertaining to continuing education requirements may be found in Section 13.4.7 NMAC.

(d) If the superintendent has reason to believe that the competence of any licensee or individual designated to exercise license powers is in question, the superintendent may require as a condition of continuation of the license or license powers that the licensee or individual take and pass the written examination that is required for new applicants for the same license.

(3) For licenses issued to business entities:

(a) Business entity licenses shall renew and continue on a biennial basis on March 1 of the biennial year except for those types of business entity licenses that renew and continue annually pursuant to Section 59A-6-1 NMSA 1978, which shall renew and continue on March 1 of every year.

(b) Business entity affiliations shall renew and continue on an annual basis on March 1 of every year, subject to payment of fees pursuant to Section 59A-6-1 NMSA 1978.

**B. Termination of licenses.**

(1) A license that is not continued by the licensee shall be deemed terminated at midnight on the last day of the licensee's birth month in the renewal year if an individual license and at midnight of March 1 in the renewal year if a business entity license. However, at the superintendent's discretion, a licensee's request for continuation received within 30 days after the due date may be granted if accompanied by a continuation fee equal to one-hundred-and-fifty percent of the fee otherwise required.

(2) Authorization to transact business in this state shall automatically terminate without notice as of the date and time of termination of a license.

(3) Any license issued to an individual shall terminate upon the death of the person.

(4) If a corporation ceases to exist, its business entity license shall be tendered to the

superintendent with notice of the dissolution.

(5) If a change occurs only in the officers or in the name of a corporation, it may continue to transact insurance under the license until action is taken by the superintendent upon a new application, if:

(a) within 30 days of the change, the surviving officers of the corporation file an application on a form prescribed by the superintendent for registration of a change in the officers or the name of the corporation and pay the required fees; and

(b) the application for registration of the change in officers is signed by the secretary or corresponding officer of the corporation.

(6) If the membership of a partnership changes, the surviving or continuing partner or partners may continue to transact insurance business under the license issued to the predecessor partnership until action is taken by the superintendent upon a new application, if:

(a) within 30 days, the surviving partner or partners file an application on a form prescribed by the superintendent for registration of a change in membership and pay the required fee;

(b) at least one person who exercises the producer powers of the predecessor entity continues to exercise those powers of the surviving or continuing partnership; and

(c) the application for registration of the change in membership is signed by a general partner.

**C. Reinstatement of licenses.**

(1) An individual licensee who allows the license to lapse may, within 12 months following the due date of the required renewal fee and completion of continuing education credits, reinstate the license without the necessity of passing a written examination.

(2) A penalty of double the unpaid renewal fee shall be required for a renewal received after the due date.

(3) If the producer has failed to comply with continuing education requirements during a lapse, the producer shall complete all continuing education hours that would have been necessary to keep the license in compliance.

[13.4.2.27 NMAC – N, 4/2/2018]

**13.4.2.28 DENIAL, SUSPENSION, REVOCATION OR CANCELLATION OF LICENSES:**

**A. Effects of suspension.** While a license is suspended, the licensee shall not engage in any transaction for which the license is required, other than receipt and remittance of premiums paid for insurance or other business that was transacted by the licensee while the license was active.

**B. Reasons for probation, suspension, revocation or refusal to continue license.**

(1) The superintendent may take necessary action based on information obtained via the NAIC attachment warehouse personal information capture system alerts or other appropriate mechanisms used to monitor actions against existing licensees.

(2) It shall be the duty of the superintendent to cancel a license if the superintendent is satisfied that:

(a) a licensee obtained the license by willful misrepresentation or fraud;

(b) a licensee obtained the license chiefly for the purpose of writing insurance on the licensee's own life, property or liability, or on the lives, property or liability of the licensee's associates;

(c) a licensee is not complying with all state and federal laws and regulations relating to insurance; or

(d) the interests of the insured or the public are not being properly served under the license.

(3) The superintendent may place on probation, suspend, revoke or refuse to issue or renew a license for any of the reasons set forth in in Section 59A-11-14 NMSA 1978.

(4) A business entity's license may be suspended, revoked or refused if the superintendent finds after hearing that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation, the violation was not reported to the superintendent and no corrective action was taken.

