

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

# New Mexico Register

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

**Volume XXX - Issue 8 - April 23, 2019**

COPYRIGHT © 2019  
BY  
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

## **The New Mexico Register**

Published by the Commission of Public Records,  
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

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

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

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

# New Mexico Register

Volume XXX, Issue 8

April 23, 2019

## Table of Contents

### Notices of Rulemaking and Proposed Rules

#### ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

##### STATE PARKS DIVISION

Notice of Proposed Rulemaking.....	189
------------------------------------	-----

#### HUMAN SERVICES DEPARTMENT

##### MEDICAL ASSISTANCE DIVISION

Notice of Rulemaking.....	189
---------------------------	-----

#### STATE LAND OFFICE

Notice of Public Hearing.....	190
-------------------------------	-----

Notice of Rulemaking.....	191
---------------------------	-----

---

### Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

#### HUMAN SERVICES DEPARTMENT

##### MEDICAL ASSISTANCE DIVISION

8.200.510 NMAC	A/E	Resource Standards.....	193
8.200.520 NMAC	A/E	Income Standards.....	195
8.291.430 NMAC	A/E	Financial Responsibility Requirements.....	200

#### PUBLIC REGULATION COMMISSION

10.25.3 NMAC	R	Parental Responsibility.....	200
10.25.5 NMAC	R	Fire Prevention and Public Occupancy.....	200
10.25.3 NMAC	N	Parental Responsibility.....	200
10.25.5 NMAC	N	Fire Prevention and Public Occupancy.....	202
10.25.1 NMAC	A	State Fire Marshal - General Provisions.....	206
10.25.6 NMAC	A	Safe Handling and Sale of Fireworks.....	207

#### RACING COMMISSION

15.2.3 NMAC	A	Flat Racing Officials.....	208
15.2.4 NMAC	A	Types of Races.....	209
15.2.5 NMAC	A	Horse Race - Rules of Racing.....	210
15.2.6 NMAC	A	Veterinary Practices, Equine Health, Medication, and Trainer Responsibility.....	212
15.2.7 NMAC	A	Pari Mutuel Wagering.....	214

**REGULATION AND LICENSING DEPARTMENT**

**PODIATRY BOARD**

16.21.1 NMAC	R	Podiatrists - General Provisions.....	216
16.21.3 NMAC	R	License By Exam.....	216
16.21.4 NMAC	R	License By Reciprocity.....	216
16.21.5 NMAC	R	Temporary License And Emergency License.....	216
16.21.8 NMAC	R	Continuing Education.....	216
16.21.10 NMAC	R	Lapse Of License And Reinstatement.....	216
16.21.11 NMAC	R	Disciplinary Proceedings.....	216
16.21.12 NMAC	R	Management Of Medical Records.....	216
16.21.1 NMAC	N	Podiatrists - General Provisions.....	216
16.21.3 NMAC	N	License By Exam.....	218
16.21.4 NMAC	N	License By Reciprocity.....	219
16.21.5 NMAC	N	Temporary License And Emergency License.....	220
16.21.8 NMAC	N	Continuing Education.....	223
16.21.10 NMAC	N	Lapse Of License And Reinstatement.....	225
16.21.11 NMAC	N	Disciplinary Proceedings.....	226
16.21.12 NMAC	N	Management Of Medical Records.....	228

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

13.10.8 NMAC	R	Health Insurance for Seniors.....	230
13.21.2 NMAC	R	Qualifications and Admissions.....	230
13.21.3 NMAC	R	Procedural Rules for Public Rule Hearings.....	230
13.21.4 NMAC	R	Administrative Hearings.....	230
13.21.1 NMAC	N	Patient’s Compensation Fund - General Provisions.....	230
13.21.2 NMAC	N	Qualifications and Admissions.....	232
13.21.3 NMAC	N	Procedural Rules for Public Rule Hearings.....	236
13.21.4 NMAC	N	Administrative Hearings.....	239
13.10.25 NMAC	A	Medicare Supplement Insurance Minimum Standards.....	246

## Notices of Rulemaking and Proposed Rules

### ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

#### NOTICE OF PROPOSED RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division hereby gives notice of the following proposed rulemaking. The State Parks Division proposes to amend its rule, 19.5.2 NMAC, Park Visitor Provisions, by adding a new section, 19.5.2.38 NMAC - Foster Families, and renumber or amend subsequent sections 39, 40, 41, 42 and 43 of 19.5.2 NMAC to reflect the new section 38. The State Parks Division also proposes to amend 19.5.6 NMAC- Park Fees, and 19.5.7 NMAC- Filming in State Parks, to reflect the changes made to 19.5.2 NMAC.

**Purpose of Amendment.** The State Parks Division proposes the amendment to 19.5.2 NMAC to add a new section 19.5.2.38 NMAC to reflect Laws of 2019, Chapter 5, which provides for free day-use admission to state parks for foster parents and children in the custody of foster parents who are New Mexico residents. Eligibility is contingent upon demonstration of proof of identity, residency, and status as a foster parent or child in the custody of a foster parent in accordance with State Parks Division rules.

**Legal Authority.** The State Parks Division proposes this rule amendment under the authority of Law of 2019, Chapter 5, NMSA 1978, Section 16-2-7, and NMSA 1978, Section 9-1-5(E).

**The full text of the proposed rule amendment is available** from Amanda Calderon at (505) 476-3360 or [amanda.calderon@state.nm.us](mailto:amanda.calderon@state.nm.us) or can be viewed on the State Parks Division's website at <http://www.emnrd.state.nm.us/spd/> or at the State

Parks Division's regional offices in Aztec, Carlsbad, Dona Ana, Santa Fe, and Tucumcari or at state park offices.

**Public Hearing and Comment.**

EMNRD will hold a public hearing on the proposed rule amendment on June 11, 2019 at 9 a.m. in Porter Hall, Wendell Chino Building, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505.

Those wishing to comment on the proposed rule amendment may make oral or written comments or submit information at the hearing or may submit written comments by June 11, 2019 at 9 a.m. by mail or email. Please mail written comments to Amanda Calderon, EMNRD, State Parks Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit comments by email to [amanda.calderon@state.nm.us](mailto:amanda.calderon@state.nm.us).

**Technical Information that served as a basis for the proposed rule amendment includes:**

8.26.4 NMAC, Licensing Requirements for Foster and Adoptive Homes

A copy of the technical information can be obtained from Amanda Calderon at (505) 476-3360 or [amanda.calderon@state.nm.us](mailto:amanda.calderon@state.nm.us) or can be viewed on the State Parks Division's website at <http://www.emnrd.state.nm.us/spd>.

**If you are an individual with a disability** who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Amanda Calderon at (505) 476-3377 or through the New Mexico Relay Network at 1-800-659-1779 one week prior to the hearing. Public documents can be provided in various accessible formats. Please contact Amanda Calderon at (505) 476-3360, if a summary or other type of accessible format is needed.

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rules 8.200.510 Medicaid Eligibility-General Recipient Policies, Resource Standards, 8.200.520, Medicaid Eligibility-General Recipient Rules, Income Standards and 8.291.430, Medicaid Eligibility-Affordable Care, Financial Responsibility Requirements in order to implement the Department of Health and Human Services (HHS) updates to the Federal Poverty Level (FPL) income guidelines for the Medical Assistance Program categories of eligibility effective April 1, 2019. The SSI and Spousal Impoverishment standards are being updated due to the annual cost of living increase (COLA) that went into effect January 1, 2019. The Department is re-promulgating these sections of the rules in full within six months of issuance of the emergency rule in accordance with the New Mexico State Rules Act.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: April 23, 2019  
Hearing Date: May 23, 2019  
Adoption Date: COLA Proposed and filed as January 1, 2019. FPL Proposed and filed as April 1, 2019.  
Technical Citations: 42 USC Section 9902 (2), Federal SSI and Spousal Impoverishment Standards, and SSA COLA Fact Sheet

**Summary of Revisions:**  
**8.200.510 NMAC**

Section 11 is amended to reflect the

current COLA for Community Spouse Resource Allowance.

Section 12 is amended to reflect the current COLA for Post-Eligibility Calculation (Medical Care Credit).

Section 13 is amended to reflect the current COLA for Average Monthly Cost of Nursing Facilities for Private Patients.

Section 14 is amended to reflect the current COLA for Resource Amounts for Supplemental Security Income Related Medicare Savings Programs. Section 15 is amended to reflect the COLA for current Excess Home Equity Amount for Long-Term Care Services.

#### **8.200.520 NMAC**

Section 11 is amended to reflect FPL mandates.

Section 12 is amended to reflect the cost of living increase.

Section 13 is amended to reflect the increase in the Federal Benefit Rate.

Section 15 is amended to reflect the increase in SSI living arrangement amounts.

Section 16 is amended to reflect the increase in the monthly income standard for Institutional Care and Home and Community Based Waiver Services categories.

Section 20 is amended to reflect the increase in the covered quarter income standard.

#### **8.291.430 NMAC**

Section 10 is amended to reflect FPL mandates.

The register for these proposed amendments to these rules will be available April 23, 2019 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement COLA rule effective January 1, 2019 and FPL rule effective April 1, 2019. A public

hearing to receive testimony on these proposed rules will be held in Hearing Room 2, Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico on May 23, 2019 at 9 a.m., Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MDT on May 23, 2019. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rules. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

## **STATE LAND OFFICE**

### **NOTICE OF PUBLIC HEARING**

The New Mexico State Land Office ("SLO") will hold a public hearing on Friday, May 24, 2019, at 10:00 a.m., and continuing thereafter as necessary, in Morgan Hall, Room 101, 310 Old Santa Fe Trail, Santa Fe, New Mexico. Any change to the location or time will be posted with a final agenda on the SLO webpage (<http://www.nmstatelands.org>) at least 72 hours prior to the date and time specified above.

The purpose of the hearing is to consider proposed amendments to 19.2.8 NMAC, Sections 9 and 11 to revise the requirements for applications to renew an agricultural lease, in recognition of the fact that the annual rental for grazing land leased under an agricultural lease is, in the absence of competitive bid, determined by the formula set forth in Section 11 of the rule. The proposed change would eliminate the requirement that an application for renewal of a grazing lease include an appraisal, which has involved completion of an obsolete and unnecessary "appraisal" form. In addition, the proposed change would provide a process for redetermination of the carrying capacity for grazing land. The proposed changes would be made pursuant to the authority of the commissioner of public lands to prescribe reasonable rules and regulations governing the conduct of all SLO business. Section 19-1-23 NMSA 1978.

The proposed rule changes are available on the SLO website (<http://nmstatelands.org>) and at the SLO building located at 310 Old Santa Fe Trail, Santa Fe, New Mexico. To request a hard copy, contact Alysha Shaw at (505) 827-5761 or [ashaw@slo.state.nm.us](mailto:ashaw@slo.state.nm.us).

Written comments may be submitted by mail to: Alysha Shaw, New Mexico State Land Office, Attention: Rulemaking Comments, P.O. Box

1148, Santa Fe, New Mexico 87504-1148, or by email to [ashaw@slo.state.nm.us](mailto:ashaw@slo.state.nm.us). Written comments will be accepted until noon on May 23, 2019.

If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Selena Romero by May 17, 2019 at (505) 827-5790 or [sromero@slo.state.nm.us](mailto:sromero@slo.state.nm.us).

---

## STATE LAND OFFICE

### NOTICE OF RULEMAKING

The New Mexico State Land Office (SLO) will hold a public hearing on Friday, May 24, 2019, at 8:30 a.m., and continuing thereafter as necessary, in Morgan Hall, 310 Old Santa Fe Trail, Santa Fe, New Mexico. Any change to the location or time will be posted with a final agenda on the SLO webpage (<http://www.nmstatelands.org>) at least 72 hours prior to the date and time specified above.

The purpose of the hearing is to receive public comments on proposed amendments to the following SLO rules to make all SLO rules gender-neutral, by eliminating use of pronouns “he,” “she,” “his,” “her” or “him” and replacing them with gender-neutral references such as “the Commissioner” or “the applicant”: 19.2.2, 19.2.3, 19.2.4, 19.2.5, 19.2.6, 19.2.7, 19.2.8, 19.2.9, 19.2.10, 19.2.11, 19.2.12, 19.2.13, 19.2.14, 19.2.15, 19.2.16, 19.2.17, 19.2.19, 19.2.21, 19.2.22, 19.2.23, and 19.2.100 NMAC. No other substantive changes are proposed. The Commissioner’s authority to promulgate rules is found in Section 19-1-2, NMSA 1978. The use of “he” in 19.2.8 NMAC, Section 9 will be eliminated and replaced with a gender-neutral reference in the SLO’s counterpart rulemaking proposing amendments to 19.2.8 NMAC, Sections 9 and 11.

The proposed rule changes are available on the SLO website (<http://nmstatelands.org>), the Sunshine Portal (<http://www.sunshineportalnm.com>), at the SLO building located at 310 Old Santa Fe Trail, Santa Fe, New Mexico, and at SLO district offices (see [nmstatelands.org/District\\_Offices.aspx](http://nmstatelands.org/District_Offices.aspx)). To request a hard copy, contact Alysha Shaw at (505) 827-5761 or [ashaw@slo.state.nm.us](mailto:ashaw@slo.state.nm.us).

Written comments may be submitted by mail to: Alysha Shaw, New Mexico State Land Office, Attention: Gender-Neutral Rulemaking Comments, P.O. Box 1148, Santa Fe, New Mexico 87504-1148, or by email to [ashaw@slo.state.nm.us](mailto:ashaw@slo.state.nm.us). Written and email comments will be accepted until noon on Thursday, May 23, 2019.

If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Selena Romero by May 17, 2019 at (505) 827-5790 or [sromero@slo.state.nm.us](mailto:sromero@slo.state.nm.us).

---

## End of Notices of Rulemaking and Proposed Rules



**This Page Intentionally Left Blank**

## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

**This is an amendment to 8.200.510 NMAC, Sections 11-15, effective 4/11/2019.**

#### **8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):**

The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

**A.** Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

**B.** On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

**C.** On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

**D.** On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

**E.** On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

**F.** On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

**G.** On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

**H.** On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

**I.** On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

**J.** On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

**K.** On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

**L.** On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

**M.** On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

**N.** On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

**O.** On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

**P.** On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

**Q.** On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

**R.** On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

**S.** On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

**T.** On or after January 1, 2008, the state minimum is \$31,290

and the federal maximum CSRA is \$104,400.

**U.** On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

**V.** On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**W.** On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

**X.** On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

**Y.** On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

**Z.** On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.

**AA.** On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**BB.** On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

**CC.** On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$120,900.

**DD.** On or after January 1, 2018, the state minimum is \$31,290 and the federal maximum CSRA is \$123,600.

**EE.** On or after January 1, 2019, the state minimum is \$31,290 and the federal maximum CSRA is \$126,420.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019]

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):**

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION	AMOUNT
<b>A. Personal needs allowance for institutionalized spouse:</b>	
(1) July 1, 2018	\$72
(2) July 1, 2017	\$70
<b>B. Minimum monthly maintenance needs allowance (MMMNA):</b>	
(1) July 1, 2018	\$2,058
(2) July 1, 2017	\$2,030
<b>C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:</b>	
<p>(1) If allowable shelter expenses of the community spouse exceeds the minimum allowance then deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.</p>	
(a)	
July 1, 2018	\$617
(b)	
July 1, 2017	\$609
<p>(2) Excess shelter allowance may not exceed the maximum:</p>	
[(a) —	
July 1, 2018	\$1,032
(b) —	
Jan. 1, 2018	\$1,060
(c) —	
July 1, 2017	\$993]
(a) —	
Jan. 1, 2019	\$1,103
(b) —	
July 1, 2018	\$1,032
(c) —	
Jan. 1, 2018	\$1,060
(d) —	
July 1, 2017	\$993

**D.** Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

**E.** Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

**F.** Non-covered medical expenses.

**G.** The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed [~~\$3,090~~ \$3,161. [8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 7/1/2015; A/E, 3/1/2017; A/E. 8/30/2018; A/E, 4/11/2019]

**8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:** Costs of care are based on the date of application registration.

