

This is an amendment to 5.7.3 NMAC, Sections 1, 5, 7, 8, 11, 12, 13 and 14, effective 7/31/2005. This rule was also reformatted and renumbered to comply with current NMAC requirements.

**5.7.3.1 ISSUING AGENCY:** State of New Mexico [~~Commission on Higher Education 1068 Cerrillos Road, Santa Fe, New Mexico, 87501-4295, (505) 827-7383.~~] Higher Education Department [7/15/98; 5.7.3.1 NMAC - Rn & A, 5 NMAC 7.3.1, 7/31/05]

**5.7.3.5 EFFECTIVE DATE:** July 15, 1998, unless a later date is cited at the end of a section. [7/15/98; 5.7.3.5 NMAC, Rn & A, 5 NMAC 7.3.5, 7/31/05]

**5.7.3.7 DEFINITIONS:**

- A. [~~"Commission" means the New Mexico commission on higher education.~~] **"Department"** means the New Mexico higher education department.
- B. "Committee" means the health professions advisory committee of the [~~commission~~] department.
- C. "Eligible educational loan" means government and commercial loans for actual costs paid for tuition, reasonable education expenses including fees, books, supplies and materials; and reasonable living expenses including room and board and other itemized expenses incurred during an individual's enrollment at a post-secondary institution in a health occupation educational program. Expenses incurred must be related to the acquiring of said education.
- D. "Eligible participant" includes primary care physicians, physician assistants, advanced practice nurses, dentists, pediatricists, optometrists and allied health care providers. Other specialties may be considered at the discretion of the committee.
- E. "Extenuating circumstances" means circumstances not within the control of the recipient.
- F. "Health professional shortage area" means an area of the state or a facility which has been determined by the health professions advisory committee as an acceptable practice site in which program participants may fulfill their commitment.
- G. "Primary care physician" means a physician, allopathic or osteopathic with a specialty in family or general medicine, general internal medicine, general pediatrics and obstetrics and gynecology. Other specialties may be considered at the discretion of the committee.
- [7/15/98; 5.7.3.7 NMAC - Rn & A, 5 NMAC 7.3.7, 7/31/05]

**5.7.3.8 HEALTH PROFESSION ADVISORY COMMITTEE:** The health profession advisory committee is created to advise the [~~commission~~] department on matters relating to the administration of the Health Professions Student Loan-for-Service Acts and the Health Professional Loan Repayment Act.

- A. The committee shall be appointed by the [~~commission~~] department pursuant to policies and procedures of the commission and shall be composed of:
- (1) a representative of the department of health;
  - (2) a representative of the New Mexico health policy commission;
  - (3) representatives of public post-secondary health and medical training programs;
  - (4) representatives of recruiting and placement organizations;
  - (5) representatives of professional health and medical associations; and
  - (6) other representatives as appointed by the [~~commission~~] department.
- B. The responsibilities of the committee shall include:
- (1) designate health professional shortage areas of the state;
  - (2) make recommendations to the [~~commission~~] department on applicants for Medical, Osteopathic, Nursing and Allied Health Loan-For-Service Acts and the Health Professional Loan Repayment Act; and
  - (3) give advice or other assistance to the [~~commission~~] department as requested.
- [7/15/98; 5.7.3.8 NMAC - Rn & A, 5 NMAC 7.3.8, 7/31/05]

**5.7.3.11 PARTICIPATION AGREEMENT:** Upon approval, a participation agreement shall be drawn between each eligible participant receiving loan repayment and the [~~commission~~] department on behalf of the state of New Mexico. The agreement shall state both the participant's obligation under the program as well as the [~~commission's~~] department's responsibility. No payment will be made until a duly signed document is on file at the [~~commission~~] department offices. The participation agreement shall include, but not be limited to, the following stipulations:

- A. provide for the repayment of a specified sum as determined in Section 10; the commission will pay the amount due for each quarter of completed service by the program participant, directly to the participant or their lender(s) for payment of their health professional education loans; any amounts allocated to repay loans will be divided equally by the number of quarters in the service period covered by the award; quarters comprise an average of thirteen weeks including paid leave or any combination of hours and weeks thereof for the entire service period;
- B. state that the ~~[commission]~~ department will complete annual reports to all tax authorities delineating award payments made to the program participant;
- C. state that payment of the award is conditioned upon the program participant submitting timely reports and requests for reimbursement to the ~~[commission]~~ department or its designee, as required by the commission;
- D. state the participant's obligations including a minimum two year period of service in a practice providing continuous clinical services in the field of their profession in an area designated by the committee as eligible;
- E. state that the program participant is responsible for payment(s) of their eligible health professional education loans until such time that actual loan repayment is performed by the ~~[commission]~~ department. Repayment by the ~~[commission]~~ department will begin following the first certified quarter of completed clinical service in an area designated by the committee;
- F. state that the recipient will charge for professional services at the usual and customary rate prevailing in the area where the services are provided, except that if a person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee;
- G. in providing health services, the participant shall not discriminate against any person on the basis of such person's ability to pay for such services or because payment for the health services provided to such person will be made under the insurance program established under Part A or B of Title XVIII of the Social Security act or under a state plan for medical assistance approved under Title XIX of such act;
- H. the participant will accept assignment under Sections 1842(b)(3)(B)(ii) of the Social Security act for all services for which payment may be under Part B of Title XVIII of such act and enter into an appropriate agreement with the state agency which administers the state plan for medical assistance under Title XIX of such Act to provide services to individuals entitled to medical assistance under the plan;
- I. the award will be terminated if any of the following should occur:
- (1) the participant fails to perform continuous clinical service at the approved facility, unless a change of facility or an interruption in service is approved in advance and in writing by the ~~[commission]~~ department; no interruption in service exceeding six months will be approved;
  - (2) the employment of the participant at an approved location is terminated;
  - (3) the participant loses his/her professional license, board certification or medicaid and/or medicare billing privileges; or
  - (4) the ~~[commission]~~ department deems termination is warranted for any other reasonable cause.
- J. in the event this agreement is terminated by the commission, the commission shall have no obligation to make any further payments to or on behalf of the participant;
- K. penalties as outlined in Section 12; and
- L. shall state that the participant further promises:
- (1) to use the allocated award solely for the purposes of repaying health professional education loans, including principal, interest and related expenses or, where approved by the commission;
  - (2) to be responsible for all tax liabilities incurred in the acceptance of the award; and
  - (3) to complete all necessary reports and requests for loan repayment required by commission and submit them to the commission or its designee on a timely basis.
- [7/15/98; 5.7.3.11 NMAC - Rn & A, 5 NMAC 7.3.11, 7/31/05]

**5.7.3.12 PENALTIES:**

- A. If a program participant does not comply with the terms of the participation agreement, the ~~[commission]~~ department shall assess a penalty of up to three times the amount of award disbursed, plus eighteen percent interest, unless the commission finds acceptable extenuating circumstances for why the participant could not serve and comply with the terms of the provisions. If the commission does not find acceptable extenuating circumstances for the participant's failure to comply, the commission shall require immediate repayment plus the amount of any penalty assessed pursuant to this section.

(1) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorata basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

(2) If the commission does not find acceptable extenuating circumstances for the recipient's failure to carry out his/her declared intent to serve in a designated shortage area in the state, the commission shall require immediate repayment of the award granted to the recipient plus the amount of any penalty assessed pursuant to this subsection.

B. Participants who have signed a participation agreement for two years and fail to complete a quarter of service will not receive a prorated award amount.  
[7/15/98; 5.7.3.12 NMAC - Rn & A, 5 NMAC 7.3.12, 7/31/05]

**5.7.3.13 INELIGIBLE DEBTS:** The following educational debts are not eligible for repayment under this program:

A. amounts incurred as a result of participation in any [~~commission~~] department administered loan-for-service program or other state programs whose purpose states that service be provided in exchange for financial assistance, such as the New Mexico health service corps;

B. scholarships which have a service component/obligation such as the national health service corps scholarship; and

C. personal loans from friends, relatives and other family members, loans which exceed individual standard school expense levels; the committee may consider cases of extenuating circumstances.

[7/15/98; 5.7.3.13 NMAC - Rn & A, 5 NMAC 7.3.13, 7/31/05]

**5.7.3.14 REPORTS:** The [~~commission~~] department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the program activity during the previous years, including the statistics, and analysis of the progress of the Health Professional Loan Repayment Act in meeting the health and medical needs of the citizens of the state.

[7/15/98; 5.7.3.14 NMAC - Rn & A, 5 NMAC 7.3.14, 7/31/05]