(5) A rental car insurance producer's license may be revoked or suspended following a hearing by the superintendent for a violation by the producer or the producer's endorsees of the Rental Car Insurance Limited Producer License Act set forth at Section 59A-32A-8 NMSA 1978. The superintendent may also impose penalties or suspend a transaction of insurance at specific rental locations where such a violation has occurred.

**C. Suspension or revocation of or refusal to continue a license.**

(1) If the superintendent suspends, revokes or refuses to continue a license, the superintendent shall notify the applicant in writing. The notice shall advise the applicant of the reason for the decision.

(2) Within 30 days of the date of issuance of the notice, the applicant may request a hearing in writing pursuant to Section 59A-4-15 NMSA 1978. The hearing shall be held within 90 days.

(3) The superintendent retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the Insurance Code against any person who is under investigation for or charged with a violation of the Insurance Code even if the person's license has been surrendered or has lapsed by operation of law.

**D. Administrative fines.**

(1) In addition to, or in lieu of, any applicable suspension, revocation or denial of a license the superintendent may impose fees or administrative fines pursuant to Section 59A-1-18 NMSA 1978 or a specific section of the Insurance Code.

(2) The amount of the administrative fine shall be not less than \$100 nor more than \$500 unless a small or larger fine is set by a specific section of the Insurance Code.

(3) In the order imposing the fine, the superintendent shall specify the grounds therefor and the period, not to exceed 60 days, within which the licensee shall pay the fine.

(4) If at the end of the allowed payment period the licensee has not paid the fine in full, the license immediately shall be suspended or revoked, or its renewal denied, as the case may be, without further order.

**E. Duration of and reinstatement following suspension or revocation of license.**

(1) In the order suspending a license, the superintendent shall state the period of suspension, which shall not exceed one year.

(a) The period of suspension may be modified by the superintendent's further order.

(b) At the end of the suspension period the license shall be reinstated upon request of the licensee unless the superintendent finds that the cause or causes of the suspension still exist or are likely to recur. If the superintendent so finds, he shall forthwith revoke the license by further order.

(2) An applicant whose license has been administratively revoked or suspended shall contact the superintendent in order to request reinstatement of the license.

(3) A licensee whose license has been revoked or suspended for noncompliance with the Parental Responsibility Act shall become compliant and provide evidence of compliance to the superintendent before the license may be reinstated.

(4) The superintendent shall not relicense a former licensee whose license has been revoked or its continuation refused without evidence that the former licensee is otherwise qualified for the license and that the cause or causes of the prior revocation or refusal to continue no longer exists and will not recur.

[13.4.2.28 NMAC – N, 4/2/2018]

**13.4.2.29 APPOINTMENTS AND CANCELLATION OF PRODUCER CONTRACTS:**

A license itself does not create any authority, actual, apparent, or inherent in the licensee to represent or commit an insurer.

**A. Appointment of insurance producers.**

(1) An insurance producer shall not act as an insurance producer on behalf of an insurer unless the insurance producer becomes an appointed insurance producer of that insurer. An insurance producer who is not acting on behalf of an insurer is not required to become appointed.

(2) An insurer shall appoint a producer using the online electronic application or as otherwise directed by the superintendent.

(a) The appointment shall be filed within 15 days from the date that the agency agreement is executed or when the first insurance application is submitted by the insurance producer on behalf of the insurer.

(b) An insurer may appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment.

(c) An insurer shall pay the filing appointment fee set forth in Paragraph (3) of Subsection E of Section 59A-6-1 NMSA 1978 for each insurance producer the insurer appoints, but may contract for reimbursement of the fee by agreement with the producer.

(3) In the event of a merger between two or more insurers, appointments of producers by any of the insurers absorbed by the merger will continue with the resulting insurer.

**B. Continuation of appointment.**

(1) Appointments of insurance producers shall be continuous subject to the insurer's payment of continuation fees as required by Section 59A-6-1 NMSA 1978 and filing of notice of continuation with the superintendent.