DATE	AVERAGE COST PER MONTH
<b>A.</b> July 1, 1988 - Dec. 31, 1989	\$1,726 per month
<b>B.</b> Jan. 1, 1990 - Dec. 31, 1991	\$2,004 per month
<b>C.</b> Jan. 1, 1992 - Dec. 31, 1992	\$2,217 per month
<b>D.</b> Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$2,377 per month
<b>E.</b> Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
<b>F.</b> Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
<b>G.</b> Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month
<b>H.</b> Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
<b>I.</b> Jan. 1, 1998 - Dec. 31, 1998	\$3,119 per month

<b>J.</b> Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
<b>K.</b> Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
<b>L.</b> Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
<b>M.</b> Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
<b>N.</b> Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
<b>O.</b> Jan. 1, 2004 - Dec. 31, 2004	\$3,899 per month
<b>P.</b> Jan. 1, 2005 - Dec. 31, 2005	\$4,277 per month
<b>Q.</b> Jan. 1, 2006 - Dec. 31, 2006	\$4,541 per month
<b>R.</b> Jan. 1, 2007 - Dec. 31, 2007	\$4,551 per month
<b>S.</b> Jan. 1, 2008 - Dec. 31, 2008	\$4,821 per month
<b>T.</b> Jan. 1, 2009 - Dec. 31, 2009	\$5,037 per month
<b>U.</b> Jan. 1, 2010 - Dec. 31, 2010	\$5,269 per month
<b>V.</b> Jan. 1, 2011 - Dec. 31, 2011	\$5,774 per month
<b>W.</b> Jan. 1, 2012 - Dec. 31, 2012	\$6,015 per month
<b>X.</b> Jan. 1, 2013 - Dec. 31, 2013	\$6,291 per month
<b>Y.</b> Jan. 1, 2014 - Dec. 31, 2014	\$6,229 per month
<b>Z.</b> Jan. 1, 2015 - Dec. 31, 2015	\$6,659 per month
<b>AA.</b> Jan. 1, 2016 - Dec. 31, 2016	\$7,786 per month
<b>BB.</b> Jan. 1, 2017 - Dec. 31, 2017	\$7,485 per month

**CC.** Jan. 1, 2018 - Dec. 31, 2018 \$7,025 per month  
**DD.** Jan. 1, 2019 \$7,285 per month  
 [8.200.510.13 NMAC - Rp, 8.200.510.13 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019]

**8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE [SAVINGS] PROGRAMS (QMB, SLIMB/QI1 AND QD):** The following resource standards are inclusive of the \$1,500 per person burial exclusion.

**A. Individual:**  
 Jan. 1, 2019 \$9,230  
 [~~(1)~~] Jan. 1, 2018 \$9,060  
 [~~(2)~~] Jan. 1, 2017 \$8,890  
**B. Couple:** Jan. 1, 2019 \$14,600  
 [~~(1)~~] Jan. 1, 2018 \$14,340  
 [~~(2)~~] Jan. 1, 2017 \$14,090  
 [8.200.510.14 NMAC - Rp, 8.200.510.14 NMAC, 7/1/2015; A/E, 8/30/2018; A/E, 4/11/2019]

**8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:**

**A.** Jan. 2019 \$585,000  
 [~~(A)~~] **B.** Jan. 2018 \$572,000  
 [~~(B)~~] **C.** Oct. 2017 \$560,000  
 [~~(C)~~] **D.** Jan. 2017 \$840,000  
 [~~(D)~~] **E.** Jan. 2016 \$828,000  
 [~~(E)~~] **F.** Jan. 2015 \$828,000  
 [~~(F)~~] **G.** Jan. 2014 \$814,000  
 [~~(G)~~] **H.** Jan. 2013 \$802,000  
 [~~(H)~~] **I.** Jan. 2012 \$786,000  
 [~~(I)~~] **J.** Jan. 2011

\$758,000  
 [~~(J)~~] **K.** Jan. 2010 \$750,000  
 [8.200.510.15 NMAC - Rp, 8.200.510.15 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A, 3/1/2018; A/E, 8/30/2018; A/E, 4/11/2019]

**HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION**

**This is an amendment to 8.200.520 NMAC, Sections 11-13, 15, 16 and 20, effective April 11, 2019.**

**8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:**

**A.** One hundred percent federal poverty limits (FPL):  
 Size of budget FPL per group month  
 1 \$1,012  
 2 \$1,372  
 3 \$1,732  
 4 \$2,092  
 5 \$2,452  
 6 \$2,812  
 7 \$3,172  
 8 \$3,532  
 \$1,041  
 \$1,410  
 \$1,778  
 \$2,146  
 \$2,515  
 \$2,883  
 \$3,251  
 \$3,620

Add \$[360] \$369 for each additional person in the budget group.  
 \*Use only these two standards for the qualified medicare beneficiary (QMB) program.

**B.** One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient Amount  
 1 Individual At least \$[1,012] \$1,041 per month but no more than \$[1,214] \$1,249 per month.

2 Couple At least \$[1,372] \$1,410 per month but no more than \$[1,646] \$1,691 per month.  
 For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

**C.** One hundred thirty-three percent FPL:

Size of budget FPL per group month  
 1 \$1,346  
 \$1,385  
 2 \$1,825  
 \$1,875  
 3 \$2,304  
 \$2,365  
 4 \$2,782  
 \$2,854  
 5 \$3,261  
 \$3,344  
 6 \$3,740  
 \$3,834  
 7 \$4,219  
 \$4,324  
 8 \$4,698  
 \$4,814

Add \$[479] \$490 for each additional person in the budget group.

**D.** One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified individual 1 (QI1) applicant or eligible recipient. For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient Amount  
 1 Individual At least \$[1,214] \$1,249 per month but no more than \$[1,366] \$1,406 per month.  
 2 Couple At least \$[1,646] \$1,691 per month but no more than \$[1,852] \$1,903 per month.

**E.** One hundred eighty-five percent FPL:

Size of budget FPL per group month  
 1 \$1,872  
 \$1,926  
 2 \$2,538  
 \$2,607

3	[\$3,204]	<b>H.</b>	Two hundred fifty
<u>\$3,289</u>		percent FPL:	
4	[\$3,870]	Size of budget	FPL per
<u>\$3,970</u>		group	month
5	[\$4,536]	1	[\$2,530]
<u>\$4,652</u>		<u>\$2,603</u>	
6	[\$5,202]	2	[\$3,430]
<u>\$5,333</u>		<u>\$3,523</u>	
7	[\$5,868]	3	[\$4,330]
<u>\$6,015</u>		<u>\$4,444</u>	
8	[\$6,534]	4	[\$5,230]
<u>\$6,696</u>		<u>\$5,365</u>	
Add [\$666] \$681 for each		5	[\$6,130]
additional person in the budget group.		<u>\$6,286</u>	
<b>F.</b> Two hundred		6	[\$7,030]
percent FPL:		<u>\$7,207</u>	
Size of budget	FPL per	7	[\$7,930]
group	month	<u>\$8,128</u>	
1	[\$2,024]	8	[\$8,830]
<u>\$2,082</u>		<u>\$9,048</u>	
2	[\$2,744]	Add [\$900] \$920 for each	
<u>\$2,819</u>		additional person in the budget group.	
3	[\$3,464]	[8.200.520.11 NMAC - Rp,	
<u>\$3,555</u>		8.200.520.11 NMAC, 8/28/2015;	
4	[\$4,184]	A/E, 4/1/2016; A/E, 9/14/2017;	
<u>\$4,292</u>		A, 2/1/2018; A/E, 5/17/2018; A,	
5	[\$4,904]	9/11/2018; A/E, 4/11/2019]	
<u>\$5,029</u>			
6	[\$5,624]	<b>8.200.520.12 COST OF</b>	
<u>\$5,765</u>		<b>LIVING ADJUSTMENT (COLA)</b>	
7	[\$6,344]	<b>DISREGARD COMPUTATION:</b>	
<u>\$6,502</u>		The countable social security benefit	
8	[\$7,064]	without the COLA is calculated using	
<u>\$7,239</u>		the COLA increase table as follows:	
Add [\$720] \$737 for each		<b>A.</b> divide the current	
additional person in the budget group.		gross social security benefit by the	
<b>G.</b> Two hundred thirty-		COLA increase in the most current	
five percent FPL:		year; the result is the social security	
Size of budget	FPL per	benefit before the COLA increase;	
group	month	<b>B.</b> divide the result	
1	[\$2,378]	from Subsection A above by the	
<u>\$2,446</u>		COLA increase from the previous	
2	[\$3,224]	period or year; the result is the social	
<u>\$3,312</u>		security benefit before the increase for	
3	[\$4,070]	that period or year; and	
<u>\$4,178</u>		<b>C.</b> repeat Subsection B	
4	[\$4,916]	above for each year, through the year	
<u>\$5,043</u>		that the applicant or eligible recipient	
5	[\$5,762]	received both social security benefits	
<u>\$5,909</u>		and supplemental security income	
6	[\$6,608]	(SSI); the final result is the countable	
<u>\$6,774</u>		social security benefit.	
7	[\$7,454]		
<u>\$7,640</u>			
8	[\$8,300]		
<u>\$8,506</u>			
Add [\$846] \$866 for each			
additional person in the budget group.			

This Column Intentionally  
Left Blank

COLA Increase and disregard table			
	Period and year	COLA increase	= benefit before
<u>1</u>	2019 Jan - Dec	2.8	Jan 19
<del>[1]</del> <u>2</u>	2018 Jan - Dec	2.0	Jan 18
<del>[2]</del> <u>3</u>	2017 Jan - Dec	0.3	Jan 17
<del>[3]</del> <u>4</u>	2016 Jan - Dec	0	Jan 16
<del>[4]</del> <u>5</u>	2015 Jan - Dec	1.017	Jan 15
<del>[5]</del> <u>6</u>	2014 Jan - Dec	1.015	Jan 14
<del>[6]</del> <u>7</u>	2013 Jan - Dec	1.017	Jan 13
<del>[7]</del> <u>8</u>	2012 Jan - Dec	1.037	Jan 12
<del>[8]</del> <u>9</u>	2011 Jan - Dec	0	Jan 11
<del>[9]</del> <u>10</u>	2010 Jan - Dec	1	Jan 10
<del>[10]</del> <u>11</u>	2009 Jan - Dec	1	Jan 09
<del>[11]</del> <u>12</u>	2008 Jan - Dec	1.058	Jan 08
<del>[12]</del> <u>13</u>	2007 Jan - Dec	1.023	Jan 07
<del>[13]</del> <u>14</u>	2006 Jan - Dec	1.033	Jan 06
<del>[14]</del> <u>15</u>	2005 Jan - Dec	1.041	Jan 05
<del>[15]</del> <u>16</u>	2004 Jan - Dec	1.027	Jan 04
<del>[16]</del> <u>17</u>	2003 Jan - Dec	1.021	Jan 03
<del>[17]</del> <u>18</u>	2002 Jan - Dec	1.014	Jan 02
<del>[18]</del> <u>19</u>	2001 Jan - Dec	1.026	Jan 01
<del>[19]</del> <u>20</u>	2000 Jan - Dec	1.035	Jan 00
<del>[20]</del> <u>21</u>	1999 Jan - Dec	1.025	Jan 99
<del>[21]</del> <u>22</u>	1998 Jan - Dec	1.013	Jan 98
<del>[22]</del> <u>23</u>	1997 Jan - Dec	1.021	Jan 97
<del>[23]</del> <u>24</u>	1996 Jan - Dec	1.029	Jan 96
<del>[24]</del> <u>25</u>	1995 Jan - Dec	1.026	Jan 95
<del>[25]</del> <u>26</u>	1994 Jan - Dec	1.028	Jan 94
<del>[26]</del> <u>27</u>	1993 Jan - Dec	1.026	Jan 93
<del>[27]</del> <u>28</u>	1992 Jan - Dec	1.03	Jan 92
<del>[28]</del> <u>29</u>	1991 Jan - Dec	1.037	Jan 91
<del>[29]</del> <u>30</u>	1990 Jan - Dec	1.054	Jan 90
<del>[30]</del> <u>31</u>	1989 Jan - Dec	1.047	Jan 89
<del>[31]</del> <u>32</u>	1988 Jan - Dec	1.04	Jan 88
<del>[32]</del> <u>33</u>	1987 Jan - Dec	1.042	Jan 87
<del>[33]</del> <u>34</u>	1986 Jan - Dec	1.013	Jan 86

<del>[34]</del> 35	1985 Jan - Dec	1.031	Jan 85
<del>[35]</del> 36	1984 Jan - Dec	1.035	Jan 84
<del>[36]</del> 37	1982 Jul - 1983 Dec	1.035	Jul 82
<del>[37]</del> 38	1981 Jul - 1982 Jun	1.074	Jul 81
<del>[38]</del> 39	1980 Jul - 1981 Jun	1.112	Jul 80
<del>[39]</del> 40	1979 Jul - 1980 Jun	1.143	Jul 79
<del>[40]</del> 41	1978 Jul - 1979 Jun	1.099	Jul 78
<del>[41]</del> 42	1977 Jul - 1978 Jun	1.065	Jul 77
<del>[42]</del> 43	1977 Apr - 1977 Jun	1.059	Apr 77

[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019]

### 8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):

Year	Individual FBR	Institution FBR	Individual VTR	Couple FBR	Institution FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33
1/13 to 1/14	\$710	\$30	\$237	\$1,066	\$60	\$355
1/14 to 1/15	\$721	\$30	\$240	\$1082	\$60	\$361
1/15 to 12/15	\$733	\$30	\$244	\$1,100	\$60	\$367
1/16 to 12/16	\$733	\$30	\$244	\$1,100	\$60	\$367
1/17 to 12/17	\$735	\$30	\$245	\$1,103	\$60	\$368
1/18 to 12/18	\$750	\$30	\$250	\$1,125	\$60	\$375
1/19 to 12/19	\$771	\$30	\$257	\$1,157	\$60	\$386

- A.** Ineligible child deeming allocation is [~~\$350.00~~] \$386.
- B.** Part B premium is [~~\$134.00~~] \$135.50 per month.
- C.** VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on his or her own household but receiving support and maintenance from others.
- D.** The SSI resource standard is \$2000 for an individual and \$3000 for a couple.  
[8.200.520.13 NMAC - Rp, 8.200.520.13 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019]

**8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:**

- A.** Individual living in his or her own household who own or rent:  
Payment amount: [~~\$750~~] \$771 Individual  
[~~\$1,125~~] \$1,157 Couple
- B.** Individual receiving support and maintenance payments: For an individual or couple living in his or her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).  
Payment amount: [~~\$750~~] \$771 - [~~\$250~~] \$257 = [~~\$500~~] \$514 Individual  
[~~\$1,125~~] \$1,157 - [~~\$375~~] \$386 = [~~\$750~~] \$771 Couple
- C.** Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his or her pro-rata share of household expenses, subtract the VTR.  
Payment amount: [~~\$750~~] \$771 - [~~\$250~~] \$257 = [~~\$500~~] \$514 Individual  
[~~\$1,125~~] \$1,157 - [~~\$375~~] \$386 = [~~\$750~~] \$771 Couple
- D.** Child living in home with his or her parent:  
Payment amount: [~~\$750~~] \$771
- E.** Individual in institution:  
Payment amount: \$30.00

[8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019]

**8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS) CATEGORIES:** Effective January 1, [~~2017~~] 2019, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$2,250~~] \$2,313.

[8.200.520.16 NMAC - Rp, 8.200.520.16 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019]

**8.200.520.20 COVERED QUARTER INCOME STANDARD:**

Date	Calendar Quarter Amount
<u>Jan. 2019 - Dec. 2019</u>	<u>\$1,360 per calendar quarter</u>
Jan. 2018 - Dec. 2018	\$1,320 per calendar quarter
Jan. 2017 - Dec. 2017	\$1,300 per calendar quarter
Jan. 2016 - Dec. 2016	\$1,260 per calendar quarter
Jan. 2015 - Dec. 2015	\$1,220 per calendar quarter
Jan. 2014 - Dec. 2014	\$1,200 per calendar quarter
Jan. 2013 - Dec. 2013	\$1,160 per calendar quarter
Jan. 2012 - Dec. 2012	\$1,130 per calendar quarter
Jan. 2011 - Dec. 2011	\$1,120 per calendar quarter
Jan. 2010 - Dec. 2010	\$1,120 per calendar quarter
Jan. 2009 - Dec. 2009	\$1,090 per calendar quarter
Jan. 2008 - Dec. 2008	\$1,050 per calendar quarter
Jan. 2007 - Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 - Dec. 2006	\$970 per calendar quarter
Jan. 2005 - Dec. 2005	\$920 per calendar quarter
Jan. 2004 - Dec. 2004	\$900 per calendar quarter
Jan. 2003 - Dec. 2003	\$890 per calendar quarter
Jan. 2002 - Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rp, 8.200.520.20 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 03/01/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019]



**HUMAN SERVICES DEPARTMENT  
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.291.430 NMAC, Section 10, effective 4/11/2019.

**8.291.430.10 FEDERAL POVERTY LEVEL (FPL):** This part contains the monthly federal poverty level table for use in determining monthly income standards for MAP categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[\$1,012] \$1,041	[\$1,346] \$1,385	[\$1,397] \$1,437	[\$1,923] \$1,978	[\$2,428] \$2,498	[\$2,530] \$2,603	[\$3,035] \$3,123
2	[\$1,372] \$1,410	[\$1,825] \$1,875	[\$1,893] \$1,945	[\$2,607] \$2,678	[\$3,292] \$3,382	[\$3,430] \$3,523	[\$4,115] \$4,228
3	[\$1,732] \$1,778	[\$2,304] \$2,365	[\$2,390] \$2,453	[\$3,291] \$3,378	[\$4,156] \$4,266	[\$4,330] \$4,444	[\$5,195] \$5,333
4	[\$2,092] \$2,146	[\$2,782] \$2,854	[\$2,887] \$2,962	[\$3,975] \$4,078	[\$5,020] \$5,150	[\$5,230] \$5,365	[\$6,275] \$6,438
5	[\$2,452] \$2,515	[\$3,261] \$3,344	[\$3,384] \$3,470	[\$4,659] \$4,777	[\$5,884] \$6,034	[\$6,130] \$6,286	[\$7,355] \$7,543
6	[\$2,812] \$2,883	[\$3,740] \$3,834	[\$3,881] \$3,978	[\$5,343] \$5,477	[\$6,748] \$6,918	[\$7,030] \$7,207	[\$8,435] \$8,648
7	[\$3,172] \$3,251	[\$4,219] \$4,324	[\$4,377] \$4,487	[\$6,027] \$6,177	[\$7,612] \$7,802	[\$7,930] \$8,128	[\$9,515] \$9,753
8	[\$3,532] \$3,620	[\$4,698] \$4,814	[\$4,874] \$4,995	[\$6,711] \$6,877	[\$8,476] \$8,686	[\$8,830] \$9,048	[\$10,595] \$10,858
+1	[\$360] \$369	[\$479] \$490	[\$497] \$508	[\$684] \$700	[\$864] \$884	[\$900] \$920	[\$1,080] \$1,105

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019]

**PUBLIC REGULATION  
COMMISSION**

The Public Regulation Commission approved, at its 3/22/2019 hearing, to repeal its rule 10 NMAC 25.3 - Parental responsibility (filed 5/9/1997) and replace it with 10.25.3 NMAC - Parental responsibility, adopted on 4/3/2019 and effective 4/23/2019.

The Public Regulation Commission approved at its 3/22/2019 hearing to repeal its rule 10.25.5 NMAC - Fire prevention and public occupancy (filed 11/1/2007) and replace it with 10.25.5 NMAC - Fire prevention and public occupancy, adopted on 4/3/2019 and effective 4/23/2019.

**PUBLIC REGULATION  
COMMISSION**

**TITLE 10 PUBLIC SAFETY  
AND LAW ENFORCEMENT  
CHAPTER 25 STATE FIRE  
MARSHAL  
PART 3 PARENTAL  
RESPONSIBILITY**

**10.25.3.1 ISSUING**  
**AGENCY:** New Mexico Public Regulation Commission, State Fire Marshal Division, Post Office Box 1269, Santa Fe, NM 87504-1269.  
[10.25.3.1 NMAC -Rp, 10 NMAC 25.3.1, 4/23/2019]

**10.25.3.2 SCOPE:** This rule applies to all persons required to have a license issued by the state fire marshal in order to sell fireworks.  
[10.25.3.2 NMAC - Rp, 10 NMAC 25.3.2, 4/23/2019]

**10.25.3.3 STATUTORY  
AUTHORITY:** Section 40-5A-9  
NMSA 1978.

[10.25.3.3 NMAC - Rp, 10 NMAC 25.3.3, 4/23/2019]

**10.25.3.4 DURATION:**  
Permanent.  
[10.25.3.4 NMAC - Rp, 10 NMAC 25.3.4, 4/23/2019]

**10.25.3.5 EFFECTIVE  
DATE:** April 23, 2019, unless a later date is cited at the end of a section or paragraph.  
[10.25.3.5 NMAC - Rp, 10 NMAC 25.3.5, 4/23/2019]

**10.25.3.6 OBJECTIVE:**  
The purpose of this rule is to implement the requirements of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, as they apply to the issuance, renewal,

suspension or revocation of fireworks vendor licenses.

[10.25.3.6 NMAC - Rp, 10 NMAC 25.3.6, 4/23/2019]

#### **10.25.3.7 DEFINITIONS:**

All terms defined in the Parental Responsibility Act shall have the same meanings in this rule unless defined below.

**A. HSD** means the New Mexico human services department.

**B. License** means a display distributor, distributor, manufacturer, retailer, specialty retailer or wholesaler license issued to an individual pursuant to the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978.

**C. Statement of compliance** means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support.

**D. Statement of non-compliance** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[10.25.3.7 NMAC - Rp, 10 NMAC 25.3.7, 4/23/2019]

#### **10.25.3.8 SANCTIONS:**

If an applicant or licensee is not in compliance with a judgment and order for support, the state fire marshal shall:

- A.** deny an application for a license;
- B.** deny the renewal of a license;
- C.** have grounds for suspension or revocation of a license.

[10.25.3.8 NMAC - Rp, 10 NMAC 25.3.8, 4/23/2019]

#### **10.25.3.9 CERTIFIED LIST:**

**A. Receipt of certified list from HSD:** Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the state fire marshal shall match the certified list

of obligors against the current list of applicants and licensees. By the end of the month in which the certified list of obligors is received from HSD, the state fire marshal shall report to HSD the names of applicants and licensees who are on the certified list of obligors and the action the state fire marshal has taken in connection with such applicants and licensees.

**B. Receipt of application:** Upon the later receipt of an application for license or renewal, the state fire marshal shall match the applicant against the most recent certified list of obligors.

[10.25.3.9 NMAC - Rp, 10 NMAC 25.3.9, 4/23/2019]

#### **10.25.3.10 INITIAL NOTICE:**

**A. Notification by letter:** Upon determination that an applicant or licensee appears on HSD's certified list of obligors, the state fire marshal shall notify the applicant or licensee by letter that the applicant or licensee must provide the state fire marshal with a subsequent statement of compliance within 30 days of the date the state fire marshal mailed the notification.

**B. Contents of letter:** The notice letter to applicants and licensees shall advise that failure to timely provide the statement of compliance shall result in commencement of a formal hearing brought by the state fire marshal before the state fire board for rejection of an application or suspension or revocation of an issued license as provided in 10.25.3.11 NMAC.

**C. Retailer permits:** In order to ensure compliance with the Parental Responsibility Act, every distributor, wholesaler, or manufacturer, before issuing retail permits to individuals, must receive a letter of clearance from the state fire marshal or his designee, stating that the individual applicant is not on the HSD certified list of obligors in violation of a child support judgment and order. Retail permits issued by distributors, wholesalers, and manufacturers to individuals are invalid without state fire marshal's

clearance being attached and available for display. Telefaxed transmission of the state fire marshal's clearance letter is permissible.

[10.25.3.10 NMAC - Rp, 10 NMAC 25.3.10, 4/23/2019]

#### **10.25.3.11 PROCEEDING TO REJECT APPLICATION OR TO SUSPEND OR REVOKE LICENSE:**

If an applicant or licensee fails to respond to the initial notice as required by 10.25.3.10 NMAC, the state fire marshal shall file and serve a complaint upon the applicant or licensee. If the state fire marshal's complaint for rejection of an application or suspension or revocation of a license is based solely on the respondent's failure to comply with a judgment and order of support, and there are no additional grounds based on violations of the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978, the complaint shall state:

**A.** the grounds for the state fire marshals proposed action, and

**B.** that a hearing shall be held before the state fire board at least 30 days after the date the complaint is mailed, unless the respondent applicant or licensee provides the state fire marshal with a statement of compliance prior to the hearing date.

[10.25.3.11 NMAC - Rp, 10 NMAC 25.3.11, 4/23/2019]

#### **10.25.3.12 EVIDENCE AND PROOF:**

In any hearing under 10.25.3.11 NMAC, relevant evidence is limited to the accuracy or veracity of the statement of non-compliance. The statement of non-compliance is conclusive evidence requiring the state fire marshal to take the rejection, suspension or revocation action under 10.25.3.11 NMAC, and is rebuttable only with a subsequent statement of compliance. Upon presentation of the subsequent statement of compliance, the state fire marshal shall dismiss the rejection, suspension or revocation action if it is based solely upon licensee or permittees failure to comply with a judgment and order for

support.

[10.25.3.12 NMAC - Rp, 10 NMAC 25.3.12, 4/23/2019]

**10.25.3.13 ORDER:** When an action to reject an application or suspend or revoke a license or permit is taken by the state fire marshal solely because the applicant, licensee or permittee is not in compliance with a judgment and order for support, the final order shall state that:

**A.** in application rejection actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

**B.** in suspension actions, the respondent may be reinstated for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

**C.** in revocation actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal.

[10.25.3.13 NMAC - Rp, 10 NMAC 25.3.13, 4/23/2019]

**10.25.3.14 PROCEDURES:** Proceedings and administrative hearings held pursuant to this rule shall be governed by Section 60-2C-11 NMSA 1978 and the New Mexico public regulation commission rules of procedure.

[10.25.3.14 NMAC - Rp. 1- NMAC 25.3.14, 04/23/19]

**HISTORY OF 10.25.3 NMAC:**

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as: SCC Rule 95-03-FM, Parental Responsibility Act Rule, filed 10/18/95.

**History of Repealed Material:**

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed (5/9/1997) effective 4/23/2019.

**NMAC History:**

10 NMAC 25. 3, State Fire Marshal - Parental Responsibility filed

(5/9/1997) was replaced by 10.25.3 NMAC State Fire Marshal - Parental Responsibility, effective 4/23/2019

**PUBLIC REGULATION COMMISSION**

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT  
CHAPTER 25 STATE FIRE MARSHAL  
PART 5 FIRE PREVENTION AND PUBLIC OCCUPANCY**

**10.25.5.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
[10.25.5.1 NMAC - Rp, 10.25.1 NMAC, 4/23/2019]

**10.25.5.2 SCOPE:**  
**A.** This rule applies to structures, processes, premises and safeguards regarding:

**(1)** the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices;

**(2)** conditions hazardous to life, property or public welfare in the occupancy of structures or premises;

**(3)** fire hazards in the structure or on the premises from occupancy or operation;

**(4)** matters related to the construction, extension, repair, alteration or removal of fire protection systems; and

**(5)** conditions affecting the safety of firefighters and emergency responders during emergency operations.

**B.** This rule does not apply to detached, -single, -double, or -three family dwellings.

**C.** Other agencies have adopted rules that may apply and that are not affected by these rules.

**(1)** CID has adopted rules for housing and construction that include provisions on fire prevention in Title 14, Chapters 5 through 10 NMAC.

**(2)** The environmental improvement board

has adopted rules for aboveground and underground storage tanks containing petroleum or hazardous substances and rules governing hazardous waste administered by the environment department in Title 20, Chapter 5 NMAC.

**(3)** The board of licensure for professional engineers and surveyors has adopted rules for the design of fire protection and alarm systems in Title 16, Chapter 39 NMAC.

**D.** AHJs may adopt fire protection requirements that are more stringent or comprehensive than 10.25.5 NMAC, as long as the requirements do not conflict with these rules.

[10.25.5.2 NMAC - Rp, 10.25.5.2 NMAC, 4/23/2019]

**10.25.5.3 STATUTORY AUTHORITY:** Sections 8-8-21, 59A-52-15, and 59A-52-16 NMSA 1978.

[10.25.5.3 NMAC - Rp, 10.25.5.3 NMAC, 4/23/2019]

**10.25.5.4 DURATION:** Permanent.

[10.25.5.4 NMAC - Rp, 10.25.5.4 NMAC, 4/23/2019]

**10.25.5.5 EFFECTIVE DATE:** April 23, 2019 unless a later date is cited at the end of a section.

[10.25.5.5 NMAC - Rp, 10.25.5.5 NMAC, 4/23/2019]

**10.25.5.6 OBJECTIVE:** The purpose of this rule is to prescribe minimum requirements for the operation and maintenance of buildings and structures necessary to reasonably protect life and property from the hazards created by fire, explosion, and similar emergencies.  
[10.25.5.6 NMAC - Rp, 10.25.5.6 NMAC, 4/23/2019]

**10.25.5.7 DEFINITIONS:** In addition to the definitions in 10.25.1 NMAC:

**A.** fire code official shall have the meaning provided in Section 202 of the IFC;

**B.** IFC means the international fire code, 2015 edition,

published by the international code council, inc. and available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795;

**C. NFPA 1** means the fire prevention code, 1997 edition, published by the national fire protection association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101;

**D. NFPA 101** means the life safety code, 1997 edition, published by the national fire protection association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101; and [10.25.5.7 NMAC - Rp, 10.25.5.7 NMAC, 4/23/2019]

**10.25.5.8 ADOPTION OF NATIONAL STANDARD:** The fire marshal adopts and incorporates by reference IFC as revised in this rule. In this rule, revisions are numbered to correspond with the numbering of the IFC and further amend such section of the IFC. All references in the IFC to the International Mechanical Code mean the New Mexico Mechanical Code. All references in the IFC to the International Plumbing Code mean the New Mexico Plumbing Code. [10.25.5.8 NMAC - Rp, 10.25.5.8 NMAC, 4/23/2019]

**10.25.5.9 CHAPTER 1 ADMINISTRATION:**

**A. Section 101 General.**

**(1) Section 101.1 Title.** Insert in brackets: New Mexico.

**(2) Section 101.2 Scope.** This section of the IFC shall not apply. 10.25.5.2 NMAC defines the scope of this rule.

**(3) Section 101.2.1 Appendices.** The appendices of the IFC shall not apply, except where adopted by an AHJ.

**B. Section 104 General authority and responsibilities.** If Section 104.6

(official records) or any other provision of the IFC conflicts with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, the provisions of the Inspection of Public Records Act shall control.

**C. Section 105 permits.** Section 105.6, required operational permits of the IFC shall not apply. Section 105.7.2 through 105.7.5 shall not apply. Section 105.7.8 through 105.7.16 shall not apply. Section 105.7.18 shall not apply. These rules do not affect the requirements imposed by those counties and municipalities with concurrent jurisdiction that require permits relating to fire protection. The fire marshal issues only the following permits with the following exceptions.

**(1) Permits and licenses for fireworks.** The fire marshal requires permits and licenses for fireworks as provided in 10.25.6 NMAC.

**(2) Certificates of fitness.** The fire marshal requires certificates of fitness for the installation, inspection, maintenance and repair of fire protection systems as provided in 10.25.2 NMAC.

**(3) Section 105.3 Conditions of a Permit.** This section is deleted in its entirety and replaced with the following language: "105.3 conditions of a permit. Such permission, if granted in Section 105.1.2.2, shall not be construed as authority to violate, cancel or set aside any other provisions of this code or other applicable regulations or laws of the jurisdiction."

**(4) Section 105.4.1 Construction documents:** submittals. This section is deleted in its entirety and replaced with the following language:

**(a)** Two sets of construction documents shall be submitted.

**(b)** All construction documents shall be submitted with the applicant's certificate of fitness number, permit application and permit number or

building official unique identifier and shall comply with the approval process provided in 10.25.5.16 NMAC.

**D. Section 106.2.2** Insert "when required" after "fire code official" at the end of the last sentence of this section.

**E. Section 108 Board of appeals.** This section of the IFC shall not apply. The appeal processes provided in Sections 59A-52-21 and 59A-52-22 NMSA 1978 shall apply and may be initiated by filing an appeal as provided in 10.25.1.NMAC.

**F. Section 109 Violations.** The penalties in section 109.4 of the IFC shall not apply in New Mexico. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

**G. Section 111 Stop work order.** The penalties in section 111.4 of the IFC shall not apply. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

**H. Section 113 Fees.** This section of the IFC shall not apply. [10.25.5.9 NMAC - Rp, 10.25.5.9, 4/23/2019]

**10.25.5.10 CHAPTER 2 DEFINITIONS:**

**A.** Unless defined by the fire marshal in Title 10 NMAC or by CID in Title 14 NMAC, terms used herein shall have the definition provided in Chapter 2 of the IFC. Where a term is defined by the fire marshal, the fire marshal's definition shall supersede all other definitions. Where a term is not defined by the fire marshal, but is defined by CID in Title 14 NMAC, the CID definition shall apply.

**B. Section 202 General Definitions.** The definition of "record drawings" is deleted in its entirety and replaced with the following language: "record drawings" means "as built" that document the location of all appurtenances of fire protection systems.

[10.25.5.10 NMAC - Rp, 10.25.5.10 NMAC, 4/23/2019]

**10.25.5.11 CHAPTER 3  
GENERAL REQUIREMENTS:**

**A. Section 301.1**

**Scope.** This section applies as mandated by the local AHJ.

**B. Section 301.2**

**Permits.** Permits shall only and to the extent mandated by the local AHJ.

**C. Section 304.1.2**

**Vegetation.** This section applies to the extent mandated by the local AHJ.

**D. Section 307, Open burning, recreational fires and portable outdoor fireplaces.** This section of the IFC applies only and to the extent mandated by the local AHJ.