(2) Notice of continuation and payment of continuation fees shall be filed annually with the superintendent on or before March 1 of each year. The annual filing shall include the name, address and license number of each insurance producer appointed by the insurer to solicit or transact business in this state on the insurer's behalf.

**C. Termination of appointment.**

(1) Insurance producer appointments terminate automatically on April 30 of the year after issuance or continuation of appointment if the appointing insurer does not file a continuation of appointment.

(2) No insurer authorized to transact property or casualty insurance business in this state shall terminate a contract appointing an independent insurance producer without giving the insurance producer written notice of the termination, including the specific reason for such action, at least 180 days prior to the termination except as provided in Subsection C of Section 59A-11-13 NMSA 1978.

(3) No insurer shall terminate an appointment with a property or casualty insurance producer based on an adverse loss-ratio, as set forth in Subsection B of Section 59A-11-13 NMSA 1978.

(4) Notice of termination of appointment by an insurer shall be provided to the superintendent using the online form, or as otherwise directed by the superintendent, within 30 days following the effective date of the termination.

(a) If the reason for termination is one of the reasons for which the superintendent may cancel, suspend, revoke or refuse to issue a license as set forth in 13.4.2.27 and 13.4.2.28 NMAC, Subsection C of Section 59A-11-13 NMSA 1978 and Section 59A-11-14 NMSA 1978, or if the insurer has knowledge that the producer has been found by a court or regulatory agency to have engaged in any of the activities prohibited by 13.4.2.27 NMAC, the notice shall disclose it.

(b) The insurer has a continuing obligation to report to the superintendent should additional information become available following the initial notification.

(c) The insurer shall provide additional information about the reason for termination upon the superintendent's request.

(5) If the reason for the termination is one or more of the activities listed in 13.4.2.27 NMAC, the insurer shall provide a copy of the notice via certified mail to the insurance producer's last known address within 15 days following submission of the notice to the superintendent.

(6) The insurance producer may provide to the superintendent additional information in response to the notice filed by the insurer within 30 days; both the insurer's notice and the insurance producer's response shall be made a permanent part of the file retained by the superintendent.

(7) Any documents and materials related to termination or cancellation of an insurance producer's appointment that are provided to the superintendent shall be handled in a manner that is consistent with the confidentiality provisions set forth in Subsection K of Section 59A-11-13 NMSA 1978.

(8) An insurer may terminate its relationship with an insurance producer for any of the reasons set forth in Subsection C of Section 59A-11-13 NMSA 1978. The provisions of Paragraphs (2) and (3) of Subsection C of 13.4.2.19 NMAC shall not apply for such terminations.

(9) When an insurer ceases operation in this state, all producers and other principals that have been appointed by the insurer shall cease to be authorized to transact business in this state on behalf of the insurer as of the date of such cessation and shall immediately cease all activity on behalf of the insurer. [13.4.2.29 NMAC – N, 4/2/2018]

**13.4.2.30 SUPERINTENDENT'S LICENSING RECORDS:**

**A.** The superintendent shall keep a record of:

(1) each licensee's name, address, date of license, kind of business transacted and qualifications;

(2) the name of the principal or insurer represented; and

(3) all cancellations, suspensions or revocations of a license and notifications submitted by an insurer to the superintendent that pertain to a licensee.

**B.** Except for confidential information and other matters withheld by the superintendent pursuant to Sections 59A-2-12, 59A-4-11 and 59A-11-13 NMSA 1978, these records shall be made available for public inspection upon request.

[13.4.2.30 NMAC – N, 4/2/2018]

**HISTORY OF 13.4.2 NMAC:**

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as: ID 67-1, Sections 5-3-1 through 5-3-13 and 5-4-1 through 5-4-16, New Mexico Official Administrative Rules and Regulations Code, filed 12/1/1967.

**History of Repealed Material:**

13.4.2 NMAC - Resident Agents And Solicitors filed 7/1/1997, was Repealed effective 4/2/2018.

**Other History:**

13.4.2 NMAC - Resident Agents And Solicitors filed 7/1/1997, was Repealed and Replaced by 13.4.2 NMAC - Resident Producers And Other Resident Licenses effective 4/2/2018