**E. Section 308.3**

**Group A Occupancies Exception #2.** Delete the word "international" and replace with the word "New Mexico". [10.25.5.11 NMAC - N, 4/23/2019]

**10.25.5.12 CHAPTER 4  
EMERGENCY PLANNING AND  
PREPAREDNESS:**

**Section 405.5 Record keeping, item number 7.** Item number 7 is deleted and replaced with the following language: "Problems encountered and corrective actions for the problems encountered." [10.25.5.12 NMAC - Rp, 10.25.5.11 NMAC, 4/23/2019]

**10.25.5.13 CHAPTER 6  
BUILDING SERVICES AND  
SYSTEMS:** Amend section 603.9 to add "if required by the fire code official" at the end of the section. [10.25.5.13 NMAC - Rp, 10.25.5.12 NMAC, 4/23/2019]

**10.25.5.14 CHAPTER 9  
FIRE PROTECTION SYSTEMS:  
Throughout chapter 9, the following  
shall apply:**

**A.** Delete the term "International Mechanical Code" where used in this chapter and replace with the term "New Mexico Mechanical Code".

**B.** Delete the term "International Plumbing Code" where used in this chapter and replace with the term "New Mexico Plumbing Code".

**C. Section 904.12  
Commercial cooking systems.**

The exception described in Section 904.12 of the IFC shall not apply. The replacement of commercial cooking equipment, including but not limited to a stove, hood, deep fryer, grill, griddle, or any other device used in the cooking process, requires the simultaneous installation of an automatic fire suppression system.

**D. Section 905.3.4.1  
Hose and Cabinet.** Insert the following sentence at the end of this section, "Unless required by a fire code official, one and one-half inch hoses and hose cabinets are not required for class II and class III standpipe systems. [10.25.5.14 NMAC - Rp, 10.25.5.13 NMAC, 4/23/2019]

**10.25.5.15 CHAPTER  
10 MEANS OF EGRESS:** This chapter of the IFC applies, except Table 1004.1.2 is amended to add the following: "New and existing correctional facilities and detention centers: the occupant load for which the means of egress is calculated by the maximum number of persons intended to occupy the floor or area, shall be no less than 60 square feet of gross floor area per person". [10.25.5.15 NMAC - Rp, 10.25.5.14 NMAC, 4/23/2019]

**10.25.5.16 CHAPTER  
56 EXPLOSIVES AND  
FIREWORKS:** This chapter of the IFC and 10.25.6 NMAC apply to fireworks. If there is any conflict between this chapter of the IFC and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978, the Fireworks Licensing and Safety Act shall control. [10.25.5.16 NMAC - N, 4/23/2019]

**10.25.5.17 REPEAL OF  
CODES:** NFPA 1 and NFPA 101 are repealed except as provided in 10.25.5.17 NMAC. [10.25.5.17 NMAC - Rp, 10.25.5.16 NMAC, 4/23/2019]

**10.25.5.18 APPROVAL OF  
FIRE PROTECTION SYSTEMS:** Prior to beginning construction

or occupancy of any building or structure regulated by the IFC, the owner shall apply for approval from the fire marshal or AHJ, whichever is applicable, of a fire protection system for the building or structure. The review and approval of fire protection systems is in addition to any review required by CID in Title 14 of the New Mexico administrative code.

**A. Filing drawings for review.**

**(1) Documents required.** The owner shall submit two sets of shop drawings for the building or structure. For his own convenience, an owner may submit additional sets of drawings and an envelope with prepaid postage for the fire marshal's use in returning the drawings after review. Electronic filing of fire protection plans (shop drawings) will be accepted via electronic plans review software that is compatible with software used by the New Mexico state fire marshal division. The state fire marshal division shall keep a copy of all submitted file drawings for 20 years.

**(2) Where to submit.** The owner shall submit drawings to the fire code enforcement division of the fire marshal division in compliance with 10.25.1 NMAC or to an AHJ as provided by the AHJ. The fire marshal shall not accept drawings by facsimile transmission.

**(3) Requirements for drawings.** The drawings shall show the fire protection systems in sufficient detail to allow the fire marshal or AHJ to analyze compliance with applicable codes and standards, and shall provide the signature and seal of the engineer that prepared the drawings. The fire marshal has optional guidelines available to assist in compliance with applicable codes and standards that may be obtained as provided in 10.25.1.9 NMAC.

**(4) Fees.** The fire marshal division does not require any fees for review of fire protection systems.

**B. Third party review.** The fire marshal, in his sole

discretion, may require and arrange for third party review of drawings if specialized expertise or knowledge is needed. If the fire marshal determines third party review is necessary, he shall so notify the owner in writing with an estimate of the cost. If the owner decides to proceed with review, he shall file written approval by the method provided in 10.25.1.8 NMAC and shall pay directly to the third party the cost of such review before the fire marshal returns the drawings.

**C. Return of drawings.** If the owner has provided an envelope with prepaid postage, the fire marshal shall mail the drawings back to the owner after review. If the owner did not supply a postage-prepaid envelope, the fire marshal shall call the owner to pick up the drawings. The fire marshal shall keep one set of electronically filed fire protection plans (shop drawings). If the fire marshal or AHJ approves the drawings, the drawings shall be stamped "approved". If the fire marshal or AHJ rejects or does not approve the drawings, an explanation for the basis for rejection or non approval shall be given to the owner.

**D. Rejection.** The fire marshal or AHJ may reject drawings for the following reasons:

- (1) the drawings are incomplete;
- (2) the drawings indicate a violation of these rules or applicable codes and standards;
- (3) the engineer that prepared the drawings did not sign, seal or prepare the drawings in accordance with Title 16, Chapter 39 NMAC;
- (4) the drawings or certificate of fitness documentation contain a misrepresentation or inaccuracy;
- (5) third party review indicates that the drawings indicate a violation of these rules, applicable codes or standards, or specialized requirements presented by the drawings; or
- (6) any other reason provided in the authorizing legislation of an AHJ.

**E. Re-submission.** If drawings are rejected, the owner may correct the deficiencies indicated in the rejection letter. A new set of shop drawings shall be submitted by the same process for filing original drawings for review.

**F. Construction.**  
**(1)** After an AHJ has approved and returned drawings, but not before, an owner may start the installation or construction of the building or structure in compliance with the approved drawings.

**(2)** After the owner has completed the installation or construction, he may request that the AHJ perform an inspection. The request may be made orally or in writing to the fire marshal at the address or phone number provided in 10.25.1.9 NMAC or as otherwise required by another AHJ.

**G. Inspection and testing.** The AHJ will inspect the building or structure within a reasonable period of time after the responsible party's request for inspection and if applicable, the AHJ may request a letter indicating the system is in compliance with approved plans and applicable codes and standards. The AHJ will not approve the installation or construction if the inspection indicates:

- (1) a violation of these rules or applicable codes and standards;
- (2) the building or structure was not installed or constructed in compliance with the drawings;
- (3) the building or structure fire protection system(s) was not installed or constructed by the responsible party through a person with an applicable certificate of fitness;
- (4) The record of completion shall be completed at the time of final acceptance testing of each fire protection system; or
- (5) any other reason provided in the authorizing legislation of an AHJ.

**H. Re-inspection.** If the AHJ does not approve the installation or construction and the responsible party corrects the deficiencies noted in the inspection, the responsible party may re-apply for inspection following the same procedure as for the initial inspection. [10.25.5.18 NMAC - Rp, 10.25.5.17 NMAC, 4/23/2019]

**10.25.5.19 CODE REQUIREMENTS FOR EXISTING BUILDINGS AND STRUCTURES:** For purposes of this section, "constructed" shall mean that the owner has begun any substantial portion in the design, permitting or building of a building or structure. A change in occupancy requires approval from the appropriate building code official. All new construction, alteration, repair, and additions require adherence to applicable building codes and laws.

**A. Existing buildings and structures.**

**(1)** An owner is not required to renovate or adapt an existing building or structure to comply with the IFC 2015, but shall comply with the requirements in place when the existing building or structure was constructed.

**(2)** Following the adoption of this provision, an existing structure that changes its classification, however done, must comply with the IFC 2015.

**(3)** Following the adoption of this provision, an existing structure that is renovated, as the term "renovated" is defined by the applicable local or state building code, but whose classification does not change, shall comply with IFC 2015.

**(4)** Buildings or structures constructed prior to November 15, 2007, which fall under NFPA 1, 1997 edition, and NFPA 101, 1997 edition, shall be required to have a permit using the requirements of IFC 2015, section 105, prior to installation of any new, renovated, or partial fire protection system.

**(5)** Buildings which were initially inspected under

IFC 2015 as per the requirements for new construction under Subsection B of 10.25.2.19 NMAC will be inspected per IFC 2015.

**B. New construction.**

Any new building, new alteration, new addition, or new structure after the effective date of the adoption of the IFC 2015 shall comply with the IFC 2015.

**C. Variance.**

The fire marshal may grant a variance from any of the requirements of this subsection if the applicant demonstrates to the fire marshal's satisfaction that the variance sought does not degrade the overall protection of individuals from fire and similar emergencies.

**D. Hazard to life**

**or property.** Notwithstanding any other provision of these rules, if the fire marshal or AHJ determines that a nonconforming facility constitutes a hazard to life or property, the fire marshal or AHJ shall so notify the owner of the facility in writing, and shall permit the owner a reasonable period of time to comply with current rules. If the owner does not comply with the notification and its requirements within the time specified, the fire marshal or AHJ may order the owner to take the facility out of service.

[10.25.5.19 NMAC - Rp, 10.25.5.18 NMAC, 4/23/2019]

**HISTORY OF 10.25.5 NMAC:**

**Pre-NMAC History:** none.

**History of Repealed Material:**

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) repealed 11/15/2007.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) repealed, effective 4/23/2019.

**NMAC History:**

10 NMAC 25.6, Safe Handling and Sale of Fireworks, effective 6/9/1997.

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 11/15/2007.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) was replaced by 10.25.5 NMAC, Fire

Prevention and Public Occupancy, effective 4/23/2019.

## PUBLIC REGULATION COMMISSION

**This is an amendment to 10.25.1 NMAC, Sections 8, 9, 12 and 15 effective 4/23/2019.**

**10.25.1.8 REQUIREMENTS FOR FILED DOCUMENTS:**

In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the fire marshal, including applications referenced in 10.25.6 NMAC, shall be filed as follows.

**A. Address for filing documents.**

(1) Documents filed by mail shall be addressed to the New Mexico Fire [Marshall's Office] Marshal Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico Fire [Marshall's Office] Marshal Division located on the [second] fourth floor of [142 West Palace Avenue] 1120 Paseo de Peralta, in Santa Fe, New Mexico.

**B. Required format.**

All reports, articles, applications and other documents filed with the fire marshal shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink.

**C. Facsimile filing prohibited.**

The fire marshal will not accept documents for filing or applications submitted by facsimile.

**D. Date of filing.**

The fire marshal shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the fire marshal's [office] division, unless the document is returned pursuant to 12.3.1.11 NMAC, except that if the fire marshal

receives a document after regular business hours, the fire marshal shall stamp and consider it received on the next regular business day.

[10.25.1.8 NMAC - N, 11/15/2007; A, 4/23/2019]

**10.25.1.9 APPLICATIONS, FORMS AND GUIDELINES:**

**A. Mandatory applications.**

For ease and consistency of data entry, the fire marshal has prepared mandatory permit and license applications for compliance with 10.25.2 and 10.25.6 NMAC.

**B. Optional permit application and guidelines.**

The fire marshal provides an optional permit application for display fireworks, described in Subsection E of 10.25.6.8 NMAC, and other guidelines to aid in fire prevention and safety, and to assist in carrying out certain requirements of these rules.

**C. How to obtain.**

Interested persons may obtain copies of mandatory and optional applications, forms, and guidelines:

(1) by calling the fire [marshal's office] marshal division at [505-827-3550] 505-476-0080 or 1-800-244-6702;

(2) at the fire [marshal's office] marshal division located on the [second] fourth floor of [142 West Palace avenue] 1120 Paseo de Peralta in Santa Fe;

(3) by writing to the fire [marshal's office] marshal division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269; or

(4) from the fire [marshal's] marshal website: [http://www.nmprc.state.nm.us/\[sfm:htm\]](http://www.nmprc.state.nm.us/[sfm:htm]).

[10.25.1.9 NMAC - N, 11/15/2007; A, 4/23/2019]

**10.25.1.12 REQUESTS FOR COPIES:**

**A. Filing of request.**

A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered as provided in 12.3.1.9 NMAC, or sent by facsimile

to (505) 827-3778. If a person cancels a request within [~~twenty-four~~ (24)] 24 hours, the fire marshal shall not assess any fees.

**B. Estimate of fees.**

When the fire marshal receives a request for copies, the fire marshal's office shall issue an informal estimate of fees. The fire marshal shall charge the fees enumerated in Subsection C of 1.2.2.8 NMAC, *Public Regulation Commission Rules of Procedure*.

**C. Completion of request.**

(1) If the person approves the estimate, the fire marshal shall prepare the copies within the time periods provided in the Inspection of Public Records Act, Section 14-2-1 *et seq.* NMSA 1978.

(2) When the requested documents are ready, the fire marshal shall provide a written statement of fees due and shall release the copies electronically upon payment of all fees due. [10.25.1.12 NMAC - N, 11/15/2007; A, 9/1/2008; A, 4/23/2019]

**10.25.1.15 APPEALS:** A person aggrieved by any order of the fire marshal may appeal the decision:

**A.** to the commission in accordance with Section 59A-52-21 NMSA 1978, by filing an appeal with the New Mexico Public Regulation Commission Docketing Office by mail to P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or by delivery to the P.E.R.A. Building, Room [406] 413, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501; or

**B.** to district court in accordance with Section 59A-52-22 NMSA 1978. [10.25.1.15 NMAC - N, 11/15/2007; A, 4/23/2019]

**PUBLIC REGULATION COMMISSION**

**This is an amendment to 10.25.6 NMAC, Section 8 effective 4/23/2019.**

**10.25.6.8 LICENSES AND PERMITS FOR SALE OF FIREWORKS:** The fire marshal issues licenses and permits as provided in Section 60-2C-4 NMSA 1978. Local governing bodies may have additional requirements for fireworks sale or use.

**A. Application procedures and forms.** Any person may apply for a license or permit to sell fireworks as provided in Section 60-2C-4 NMSA 1978 by submitting a required application to the fire marshal as provided in 10.25.1.9 NMAC. The following information shall be included in each application for a permit or license involving fireworks:

(1) the applicant's name and mailing address;

(2) the applicant's telephone number and social security number;

(3) any company or corporate name or name the applicant is using for business purposes;

(4) the type of permit or license requested;

(5) the physical address where applicant [~~proposes to~~ will] sell fireworks and a description of the type of structure in which applicant proposes to sell fireworks;

(6) name and phone number of a contact person at the location where applicant proposes to sell fireworks;

(7) the name and address of applicant's primary supplier of fireworks; and

(8) the following statement: "All information provided on and with this form is true and correct to the best of my knowledge and belief. I have read, reviewed and understand the New Mexico laws and rules regarding safe packaging, handling and sale of

fireworks. I agree to fully comply with these laws and rules as a condition of obtaining and operating pursuant to a fireworks license or permit. I understand that the approval of this application depends upon compliance with Sections 60-2C-1 through 60-2C-11 NMSA 1978 of the Fireworks Licensing and Safety Act. In the event that my license or permit is lost or destroyed, I understand that I shall immediately notify the Fire Marshal's office and that I am not entitled to a refund of the original application fees, but must submit a new application and pay a \$20.00 replacement fee for the type of license or permit required for that location. I understand that Section 60-2C-4 NMSA 1978 does not permit the fire marshal to process applications for a license or permit during any holiday selling periods";

(9) each application shall contain the date and notarized signature of the applicant; and

(10) an applicant shall submit fees required by Section 60-2C-4 NMSA 1978 with each application following the provisions of 10.25.1.13 NMAC.

**B. Review of application.** The fire marshal shall review all applications for licenses and permits. Unless otherwise prohibited by law, the fire marshal shall issue licenses and permits within 30 days of receipt of complete applications. The fire marshal shall disapprove and return incomplete applications within 30 days of receipt.

**C. Damaged or lost license or permit.** The fire marshal will not issue duplicate fireworks licenses or permits. If a license or permit is lost or damaged, the vendor shall immediately notify the fire marshal who shall revoke the license or permit. The fire marshal will not refund any fees for a lost or damaged license or permit. If the vendor wishes to continue to sell fireworks at that location, the vendor shall submit the \$20.00 fee required by section 60-2C-4 NMSA 1978 for a replacement license or permit.



**D. Special provisions for retailer permits.** Applicants may obtain retailer permits for the sale of fireworks from the fire marshal or from a licensed manufacturer, distributor or wholesaler.

**(1) Products list.** Any person with a retailer permit shall maintain a complete written list of products for sale, available on inspection by an AHJ, of all fireworks at each retail location.

**(2) Obtaining books of 20 retailer permits.** A licensed manufacturer, distributor or wholesaler may obtain books of 20 retailer permits from the fire marshal by following the process in Subsection A of 10.25.6.8 NMAC.

**(3) Requirements for resale of retailer permits.** A licensed manufacturer, distributor or wholesaler may re-sell retailer permits in books of 20, by requiring the same mandatory application form, fees and other requirements in Subsection A of 10.25.6.8 NMAC. A licensed manufacturer, distributor or wholesaler shall account for all fees collected and permits sold.

**(a) Semi-annual report.** On January 31 and July 31 of each year, a licensed manufacturer, distributor or wholesaler that has purchased any books of 20 retailer permits shall provide a report to the fire marshal detailing the numbers of sold and unsold permits, with all information required by Section 60-2C-3 NMSA 1978. The report shall include a copy of each permit application and permit issued, as well as the name and address of each location permitted for the sale of fireworks.

**(b) Unsold permits.** If a licensed manufacturer, distributor or wholesaler has not sold all permits in books of 20 purchased, it may request in writing that the fire marshal issue to it credit toward new permits. The written request shall contain a list of all unsold permit numbers and shall include the original unsold permits.

**(c) Inspection list.** On or before June 15 of each year, each licensed manufacturer, distributor and wholesaler shall provide to the fire marshal a list of locations of sales of fireworks for the retailer permits it has sold to assist the fire marshal in conducting inspections of these locations.

**E. Display permit.** The fire marshal provides an optional permit application for display fireworks as required by Section 60-2C-9 NMSA 1978, available as provided in 10.25.1 NMAC, for the use of counties and municipalities requiring such display permits.

**F. Revocation of license or permit.**

**(1)** Notwithstanding any other provision of these rules, if the fire marshal determines that any licensee's or permittee's actions or facility constitutes:

**(a)** a hazard to life or property, the fire marshal shall so notify the licensee or permittee in writing, and shall permit him a reasonable period of time to comply with these rules and to eliminate the hazard; if the licensee or permittee does not comply with the notification and its requirements within the time specified, the fire marshal may revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements;

**(b)** an imminent hazard to life or property, the fire marshal shall order the licensee or permittee to eliminate the hazard immediately; if the licensee or permittee fails to eliminate the hazard immediately, the fire marshal shall revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements and demonstrate that the hazard has been eliminated.

**(2)** If any retailer possesses fireworks not permitted by Section 60-2C-7 NMSA 1978, the fire marshal shall revoke the retailer's permit and confiscate

the impermissible fireworks using the procedure required by 10.25.6.11 NMAC.  
[10.25.6.8 NMAC - N, 11/15/2007; A, 04/23/2019]

## RACING COMMISSION

**Explanatory Paragraph: This is an amendment to 15.2.3 NMAC, Section 8, effective May 1, 2019. In 15.2.3.8 NMAC Subsection A, Paragraphs (1), (2) and Paragraphs (4) through (9) of Subsection B and Subsections C through P were not published as there were no changes.**

### 15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

\*\*\*

#### B. Stewards:

\*\*\*

**(3) Disciplinary action:** The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

**(a)** The stewards shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

**(b)** The stewards may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

**(c)** The stewards may at any time inspect license documents, registration papers, and other documents related to racing.

**(d)** The stewards have the power to administer oaths and examine witnesses.

~~**(e)** The stewards shall consult with the official veterinarian to determine the nature and seriousness of a laboratory~~

finding or an alleged medication violation.]

~~(f)~~ (e)

The stewards may impose any of the following penalties on a licensee for a violation of the act or these rules: issue a reprimand; assess a fine; require forfeiture or redistribution of purse or award, when specified by applicable rules and at their discretion; place a licensee on probation; suspend a license or racing privileges; revoke a license; exclude from grounds under the jurisdiction of the commission.

~~(g)~~ (f)

The stewards may order that a person be ineligible for licensing; or they may deny a license to an applicant on grounds set forth in the act or these rules.

~~(h)~~ (g)

The stewards shall submit a written report to the commission of every inquiry and hearing.

~~(i)~~ (h) A

stewards' ruling shall not prevent the commission from imposing a more severe penalty.

~~(j)~~ (i)

The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a steward's referral shall not preclude commission action in any matter.

~~(k)~~ (j)

Purses, prizes, awards, and trophies shall be redistributed if the stewards or commission order a change in the official order of finish.

~~(l)~~ (k)

All fines imposed by the stewards shall be paid to the commission within 30 days after the ruling is issued, unless otherwise ordered.

\*\*\*

[15.2.3.8 NMAC - Rp, 15 NMAC 2.3.8, 4/13/2001; A, 11/15/2001; A, 8/30/2007; A, 6/15/2009; A, 6/30/2009; A, 12/1/2010; A, 5/1/2015; A/E, 6/28/2016; A, 9/15/16; A, 12/16/2016; A, 7/1/2017; A, 9/26/2018; A, 5/1/2019]

**RACING COMMISSION**

**Explanatory Paragraph: This is an amendment to 15.2.4 NMAC, Section 8, effective May 1, 2019. In 15.2.4.8 NMAC, Subsections B through G were not published as there were no changes.**

**15.2.4.8 CLAIMING RACES:  
A. GENERAL PROVISIONS:**

(1) A person entering a horse in a claiming race warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for that horse.

(2) A filly or mare that has been bred is ineligible to enter into a claiming race unless a licensed veterinarian's certificate dated at least 25 days after the last breeding of that mare is on file with the racing secretary's office stating that the mare or filly is not in foal. However, an in-foal filly or mare shall be eligible to enter into a claiming race if the following conditions are fulfilled:

- (a) full disclosure of such fact is on file with the racing secretary and such information is posted in the racing secretary's office;
- (b) the stallion service certificate has been deposited with the racing secretary's office (although all information obtained on such certificate shall remain confidential);
- (c) all payments due for the service in question and for any live progeny resulting from that service are paid in full;
- (d) the release of the stallion service certificate to the successful claimant at the time of claim is guaranteed.

(3) The stewards may set aside and order recession of a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the claim committed a prohibited action, as specified in Subsection E of 15.2.4 NMAC with respect to the making of the claim, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of these rules regarding claiming races. Should the stewards order a recession of a claim, they may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate.

(4) The successful claimant of a horse that tests positive for a substance that requires the horse to be placed on the steward's list pursuant to Subsection C of 15.2.6.9 NMAC shall be notified at the time the horse is placed on the steward's list. Once notified, the successful claimant has 72 hours in which to request the stewards to void the claim. If the claim is voided the stewards may also, in their discretion, make a further order for the costs of maintenance and care of the horse as they may deem appropriate. If the claim is not voided, all applicable time requirements and procedures pursuant to Subsection C of 15.2.6.9 NMAC shall follow the horse.

(5) A claim shall be voided if a horse is a starter as determined by the New Mexico racing commission, and the horse:  
(a)  
dies on the track; or  
(b)  
suffers an injury which requires euthanasia of the horse as determined by the official or racing veterinarian while the horse is on the track.

\*\*\*

[15.2.4.8 NMAC - Rp, 15 NMAC 2.4.8, 3/15/2001; A, 10/31/2006; A, 6/15/2009; A, 6/30/2009; A, 1/1/2013; A, 6/1/2016; A/E, 6/28/16; A, 12/16/16; A, 5/1/2019]

RACING COMMISSION

Explanatory Paragraph: This is an amendment to 15.2.5 NMAC, Section 10, effective May 1, 2019. In 15.2.5.10 NMAC, Subsections A through C were not published as there were no changes.

15.2.5.10 WEIGHTS:

\*\*\*

D. Scale of Weights:

(†) — The weights required shall be specified in the conditions of the race:

Table 1: Scale of weights for age

Dist	Age	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
	Two-Yr	x	x	x	x	x	x	X	†05	†08	†11	†14	†14
One	Three-Yr	†17	†17	†19	†19	†21	†23	†25	†26	†27	†28	†29	†29
Half	Four-Yr	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30
Mile	Five-Yr	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30
	& Up												
	Two-Yr	x	x	x	x	x	x	X	†02	†05	†08	†11	†11
Six	Three-Yr	†14	†14	†17	†17	†19	†21	†23	†25	†26	†27	†28	†28
Fur-	Four-Yr	†29	†29	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30
long	Five-Yrs	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30	†30
	& Up												
	Two-Yr	x	x	x	x	x	x	X	x	96	99	†02	†02
One	Three-Yr	†07	†07	†11	†11	†13	†15	†17	†19	†21	†22	†23	†23
Mile	Four-Yr	†27	†27	†27	†28	†28	†27	†26	†26	†26	†26	†26	†26
	Five-Yrs	†28	†28	†28	†28	†27	†26	†26	†26	†26	†26	†26	†26
	& Up												
	Two-Yr	x	x	x	x	x	X	X	x	x	x	x	x
One	Three-Yr	†01	†01	†07	†07	†11	†13	†16	†18	†20	†21	†22	†22
&	Four-Yr	†25	†25	†27	†27	†27	†26	†26	†26	†26	†26	†26	†26
1/4	Five-Yrs	†27	†27	†27	†27	†27	†26	†26	†26	†26	†26	†26	†26
Mile	& Up												
	Two-Yr	x	x	x	x	x	x	X	x	x	x	x	x
One	Three-Yr	98	98	†04	†04	†08	†11	†14	†17	†19	†21	†22	†22
&	Four-Yr	†24	†24	†26	†26	†26	†26	†26	†26	†26	†26	†26	†26
1/2	Five-Yrs	†26	†26	†26	†26	†26	†26	†26	†26	†26	†26	†26	†26
Mile	& Up												
	Two-Yr	x	x	x	x	x	x	x	x	x	x	x	x
Two	Three-Yr	96	96	†02	†02	†06	†09	†12	†14	†17	†19	†20	†20

Mile	Four-Yr	124	124	126	126	126	126	126	125	125	124	124	124
	Five-Yrs	126	126	126	126	126	126	126	125	125	124	124	124
	& Up												

(2) In races on intermediate lengths, the weights for the shorter distance are carried.

(3) In races exclusively for three-year-olds or four-year-olds, the weight is 126 pounds, and in races exclusively for two-year-olds, it is 122 pounds:

(4) In all races except in handicaps, quarter horse, and races where the conditions expressly state to the contrary, the scale of weights is less, by the following: for two-year-old fillies, three pounds; for fillies and mares, three-years-old and upward, five pounds before September 1, and three pounds thereafter.

(5) In all overnight races except handicaps, not more than six pounds may be deducted from the scale of weights for age, except for allowances, but in no case shall the total allowances of any type reduce the lowest weight below 101 pounds, except that this minimum weight need not apply to two-year-olds or three-year-olds when racing with older horses:

(6) In all overnight races for two-year-olds, for three-year-olds or for four-year-olds and upward the minimum weight shall be 112 pounds, subject to sex and apprentice allowances. This rule shall not apply to handicaps, nor to races for three-year-olds and upward:]

(1) With the exception of apprentice allowances, handicaps, three years old horses entered to run in races against horses four year olds and upwards, and the allowance provided in Paragraph (2) of this subsection, no jockey shall be assigned a weight of less than 118 pounds. For three years old horses entered to run in races against horses four year olds and upwards from January 1 through August 31, no jockey shall be assigned a weight of less than 116 pounds.

(2) Except in handicaps, fillies two years old shall be allowed three pounds, and fillies and mares three years old and upward shall be allowed five pounds before September 1, and three pounds thereafter in races where competing against horses of the opposite sex.

(3) Quarter horses, minimum scale weights shall be 124 pounds for two years old, 126 pounds for three years old and 128 pounds for four year olds and older with the exception of handicap races.

(4) A notice shall be included in the daily program that all jockeys will carry approximately three pounds more than the published weight to account for safety equipment (vest and helmet) that is not included in required weighing out procedures. Additionally, upon stewards' approval, jockeys may weigh in with an additional three pounds for inclement weather gear.

**E. Distance conversions:** For the purpose of determining eligibility, weight assignments [and/or] and allowances for imported horses, the racing secretary shall convert metric distances to English measures by reference to the following scale:

**Comparative table of distances**

200 Meters	Equals	1 Furlong
1,000 Meters	Equals	5 Furlongs
1,200 Meters	Equals	6 Furlongs
1,400 Meters	Equals	7 Furlongs
1,600 meters	Equals	1 Mile
1,700 Meters	Equals	1 1/16 Miles
1,800 Meters	Equals	1 1/8 Miles
2,000 Meters	Equals	1 ¼ Miles
2,200 Meters	Equals	1 3/8 Miles
2,400 Meters	Equals	1 ½ Miles
2,600 Meters	Equals	1 5/8 Miles
3,000 Meters	Equals	1 7/8 Miles
3,200 Meters	Equals	2 Miles
3,600 Meters	Equals	2 ¼ Miles
4,800 Meters	Equals	3 Miles

[15.2.5.10 NMAC - Rp, 15 NMAC 2.5.10, 3/15/2001; A, 1/1/2013; A, 6/1/2016; A, 5/1/2019]

**RACING COMMISSION**

**Explanatory paragraph: This is an amendment to 15.2.6 NMAC, Sections 8 and 9, effective May 1, 2019. In 15.2.6.8 NMAC Subsections B through E were not published as there were no changes. In 15.2.6.9 NMAC, Paragraphs (1) through (11) of Subsection A, Subsection B, Paragraphs (1) through (3), Paragraphs (5) through (7), and Paragraphs (9) through (12) of Subsection C, Subsections D through F, Subsections H and I, Paragraphs (3) through (11) of Subsection J, and Subsections L through N were not published as there were no changes.**

**15.2.6.8 VETERINARY PRACTICES:**

**A. Veterinarians under authority of official veterinarian:** Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the [supervision] authority of the official veterinarian and the stewards. [The official veterinarian shall recommend to the stewards or the commission the discipline to be imposed upon a veterinarian who violates the rules.]

\*\*\*

15.2.6.8 NMAC - Rp, 15 NMAC 2.6.8, 04/13/2001; A, 07/15/2002; A, 02/15/2012; A, 07/31/2012, A, 05/16/2014; A, 12/16/2016; A; 09/26/2018; A, 5/1/2019]

**15.2.6.9 MEDICATIONS AND PROHIBITED**

**SUBSTANCES:** The classification guidelines contained within the “uniform classification guidelines for foreign substances and recommended penalties and model rule”, [January 18, 2018, version 13.4] January 2019 version 14.0 and “association of racing commissioners international inc. controlled therapeutic medication schedule for horses”, version 4.0, revised April 20, 2017 by the association of racing commissioners international, are incorporated by

reference. Any threshold herein incorporated by reference by inclusion in one of the documents above shall not supersede any threshold or restriction adopted by the commission as specified by this section.

**A. Penalties:**

\*\*\*

**(12) Procedures** shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to a licensed person within the first degree of affinity (marriage relationship) or first degree of consanguinity (blood relationship):

**(a)**

first degree of affinity shall mean the licensee’s spouse or spouse’s mother, father, brother, sister, son or daughter;

**(b)**

first degree of consanguinity shall mean the licensee’s mother, father, brother, sister, son or daughter.

**(c)**

No entry in any race shall be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry; except that, if the license of a jockey has been suspended for a routine riding offense, the stewards may waive this rule.

\*\*\*

**C. Medication restrictions:**

\*\*\*

**(4)** There is no permissible concentration of clenbuterol or albuterol that is allowed to appear in any official sample. This includes samples collected from Quarter Horses and Thoroughbreds.

\*\*\*

**(8) Any**

horse that is the subject of a positive test report from the official laboratory for a drug in one of the following categories shall be placed immediately on the steward’s list:

**(a)**

any drug categorized by the association of racing commissioner’s international “uniform classification guidelines for foreign substance and recommended penalties and model rule” incorporated by reference under 15.2.6.9 NMAC as a penalty class A substance;

**(b)**

any prohibited anabolic androgenic steroid or any anabolic androgenic steroid in excess of the permitted concentrations listed in Subsection G of 15.2.6.9 NMAC;

**(c)**

clenbuterol, albuterol, or other beta-agonist drugs with significant anabolic effects that are not currently penalty class A drugs (specifically Quarter Horses or Thoroughbreds);

**(d)**

other drugs designed to promote growth or muscle including, but not limited to, growth hormones, somatotropins, insulin growth factors and gene modifying agents;

**(e)**

cobalt in excess of the allowable concentration specified pursuant to Subsection M of 15.2.6.9 NMAC.

\*\*\*

**G. Androgenic-anabolic steroids (AAS):****(1) No AAS**

shall be permitted in official samples collected from racing horses except for [~~residues of the major metabolite of nandrolone, and the naturally-occurring substances boldenone and testosterone~~] endogenous concentrations of the naturally occurring substances boldenone, nandrolone, and testosterone at concentrations less than the indicated thresholds.

**(2)**

[~~Concentrations of these AAS shall not exceed the following urine threshold concentrations for total~~

(i.e., free drug or metabolite and drug or metabolite liberated from its conjugates):

(a) boldenone (Equipose® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses;

(b) nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings-45 ng/ml of metabolite, 5 alpha oestrane-3 beta, 17 alpha - diol in urine;

(c) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine);] Concentrations of these AAS shall not exceed the following free (i.e., not conjugated) steroid concentrations in plasma or serum:

(a) Boldenone - a confirmatory threshold not greater than 25 picograms/milliliter for all horses, regardless of sex;

(b) Nandrolone - a confirmatory threshold not greater than 25 picograms/milliliter for fillies, mares and geldings; male horses other than geldings shall be tested for nandrolone in urine (see Subparagraph (b) of Paragraph (3) of this subsection below):

(c) Testosterone - a confirmatory threshold not greater than 100 picograms/milliliter for fillies, mare and geldings.

(3) Total concentrations of these AAS shall not exceed the following total concentrations in urine after hydrolysis of conjugates:

(a) Boldenone - a confirmatory threshold not greater than one nanogram/milliliter for fillies, mares and geldings; a confirmatory threshold not greater than 15 nanograms/milliliter in male horses other than geldings;

(b) Nandrolone - a confirmatory threshold not greater than one nanogram/milliliter for fillies, mares, and geldings; a confirmatory threshold not greater than 45 nanograms/milliliter (as 5α-estrane-3β, 17α -diol) of urine in males horses other than geldings;

(c) Testosterone - a confirmatory threshold of not greater than 55 nanograms/milliliter of urine in fillies and mares (unless in foal); a confirmatory threshold of not less than 20 nanograms/milliliter in geldings.

(3) (4) Any other [anabolic steroids] AAS are prohibited in racing horses.

(4) (5) The presence of more than one of the three AAS identified in Paragraph (2) and (3) of this subsection at concentrations greater than the individual thresholds indicated above shall not be permitted.

(5) Post-race urine samples collected from intact males must be identified to the laboratory.]

(6) The sex of the horse must be identified to the laboratory on all pre-race and post-race samples designated for androgenic-anabolic steroids testing.

(7) If an AAS has been administered to a horse in order to assist in its recovery from illness or injury, that horse may be placed on the veterinarian’s list in order to monitor the concentration of the drug or metabolite in urine or blood. After the concentration has fallen below the designated threshold for the administrated AAS, the horse is eligible to be removed from the list.

\*\*\*

J. Out of competition testing:

(1) A horse may be subject to out of competition testing without advance notice if the horse is:

(a) on the grounds of a racetrack or training center under the jurisdiction of the commission;

(b) under the care or control of a trainer or owner licensed by the commission; or

(c) any horse whose papers are filed in the racing office; or

(d) has been nominated to a stakes race; or

(e) on the steward’s list pursuant to Subsection C of 15.2.6.9 NMAC.

(2) This rule applies to the detection of prohibited substances in out of competition official samples as follows:

(a) penalty class A drugs as listed with the association of racing commissioners international “uniform classification guidelines for foreign substances and recommended penalties and model rule” and incorporated by reference under 15.2.6.9 NMAC;

(b) blood doping agents including, but not limited to, erythropoietin (EP), darbepoetin, oxylglobin, hemopure, aranasep or any substance that abnormally enhances the oxygenation of body tissues;

(c) gene doping agents or the non-therapeutic use of genes, genetic elements, or cells that have the capacity to enhance athletic performance or produce analgesia

(d) clenbuterol or albuterol present in any official sample in a horse not previously placed on the veterinarian’s list pursuant to Paragraph (10) of Subsection C of 15.2.6.9 NMAC; and

(e) androgenic-anabolic steroids present in any official sample in a horse not previously placed on the veterinarian’s list pursuant to Paragraph (10) of Subsection C of 15.2.6.9 NMAC.

\*\*\*

K. Contraband: (1) No person on association grounds or any

premises under the jurisdiction of the New Mexico racing commission where horses are lodged or kept, excluding licensed veterinarians, shall have in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with Subsection H of 15.2.6.9 NMAC. This restriction includes, but is not limited to, locations on the association grounds where that person occupies, in that person's personal property, effects or vehicle.

(2) The New Mexico racing commission may confiscate any contraband in violation of Subsection H of 15.2.6.9 NMAC and any drug or illegal substance that is found on association premises or any premises under the jurisdiction of the New Mexico racing commission which a licensed trainer occupies or has the right to occupy, or in that trainer's personal property, effects or vehicle in that trainer's care, custody or control.

(3) Upon finding a violation of this subsection, the stewards shall consider the classification level as it is listed in the uniform classification guidelines for foreign substances and recommended penalties as promulgated by Subsection A of 15.2.6.9 NMAC.

(4) If the contraband is required to be tested by the official laboratory, payment of all costs for testing shall be borne by the licensee upon final decision by the stewards that the substance is prohibited pursuant to these rules.

\*\*\*

[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 4/13/2001; A, 8/30/2001; A, 7/15/2002; A, 8/15/2002; A, 9/29/2006; A, 10/31/2006; A, 8/30/2007; A, 1/31/2008; A, 3/1/2009; A, 6/15/2009; A, 6/30/2009; A, 9/15/2009; A, 12/15/2009; A, 3/16/2010; A, 7/5/2010; A, 9/1/2010; A, 12/1/2010; A, 11/1/2011; A, 2/15/2012; A, 4/30/2012; A, 7/31/2012; A, 12/14/2012;

A, 5/1/2013; A/E, 5/2/2013; A, 9/30/2013; A, 4/1/2014; A, 5/16/2014; A, 8/15/2014; A, 9/15/2014; A, 3/16/2015; A, 9/16/15; A, 3/15/2016; A, 6/15/2016; A/E, 6/28/2016; A, 9/15/2016; A, 12/16/2016; A, 7/1/2017; A, 10/31/17; A, 3/14/2018; A; 9/26/2018; A, 5/1/2019]

## RACING COMMISSION

**Explanatory paragraph: This is an amendment to 15.2.7 NMAC, Section 12, effective May 1, 2019. In 15.2.1.12 NMAC Subsections A through W were not published as there were no changes made.**

### 15.2.7.12 CALCULATION OF PAYOUTS AND DISTRIBUTION OF POOLS:

\*\*\*

#### X. 123RACING PICK (N) WAGER POOL:

(1) The 123Racing pick-n is a pari-mutuel wager that requires the selection of one runner from each contest in a series of specific contests comprising the 123Racing pick-n pool ("123Racing pool"). "N" denotes the number of designated contests in that pool.

(2) Four is the minimum number of contests required to offer a 123Racing pick-n pool.

(3) If a 123Racing pick-n pool is reduced to fewer than four completed contests, the 123Racing pick-n pool will be cancelled and all wagers will be refunded.

(4) Each wager is automatically assigned to a unique wager identification by the host totalizator platform, and is allocated "points" in each contest.

(5) Points are allocated for winning selections of contestants that finish in the first, second or third position in the official results for each contest and have a pari-mutuel payout associated with its finish. Points scored will be equivalent to adding the pari-mutuel

pool host payouts for its finish. Points scored will be equivalent to adding the pari-mutuel pool host payouts for the win, place and show wager on that selection (i.e. \$2 win, \$2 place and \$2 show wagers).

(6) Points are accumulated after each contest in the 123Racing pick-n pool and displayed on a leaderboard shown at betting venues and online.

(7) Each 123Racing pick-n wager is assigned a unique identifier or nickname associated with the serial number of the ticket or account wager record. This unique identifier or nickname is used to identify the wagers' progress on the leaderboard display.

(8) The unique 123Racing pick-n wagers with the highest points scores after the last designated contest, share in the payouts of the net pool according to paragraph (14) of this subsection.

(9) After each leg of the contests comprising the 123Racing pick-n wager, the leaderboard displays the points accumulated from that leg and the cumulative points of each player and their ranking in the 123Racing pick-n pool. After the final contest comprising the 123Racing pick-n, the leaderboard displays the final results and payouts for the 123Racing pick-n pool.

(10) Where a selection in a 123Racing pick-n wager does not finish in first, second or third in the official results, or the selection was a non-wagering interest, no points are scored.

(11) The 123Racing pick-n wager is not eliminated if a selection does not score points.

(12) Wagering on the 123Racing pick-n pool shall close at the start of the first designated contest in the 123Racing pick-n pool. Participants are not permitted to cancel a 123Racing pick-n wager after the 123Racing pick-n pool has closed.

(13) One hundred percent of the net 123Racing pick-n pool is paid out upon completion of all designated contests in the 123Racing pick-n pool.

**(14)** The distribution of the 123Racing pick-n pool is based on the winning wager(s) in the following order of precedence:

**(a)**  
Single winners of the 123Racing pick-n pool

**(i)**  
The highest scoring single wager in the 123Racing pick-n pool receives sixty percent of the net pool.

**(ii)**  
The second highest scoring single wager receives thirty percent of the net pool.

**(iii)**  
The third highest scoring single wager receives ten percent of the net pool.

**(b)**  
If there are two 123Racing pick-n wagers that score the highest points then those two winning wagers share ninety percent (sixty percent plus thirty percent) of the net pool equally divided between the two winning wagers and the second highest scoring single wager receive ten percent of the net pool.

**(c)**  
If there are three or more winning wagers scoring the same highest points, one hundred percent of the net pool is equally divided amongst each winning wager. This shall be done consistent with the minimum pari-mutuel payouts of the jurisdiction in which the wager was hosted.

**(d)**  
If there is a single wager with the highest points total, and two or more wagers with the second highest points total, the highest scoring wager will receive sixty percent of the net pool, and the second highest points wagers

share forty percent of the net pool equally divided by the two or more wagers, as the case may be, that scored the second highest points total.

**(e)**  
If there is a single wager with the highest points total, and a single wager with the second highest points total, and two or more wagers with the third highest points total, the highest scoring wager will receive sixty percent of the net pool, the second highest point wager will receive thirty percent of the net pool, and the third highest point wagers will share ten percent of the net pool equally divided by the two or more wagers, as the case may be, that scored the third highest point total.

**(15)** Subject to Paragraph (3) of this subsection, if a single contest included as part of a 123Racing pick-n pool is cancelled or declared a "no contest", the net pool shall be distributed based on the results of the other designated contests included in the pool.

**(16)** Coupled entries or mutuel fields, as defined within the rules and regulations of the commission, shall race in any 123Racing pick-n contest as a single betting interest for purposes of the 123Racing pick-n pool calculations.

**(17)** A scratch after wagering on the 123Racing pick-n has begun of any betting interest of a coupled entry or mutuel field selection in said 123Racing pick-n contest shall be of no effect with respect to the status of such remaining entry either or both field as a viable wagering interests, unless in

conflict with the wagering rules in the host track jurisdiction.

**(18)** Should a betting interest in any of the 123Racing pick-n contests be scratched, the post time favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest at the close of wagering on that contest shall be substituted for the scratched betting interest for all purposes including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalizator shall produce reports showing each of the wagering combinations with substituted betting interest which became winners as result of the substitution in addition to the normal winning combination.

**(19)** The takeout and the pool distribution for a 123Racing pick-n pool shall be set by the host association and approved by the host regulatory commission.

**(20)** With written approval of the commission, the pool host may contribute to the net amount of the 123Racing pick-n pool.

**(21)** 123Racing pick-n scoring example: Picks that finish first, second, or third in each contest score points allocated by summing the pari-mutuel payouts equivalent to a \$2 win, place and show wager, i.e. by summing the official win, place and show pari-mutuel payouts for the contest, as in the following examples:

<p><b>Horse A - First Place</b> Win: \$6.00 Place: \$5.60 Show: \$2.20 <b>Total Score Equals:</b> Win + Place + Show = 13.80 points</p>	<p><b>Horse B - Second Place</b> Place: \$15.60 Show: \$4.80 <b>Total Score Equals:</b> Place + Show = 20.40 points</p>	<p><b>Horse C - Third Place</b> Show: \$2.10 <b>Total Score Equals:</b> Place = 2.10 points</p>
---	---	---

[15.2.7.12 NMAC - Rp, 15 NMAC 2.7.12, 3/15/2001; A, 3/31/2003; A, 9/15/2003; A, 4/14/2005; A, 7/15/2005; A, 11/30/2005; A, 3/30/2007; A, 6/15/2009; A, 12/1/2010; A, 11/1/2011; A, 1/1/2013; A, 9/15/2014; A, 12/16/2016; A, 5/1/2019]



**REGULATION AND  
LICENSING DEPARTMENT  
PODIATRY BOARD**

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.1 NMAC, Podiatrists - General Provisions (filed 9/15/2004). The Board has decided to repeal 16.21.1 NMAC, Podiatrists - General Provisions (filed 9/15/2004) and replace it with 16.21.1 NMAC, Podiatrists - General Provisions, adopted 3/29/2019 and effective 5/3/2019.

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.3 NMAC, License by Exam (filed 9/15/2004). The Board has decided to repeal 16.21.3 NMAC, License by Exam (filed 9/15/2004) and replace it with 16.21.3 NMAC, License by Exam, adopted 3/29/2019 and effective 5/3/2019.

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.4 NMAC, License by Reciprocity (filed 9/15/2004). The Board has decided to repeal 16.21.4 NMAC, License by Reciprocity (filed 9/15/2004) and replace it with 16.21.4 NMAC, License by Reciprocity, adopted 3/29/2019 and effective 5/3/2019.

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.5 NMAC, Temporary License and Emergency License (filed 6/14/2007). The Board has decided to repeal 16.21.5 NMAC, Temporary License and Emergency License (filed 6/14/2007) and replace it with 16.21.5 NMAC, Temporary License and Emergency License, adopted 3/29/2019 and effective 5/3/2019.

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.8 NMAC, Continuing Education (filed 9/15/2004). The

Board has decided to repeal 16.21.8 NMAC, Continuing Education (filed 9/15/2004) and replace it with 16.21.8 NMAC, Continuing Education, adopted 3/29/2019 and effective 5/3/2019.

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.10 NMAC, Lapse of License and Reinstatement (filed 9/15/2004). The Board has decided to repeal 16.21.10 NMAC, Lapse of License and Reinstatement (filed 9/15/2004) and replace it with 16.21.10 NMAC, Lapse of License and Reinstatement, adopted 3/29/2019 and effective 5/3/2019.

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.11 NMAC, Disciplinary Proceedings (filed 9/15/2004). The Board has decided to repeal 16.21.11 NMAC, Disciplinary Proceedings (filed 9/15/2004) and replace it with 16.21.11 NMAC, Disciplinary Proceedings, adopted 3/29/2019 and effective 5/3/2019.

The Regulation and Licensing Department - Board of Podiatry reviewed at its 3/29/2019 hearing, 16.21.12 NMAC, Management of Medical Records (filed 6/14/2007). The Board has decided to repeal 16.21.12 NMAC, Management of Medical Records (filed 6/14/2007) and replace it with 16.21.12 NMAC, Management of Medical Records, adopted 3/29/2019 and effective 5/3/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
PODIATRY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 21 PODIATRISTS  
PART 1 GENERAL  
PROVISIONS**

**16.21.1.1 ISSUING**  
**AGENCY:** Regulation and Licensing Department, Board of Podiatry.  
[16.21.1.1 NMAC - Rp, 16.21.1.1 NMAC 5/3/2019]

**16.21.1.2 SCOPE:** The provisions in 16.21.1 NMAC apply to all parts of Chapter 21 and provide information for applicants, licensed podiatrists, board members, and members of the public.  
[16.21.1.2 NMAC - Rp, 16.21.1.2 NMAC 5/3/2019]

**16.21.1.3 STATUTORY**  
**AUTHORITY:** Podiatry Act, Subsection E of Section 61-8-6 NMSA 1978.  
[16.21.1.3 NMAC - Rp, 16.21.1.3 NMAC 5/3/2019]

**16.21.1.4 DURATION:**  
Permanent.  
[16.21.1.4 NMAC - Rp, 16.21.1.4 NMAC 5/3/2019]

**16.21.1.5 EFFECTIVE**  
**DATE:** May 3, 2019, unless a later date is cited at the end of a section.  
[16.21.1.5 NMAC - Rp, 16.21.1.5 NMAC 5/3/2019]

**16.21.1.6 OBJECTIVE:**  
This part provides general provisions for the practice of podiatry, licensee responsibility, and requirements for the conduct of board business.  
[16.21.1.6 NMAC - Rp, 16.21.1.6 NMAC 5/3/2019]

**16.21.1.7 DEFINITIONS:**  
**A.** "APMLE" means American podiatric medical licensing examination.

**B.** "Board" means board of podiatry.

**C.** "CPME" means the council on podiatric medical education.

**D.** "NBPME" means the national board of podiatric medical examiners.

[16.21.1.7 NMAC - Rp, 16.21.1.7 NMAC 5/3/2019]

**16.21.1.8 SCOPE OF PRACTICE:**

**A.** For the purpose of clarification of the Podiatry Act, Subsection C of Section 61-8-2 NMSA 1978, the practice of podiatry:

(1) in regard to surgical treatment shall include the skin and subcutaneous tissues of the thigh and all structures distal to the knee.

(2) does include amputation of any portion of the foot;

(3) does allow the use of the services of a certified registered nurse anesthetist; and

(4) a licensed podiatrist may assist a licensed medical or osteopathic physician in the performance of any surgery of the lower extremities.

**B.** A podiatric physician shall be recognized and permitted to supervise and administer hyperbaric oxygen following the published recommendations of the undersea and hyperbaric medical society, inc. "UHMS" and within the credentials and bylaws of the facility that operates the hyperbaric unit with the following stipulation; prior to administering hyperbaric oxygen, a podiatric physician must have on file with the New Mexico board of podiatry, documentation certifying compliance with the above requirements.

[16.21.1.8 NMAC - Rp, 16.21.1.8 NMAC 5/3/2019]

#### **16.21.1.9 LICENSE**

**DISPLAY:** A valid license must be displayed and must be visible to the public in each place of business.

[16.21.1.9 NMAC - Rp, 16.21.1.9 NMAC 5/3/2019]

#### **16.21.1.10 RESPONSIBILITY OF LICENSEE:**

It is the responsibility of the licensed podiatrist to keep the board informed of a current mailing address within 30 days of changes. All correspondence, including renewal forms, will be mailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of mailing address or

email address.

[16.21.1.10 NMAC - Rp, 16.21.1.10 NMAC 5/3/2019]

#### **16.21.1.11 SEVERABILITY:**

The provisions of these regulations are severable. If any parts of these regulations are held invalid, the remaining provisions shall remain in force and effect.

[16.21.1.11 NMAC - Rp, 16.21.1.11 NMAC 5/3/2019]

#### **16.21.1.12 TELEPHONIC ATTENDANCE BY BOARD MEMBERS:**

**A.** Pursuant to the provisions of the Open Meetings Act, Subsection C of Section 10-15-1 NMSA 1978, board members may participate in a board meeting by means of a conference telephone or similar communications equipment, and participation by such means shall constitute presence in person at the meeting. Such participation by telephone may only occur when it is difficult or impossible for the member to attend in person.

**B.** Each board member participating by conference telephone must be identified when speaking and all participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the public or board members participating by phone.

[16.21.1.12 NMAC - Rp, 16.21.1.12 NMAC 5/3/2019]

#### **16.21.1.13 CONDUCT OF BOARD BUSINESS:**

**A. Officers.** The board shall elect a chairperson, vice-chair, and secretary at the first regularly scheduled meeting in each calendar year.

**B. Excused absences.** A board member may be excused from a board meeting at the discretion of the board chairperson. The member shall notify the board chairperson and board administrator prior to meeting with an explanation of why they will be unable to attend. All other unattended meetings will be unexcused absences. After three

consecutive unexcused absences, the member shall be recommended for removal as a board member pursuant to the Podiatry Act, Subsection D of Section 61-8-5 NMSA 1978.

**C. Quorum.** Three board members shall constitute a quorum.

**D. Notice of meetings.** Regular meetings, special meetings and emergency meetings shall be noticed in accordance with the provisions of the board's open meetings resolution.

[16.21.1.13 NMAC - Rp, 16.21.1.13 NMAC 5/3/2019]

#### **16.21.1.14 ADVERTISING GUIDELINES:**

**A.** All advertisements shall include the podiatrist's name or medical group name, address and telephone number consistent with the Health Care Advertising Act, Section 57-27-1 NMSA 1978.

**B. Specialty practice:** A podiatrist may only advertise a specialty practice if they qualify under one of the following provisions:

(1) the licensee is board certified or board eligible by a recognized certifying board; if an abbreviation of the certifying board is used then the name of the certifying board must be included in the advertisement;

(2) the licensee is a fellow or an associate of a specialty organization which admits fellows and associates on the basis of an examination; if an abbreviation of the certifying board is used then the name of the certifying board must be included in the advertisement.

[16.21.1.14 NMAC - Rp, 16.21.1.14 NMAC 5/3/2019]

**16.21.1.15 [RESERVED]**

**16.21.1.16 [RESERVED]**

#### **HISTORY of 16.21.1 NMAC:**

##### **Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives: Rule I, Conduct of Board Business, filed 7/21/1980;

Rule IX, Scope of Practice, filed 7/21/1980;  
 Rule XI, Advertising by Licensees, filed 7/21/1980;  
 Rule XII, Inspection of Board Records, filed 11/29/1990;  
 Rule XIV, Severability, filed 11/29/1990.

#### History of Repealed Material:

Rule I, Conduct of Board Business (filed 7/21/1980); Rule IX, Scope of Practice (filed 7/21/1980); Rule XI, Advertising by Licensees (filed 7/21/1980); Rule XII, Inspection of Board Records (filed 11/29/1990); and Rule XIV, Severability, (filed 11/29/1990), repealed 10/15/2004.  
 16.21.1 NMAC, Podiatrists - General Provisions filed 9/15/2004, Repealed effective 5/3/2019.

#### Other History:

Rule I, Conduct of Board Business (filed 7/21/1980); Rule IX, Scope of Practice (filed 7/21/1980); Rule XI, Advertising by Licensees (filed 7/21/1980); Rule XII, Inspection of Board Records (filed 11/29/1990); and Rule XIV, Severability, (filed 11/29/1990) all replaced by 16.21.1 NMAC, effective 10/15/2004.  
 16.21.1 NMAC, Podiatrists - General Provisions filed 9/15/2004 was replaced by 16.21.1 NMAC, Podiatrists - General Provisions effective 5/3/2019.

## REGULATION AND LICENSING DEPARTMENT PODIATRY BOARD

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 3 LICENSE BY EXAM

#### 16.21.3.1 ISSUING

**AGENCY:** Regulation and Licensing Department, Board of Podiatry.  
 [16.21.3.1 NMAC - Rp, 16.21.3.1 NMAC 5/3/2019]

#### 16.21.3.2 SCOPE:

Applicants for licensure as a podiatrist by examination.  
 [16.21.3.2 NMAC - Rp, 16.21.3.2 NMAC 5/3/2019]

#### 16.21.3.3 STATUTORY AUTHORITY:

Podiatry Act, Paragraph (10) of Subsection E of Section 61-8-6 and 61-8-8 NMSA 1978.

[16.21.3.3 NMAC - Rp, 16.21.3.3 NMAC 5/3/2019]

#### 16.21.3.4 DURATION:

Permanent.

[16.21.3.4 NMAC - Rp, 16.21.3.4 NMAC 5/3/2019]

#### 16.21.3.5 EFFECTIVE DATE:

May 3, 2019, unless a later date is cited at the end of a section.

[16.21.3.5 NMAC - Rp, 16.21.3.5 NMAC 5/3/2019]

#### 16.21.3.6 OBJECTIVE:

This part lists the requirements and documentation, which must be submitted to the board to obtain licensure as a podiatrist by examination.

[16.21.3.6 NMAC - Rp, 16.21.3.6 NMAC 5/3/2019]

#### 16.21.3.7 DEFINITIONS:

“Jurisprudence exam” means an examination concerning the laws and rules of the New Mexico board of podiatry.

[16.21.3.7 NMAC – Rp, 16.21.3.7 NMAC 5/3/2019]

#### 16.21.3.8 REQUIREMENTS FOR LICENSE:

Each applicant for a license as a podiatrist must possess the following qualifications:

**A.** graduated and been awarded a doctor of podiatric medicine degree from an accredited college of podiatric medicine as defined in the Podiatry Act, Paragraph (3) of Subsection A of Section 61-8-8 NMSA 1978;

**B.** passed the NBPME examinations part 1, 2, and 3;

**C.** every applicant prior to 2015 shall have completed at minimum one year of residency

approved by the CPME and after 2015 completion of three year residency approved by the CPME; and

**D.** passed the New Mexico jurisprudence examination with a score of ninety percent or higher.

[16.21.3.8 NMAC - Rp, 16.21.3.8 NMAC 5/3/2019]

#### 16.21.3.9 DOCUMENTATION REQUIREMENTS:

The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Each applicant for a license by examination must submit the required fees and following documentation:

**A.** completed application, with signature and a passport quality photo taken within the past six months; applications are valid for one year from the date of receipt;

**B.** official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

**C.** certificate or letter from residency director verifying completion of residency program approved by the CPME; after completion of 24 months of residency applicants may submit a letter from residency director indicating good standing of applicant and anticipated completion of full 36 month residency program.

**D.** proof that the applicant has passed the NBPME examinations sent directly from the NBPME;

**E.** verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification from the other state(s) may be received via US mail, electronically or facsimile, and must attest to the status, issue date, license number, and other information contained in the form; and

**F.** electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-

1 through Section 14-16-19 NMSA 1978.

[16.21.3.9 NMAC - Rp, 16.21.3.9 NMAC 5/3/2019]

**16.21.3.10 REPORTS:** The board requires obtainment of reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank.

[16.21.3.10 NMAC - Rp, 16.21.3.10 NMAC 5/3/2019]

**16.21.3.11 LICENSURE PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may ratify the approval of the application at the next scheduled board meeting. Any application which cannot be approved by the designee of the board will be reviewed by the board at the next scheduled meeting.

[16.21.3.11 NMAC - Rp, 16.21.3.11 NMAC 5/3/2019]

**HISTORY of 16.21.3 NMAC:**

**Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

Rule II, Initial Application for License, filed 7/21/1980;

Rule II, Initial Application for License, filed 8/18/1989;

Rule II, Initial Application for License, filed 11/29/1990;

Rule II, Initial Application for License, filed 12/10/1990;

Rule V, Examinations, filed 9/11/1989.

**History of the Repealed Material:**

16 NMAC 21.3, Podiatry - Application for License by Examination, repealed 10/15/2004. 16.21.3 NMAC, Podiatrists - License by Exam filed 9/15/2004, Repealed effective 5/3/2019.

**Other History:**

Rule II, Initial Application for License (filed 12/10/1990) was renumbered, reformatted and replaced by 16 NMAC 21.3, Podiatry - Application for License By Examination, effective 7/1/1996.

Rule V, Examinations, (filed 9/11/1989) and 16 NMAC 21.3, Podiatry - Application for License by Examination (filed 6/17/1996) were replaced by 16.21.3 NMAC, License by Exam, effective 10/15/2004.

16.21.3 NMAC, Podiatrists - License by Exam filed 9/15/2004 was replaced by 16.21.3 NMAC, Podiatrists - License by Exam effective 5/3/2019.

**REGULATION AND LICENSING DEPARTMENT PODIATRY BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 21 PODIATRISTS  
PART 4 LICENSE BY RECIPROCITY**

**16.21.4.1 ISSUING**

**AGENCY:** Regulation and Licensing Department, Board of Podiatry.

[16.21.4.1 NMAC - Rp, 16.21.4.1 NMAC 5/3/2019]

**16.21.4.2 SCOPE:**

Applicants for licensure by reciprocity who are currently licensed in another state.

[16.21.4.2 NMAC - Rp, 16.21.4.2 NMAC 5/3/2019]

**16.21.4.3 STATUTORY AUTHORITY:**

The Podiatry Act, Section .61-8-9 NMSA 1978.

[16.21.4.3 NMAC - Rp, 16.21.4.3 NMAC 5/3/2019]

**16.21.4.4 DURATION:**

Permanent.

[16.21.4.4 NMAC - Rp, 16.21.4.4 NMAC 5/3/2019]

**16.21.4.5 EFFECTIVE DATE:**

May 3, 2019, unless a later date is cited at the end of a section.

[16.21.4.5 NMAC - Rp, 16.21.4.5 NMAC 5/3/2019]

**16.21.4.6 OBJECTIVE:**

This part lists the requirements and documentation that must be submitted to the board to obtain licensure as a podiatrist based on a license to practice podiatry in another state.

[16.21.4.6 NMAC - Rp, 16.21.4.6 NMAC 5/3/2019]

**16.21.4.7 DEFINITIONS:**

**A.** "Active practice" for the purpose of this rule does not include practice in a residency or other training program.

**B.** "Jurisprudence exam" means an examination concerning the laws and rules of the New Mexico board of podiatry.

[16.21.4.7 NMAC - Rp, 16.21.4.7 NMAC 5/3/2019]

**16.21.4.8 REQUIREMENTS FOR LICENSURE BY RECIPROCITY:**

Each applicant for licensure as a podiatrist by reciprocity must:

**A.** graduated and received a degree from an accredited podiatric school as defined in the Podiatry Act, Paragraph (3) of Subsection A of Section 61-8-8 NMSA 1978;

**B.** hold a valid license issued after examination in another state, District of Columbia, or territory of the United States where the requirements for licensure are equal to or exceed those in New Mexico;

**C.** provide proof of active practice for at least five consecutive years immediately preceding the date of application;

**D.** passed the NBPME/APMLE or APMLE American podiatric medical licensing examination part 1, 2 and 3, or equivalent exam for part 3 as determined by the board; and

**E.** passed the jurisprudence examination with a score of ninety percent or higher.

[16.21.4.8 NMAC - Rp, 16.21.4.8 NMAC 5/3/2019]

**16.21.4.9 DOCUMENTATION REQUIREMENTS:** The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Each applicant for a license by reciprocity must submit the required fees and submit or provide for the following documentation:

- A.** completed application, with signature and a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;
- B.** official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;
- C.** one letter of recommendation from a practicing podiatrist who is personally acquainted with the applicant and who can attest that the applicant is of good moral character;
- D.** certificate or letter from residency director verifying completion of residency program approved by the CPME;
- E.** proof that the applicant has passed the NBPME examinations part 1, 2 and 3 sent directly from NBPME;
- F.** proof that the applicant who has not taken NBPME part 3 or the PM lexis exam provide equivalent examination proof of passing or reason why examination was not taken.
- G.** proof of active practice for the five consecutive years immediately preceding the date of application (proof may include a letter from an accountant, the professional society, tax forms, or other documentation approved by the board);
- H.** verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or another health care profession the verification must attest to the license status, issue date, license number, and all other information requested on the verification form and will be

accepted if submitted via U.S. mail, electronically or by facsimile.;

**I.** electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.  
[16.21.4.9 NMAC - Rp, 16.21.4.9 NMAC 5/3/2019]

**16.21.4.10 REPORTS:** The board requires obtainment of reports from the national practitioners data bank, or other national reporting organization, and the federation of podiatric medical boards disciplinary data bank.  
[16.21.4.10 NMAC - Rp, 16.21.4.10 NMAC 5/3/2019]

**16.21.4.11 LICENSURE PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application. If a background check contains negative findings, the application must be considered and reviewed by the entire board. The board may then grant, deny, or otherwise limit an applicant's license.  
[16.21.4.11 NMAC - Rp, 16.21.4.11 NMAC 5/3/2019]

**HISTORY of 16.21.4 NMAC:**  
**Pre-NMAC History:**  
The material in this part was derived from that previously filed with the commission of public records - state records center and archives:  
Rule III, Licensure by Reciprocity, filed 7/21/1980;  
Rule III, Licensure by Reciprocity, filed 8/18/1989.

**History of the Repealed Material:**  
16 NMAC 21.4, Podiatry - Application for License by Reciprocity, repealed 10/15/2004.  
16.21.4 NMAC, Podiatrists - License by Reciprocity filed 9/15/2004, Repealed effective 5/3/2019.

**Other History:**  
Rule III, Licensure by Reciprocity (filed 8/18/1989) was renumbered, reformatted and replaced by 16

NMAC 21.4, Podiatry - Application for License by Reciprocity, effective 7/1/1996.

16 NMAC 21.4, Podiatry - Application for License by Reciprocity (filed 6/17/1996) was replaced by 16.21.4 NMAC, License by Reciprocity, effective 10/15/2004.  
Podiatrists - License by Reciprocity filed 9/15/2004 was replaced by 16.21.4 NMAC, Podiatrists License by Reciprocity effective 5/3/2019.

## REGULATION AND LICENSING DEPARTMENT PODIATRY BOARD

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 5 TEMPORARY LICENSE AND EMERGENCY LICENSE

**16.21.5.1 ISSUING AGENCY:** Regulation and Licensing Department, Board of Podiatry.  
[16.21.5.1 NMAC - Rp, 16.21.5.1 NMAC 5/3/2019]

**16.21.5.2 SCOPE:**  
Applicants for a temporary license to practice podiatry in New Mexico.  
[16.21.5.2 NMAC - Rp, 16.21.5.2 NMAC 5/3/2019]

**16.21.5.3 STATUTORY AUTHORITY:** The Podiatry Act, Subsection E of Section 61-8-6 NMSA 1978 and Subsections B and C of Section 61-8-14 NMSA 1978.  
[16.21.5.3 NMAC - Rp, 16.21.5.3 NMAC 5/3/2019]

**16.21.5.4 DURATION:**  
Permanent.  
[16.21.5.4 NMAC - Rp, 16.21.5.4 NMAC 5/3/2019]

**16.21.5.5 EFFECTIVE DATE:** May3, 2019 unless a later date is cited at the end of a section.  
[16.21.5.5 NMAC - Rp, 16.21.5.5 NMAC 5/3/2019]

**16.21.5.6 OBJECTIVE:**  
 This part provides the circumstances under which a temporary license and or temporary emergency license will be issued and lists the requirements and documentation that must be submitted to the board in a complete application. It provides the procedure by which the board may approve the application and provides for expiration of the temporary license and or temporary emergency license. [16.21.5.6 NMAC - Rp, 16.21.5.6 NMAC 5/3/2019]

**16.21.5.7 DEFINITIONS:**  
**A. “Background findings”** the board may deny, or otherwise limit a license if it is determined the applicant hold or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the Podiatric Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

**B. “Complaint/review committee”** means a committee established by the board to review all complaints and applicants with background findings and to report to the board at its next scheduled meeting.

**C. “Emergency”** for purposes of this rule means any sudden or unforeseen situation that requires immediate action. The sudden onset of physical or mental illness, injury, impairment or other incapacitating condition by a New Mexico licensed podiatrist is considered an emergency.

**D. “Fellowship”** the period of medical training a podiatrist may undertake after completing residency.

**E. “Preceptorship”**  
 a period of practical experience and training for a podiatric medical school or college that is not defined as a residency program approved by the council podiatric medical education (CPME) and supervised by a New Mexico licensed podiatrist. [16.21.5.7 NMAC - Rp, 16.21.5.7 NMAC 5/3/2019]

**16.21.5.8 TEMPORARY LICENSE:** A temporary license may be issued by the board in the following situations.

**A.** In cases of emergency as determined by the board; a temporary license to practice podiatry may be issued under this rule for practice in the office of a New Mexico licensed podiatrist who is unable to continue his or her practice due to an emergency.

**B.** To facilitate educational programs; a temporary license to practice podiatry in New Mexico may be issued to:

**(1) a**  
 participant in a residency training program located in New Mexico accredited by the “CPME” and insure that at all times throughout the program the temporary license holder is supervised by a New Mexico licensed podiatrist; or

**(2) a**  
 participant in a residency program that is located in the United States accredited by the “CPME” and insure that at all times the temporary license holder is supervised by a New Mexico licensed podiatrist, if the program offers part of its program residency in New Mexico;

**(3) a**  
 participant in a post-graduate 1 year preceptorship program in New Mexico that at all times throughout the program is supervised by a New Mexico licensed podiatrist(s) in good standing and without restriction(s) of license; the board of podiatry requires the supervising podiatrist(s) of this preceptorship to have notified the board in writing of the start and end dates for this post-graduate training position.

**(4) a**  
 participant in a Fellowship program known and listed by a recognized medical specialty organization provided that at all times the temporary license holder is supervised by a New Mexico Licensed podiatrist.

**C.** In cases to assist or perform surgical procedures with a licensed New Mexico podiatrist which is beyond the training and experience available in New Mexico. [16.21.5.8 NMAC - Rp, 16.21.5.8 NMAC 5/3/2019]

**16.21.5.9 DISASTER RELATED LICENSE:** Podiatric physician currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost. [16.21.5.9 NMAC - Rp, 16.21.5.9 NMAC 5/3/2019]

**16.21.5.10 REQUIREMENTS FOR TEMPORARY LICENSURES:** The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Applicants for temporary license due to situations defined under Subsection A or C of 16.21.5.8 NMAC must meet the qualifications set forth in 16.21.3.8 NMAC: [16.21.5.10 NMAC - Rp, 16.21.5.10 NMAC 5/3/2019]

**16.21.5.11 TEMPORARY LICENSE DOCUMENTATION REQUIREMENTS:** Each applicant for a temporary license must submit the required fees and submit or provide for the following documentation set forth in 16.21.3.9 NMAC. [16.21.5.11 NMAC - Rp, 16.21.5.11 NMAC 5/3/2019]

**16.21.5.12 DISASTER RELATED LICENSE DOCUMENTATION REQUIREMENTS:**

**A.** Podiatric physicians currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost, upon satisfying the following requirements set forth in 16.21.4.8 NMAC. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.21.5 NMAC.

**B.** Upon receipt of a completed application, including all required documentation designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be reviewed by the complaint/review committee. The board may formally accept the recommendation of the complaint/review committee at the next scheduled meeting.  
[16.21.5.12 NMAC - RP, 16.21.5.12 NMAC 5/3/2019]

**16.21.5.13 REPORTS:** The board requires obtainment of reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed as a podiatrist in another state.  
[16.21.5.13 NMAC - Rp, 16.21.5.13 NMAC 5/3/2019]

**16.21.5.14 TEMPORARY LICENSE PROCEDURE:** Upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application.

**A.** The results of the background check must either indicate no negative findings, or if

there are negative findings, those findings will be considered by the board. The board shall ratify the approval of the application at the next scheduled board meeting. Any application which cannot be approved by the designee of the board will be reviewed by the board at the next scheduled meeting. The board's decision in regard to the issuance of a temporary license shall be final.

**B.** When issued, a temporary license shall state on its face that the license only authorizes the individual to practice podiatry at the location or locations stated on the license and shall expire automatically on December 31<sup>st</sup> of the year the license was issued or on the date the applicant's residency educational program terminates.

[16.21.5.14 NMAC - Rp, 16.21.5.14 NMAC 5/3/2019]

**16.21.5.15 DISASTER RELATED LICENSE PROCEDURE:**

**A.** An emergency license shall expire at the next board meeting after four months, whichever comes first. A request for an extension of the emergency license may be made to the board or its designee and may be extended until December 31<sup>st</sup> of the current year.

**B.** An emergency licensee may obtain permanent license status upon submission of a renewal application, all fees and CE's approved by the board as outlined in 16.21.7 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal.

**C.** The emergency license shall be terminated by the board for the following:

(1) the issuance of a permanent license under Subsection A of 16.21.5.15 NMAC;

(2) proof that the emergency license holder has engaged in fraud deceit or misrepresentation in procuring or attempting to procure an emergency license under this section;

(3) the results of the background check indicate negative findings.  
[16.21.5.15 NMAC - Rp, 16.21.5.15 NMAC 5/3/2019]

**HISTORY of 16.21.5 NMAC: Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

Rule IV, Temporary Licenses, filed 7/21/1980;

Rule IV, Temporary License, filed 10/6/1987;

Rule IV, Temporary License, filed 8/18/1989;

Rule IV, Temporary License, filed 11/29/1990.

**History of the Repealed Material:**

16 NMAC 21.5, Podiatry - Application for Temporary License (filed 7/17/1996), repealed 10/15/2004.

16.21.5 NMAC, Temporary License (filed 9/15/2004), repealed 7/15/2007.

16.21.5 NMAC, Podiatrists - Temporary License and Emergency License filed 6/14/2007, Repealed effective 5/3/2019.

**Other History:**

Rule IV, Temporary License (filed 11/29/1990) was renumbered, reformatted and replaced by 16 NMAC 21.5, Podiatry - Application for Temporary License, effective 7/1/1996.

16 NMAC 21.5, Podiatry - Application for Temporary License (filed 6/17/1996) was replaced by 16.21.5 NMAC, Temporary License, effective 10/15/2004.

16.21.5 NMAC, Temporary License (filed 9/15/2004) was replaced by 16.21.5 NMAC, Temporary License and Emergency License, effective 7/15/2007.

16.21.5 NMAC, Podiatrists - Temporary License and Emergency License filed 6/14/2007 was replaced by 16.21.5 NMAC, Podiatrists - General Provisions effective 5/3/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
PODIATRY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 21 PODIATRISTS  
PART 8 CONTINUING  
EDUCATION**

**16.21.8.1 ISSUING**  
**AGENCY:** Regulation and Licensing  
Department, Board of Podiatry.  
[16.21.8.1 NMAC - Rp, 16.21.8.1  
NMAC 5/3/2019]

**16.21.8.2 SCOPE:**  
Individuals with a license to practice  
podiatry in the state of New Mexico.  
[16.21.8.2 NMAC - Rp, 16.21.8.2  
NMAC 5/3/2019]

**16.21.8.3 STATUTORY  
AUTHORITY:** This rule is  
promulgated pursuant to the Podiatry  
Act, Subsection B of Section 61-8-  
10.1 NMSA 1978, which requires,  
as a condition of license renewal,  
evidence of completion of post-  
graduate study as required by board  
rule.  
[16.21.8.3 NMAC - Rp, 16.21.8.3  
NMAC 5/3/2019]

**16.21.8.4 DURATION:**  
Permanent.  
[16.21.8.4 NMAC - Rp, 16.21.8.4  
NMAC 5/3/2019]

**16.21.8.5 EFFECTIVE  
DATE:** May 3, 2019 unless a later  
date is cited at the end of a section.  
[16.21.8.5 NMAC - Rp, 16.21.8.5  
NMAC 5/3/2019]

**16.21.8.6 OBJECTIVE:**  
To establish the criteria, standards,  
approval requirements, verification  
and waiver requirements, for post-  
graduate study required by the board  
for license renewal.  
[16.21.8.6 NMAC - Rp, 16.21.8.6  
NMAC 5/3/2019]

**16.21.8.7 DEFINITIONS:**  
[RESERVED]

**16.21.8.8 HOURS  
REQUIRED:** Sixteen hours of  
continuing education are required  
annually, with two hours specifically  
related to pain management as defined  
in 16.21.9.11 NMAC. Initial licenses  
issued for a period of less than six  
months do not require any continuing  
education for the initial licensing  
period. Licenses issued for more than  
six months but less than 12 months  
require eight hours of continuing  
education for the initial licensing  
period.

**A.** Continuing  
education coursework must contribute  
directly to the practice of podiatric  
medicine.

**B.** One hour of credit  
will be granted for every contact  
hour of instruction. This credit shall  
apply to either academic or clinical  
instruction.  
[16.21.8.8 NMAC - Rp, 16.21.8.8  
NMAC 5/3/2019]

**16.21.8.9 APPROVED  
COURSES:** Continuing education  
courses offered or sponsored by  
the following organizations are  
automatically approved by the board:

**A.** a college of  
podiatric medicine which is accredited  
by the council podiatric medical  
education (CPME) of the American  
podiatric medical association;

**B.** constituent society  
of the American podiatric medical  
association;

**C.** an organization or  
sponsor approved by the "CPME"  
of the American podiatric medical  
association; or

**D.** hospital or other  
health care organizations sponsored  
in-service programs related to the  
practice of podiatry.

[16.21.8.9 NMAC - Rp, 16.21.8.9  
NMAC 5/3/2019]

**16.21.8.10 APPROVAL  
REQUIREMENTS:** Any course not  
sponsored by a recognized provider  
may be approved by the designee  
of the board. The application for  
approval must include the name of the  
course, the sponsor, course outline,  
date, location, hours, names and

qualifications of presenters, and the  
method that will be used to certify  
attendance.  
[16.21.8.10 NMAC - Rp, 16.21.8.10  
NMAC 5/3/2019]

**16.21.8.11 ALLOWED  
COURSES AND PROVIDERS:**  
The following courses and activities  
are acceptable for CME credit:

**A. POST  
GRADUATE EDUCATION:**  
This category includes internships,  
residencies and fellowships, 14  
hours of credit allowed for full time  
participants.

**B. SPECIALTY  
TRAINING/CERTIFICATIONS:**  
Four hours of credit per certificate for  
specialty training with a maximum  
of 10 hours per year. A maximum  
of 10 hours of credit is allowed for  
certification with a CPME approved  
board initially obtained or renewed  
within the license renewal cycle.

**C. TEACHING:**  
One credit hour is allowed for each  
hour of teaching medical students or  
physicians in a United States medical  
school, an approved residency/  
fellowship or for teaching in other  
programs approved by the board with  
maximum of 10 hours per reporting.

**D. PHYSICIAN  
PRECEPTORS/MENTORS:** A  
maximum of five hours of credit  
during a year reporting period is  
acceptable for licensed podiatrists  
who are acting as preceptors/  
mentors for students enrolled in an  
accredited medical degree program  
or as preceptors/mentors for students  
enrolled in a combined bachelor of  
arts and medical degree program.

**E. PAPERS AND  
PUBLICATIONS:** 10 hours  
of credit are allowed for each  
original scientific medical paper or  
publication written by a licensee. For  
acceptance, papers must have been  
presented to a recognized national,  
international, regional or state society  
or organization whose membership  
is primarily physicians; or must  
have been published in a recognized  
medical or medically related scientific  
journal.



**F. ADVANCED LIFE**

**SUPPORT:** Two hours of credit may be claimed during reporting period for successful completion of advanced cardiac life support (ACLS), pediatric advanced life support (PALS), advanced trauma life support (ATLS) and neonatal advanced life support (NALS) courses.

[16.21.8.11 NMAC - Rp, 16.21.8.11 NMAC 5/3/2019]

**16.21.8.12 VERIFICATION**

**OF COURSE ATTENDANCE:** The following documents, or combination of documents, may be used to verify attendance in required continuing education.

**A.** Course certificate with the course title, content, presenter, sponsor and hours.

**B.** Course attendance sheet submitted by the sponsor.

**C.** Course code or statement of attendance from presenter or sponsor.

[16.21.8.12 NMAC - Rp, 16.21.8.12 NMAC 5/3/2019]

**16.21.8.13 VERIFICATION****OF CONTINUING EDUCATION**

**HOURS:** Each podiatrist renewing a license shall attest that they have obtained the required hours of continuing medical education (CME). Documentation of CME is not required unless you are selected for the annual CME compliance audit. If you are selected for audit you will be notified and provided with instructions for compliance. The board may audit CME records at any time, so CME records must be maintained for at least one year following the renewal cycle in which they are earned.

[16.21.8.13 NMAC - Rp, 16.21.8.13 NMAC 5/3/2019]

**16.21.8.14 ACCEPTABLE****DOCUMENTATION OF CME****INCLUDES:**

**A.** Photocopies of original certificates or official letters from course sponsors or online providers.

**B.** Postgraduate CME hours must be documented

and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**C.** Advanced degree studies must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**D.** Teaching hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**E.** Preceptor hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.

**F.** Papers or publications must be documented with a copy.  
[16.21.8.14 NMAC - Rp, 16.21.8.14 NMAC 5/3/2019]

**16.21.8.15 WAIVER OF**

**REQUIREMENTS:** Waivers of the continuing education requirement may be considered for the following situations for licensees.

**A.** During periods of prolonged illness or physical incapacity.

**(1)** For the purposes of this rule, the duration of a prolonged illness or physical incapacity period will be defined as longer than six months.

**(2)** Any licensee who wishes to apply for this type of waiver of continuing education must submit in writing a letter detailing the nature of the illness or incapacity and its probable duration. The board will review this waiver request and allow the licensee or the licensee's representative to attend board meeting to present evidence of support of this waiver request and to speak to the board concerning the petition for waiver. The burden shall be on the licensee to prove to the board the necessity of the waiver. The decision of the board on the waiver shall be final.

**B.** Any licensee who believes that the licensee is entitled

to a waiver of a continuing education requirement for reasons of prolonged illness or physical incapacity shall request such a waiver by sending the board a letter from his or her physician setting out in detail the nature of the illness or incapacity and its probable duration. The board shall notify the licensee in writing of the date on which the application will be considered by the board. The licensee or the licensee's representative may attend the meeting, present evidence on behalf of a petition for waiver, and to speak to the board concerning the petition. The burden shall be on the licensee to satisfy the board of the necessity of the waiver. The decision of the board on the waiver shall be final.

**C.** Licensee in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

**(1)** The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

**(2)** Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply in writing to the board detailing reason for deferral of this requirement.

**D.** Applications for waiver under this section must be filed as soon as the licensee has reason to believe that grounds for the waiver exist.

[16.21.8.15 NMAC - Rp, 16.21.8.15 NMAC 5/3/2019]

**16.21.8.16 EXTENSION TO**

**MEET REQUIREMENTS:** The board may extend the time in which a licensee may meet the required continuing education requirements.

**A.** A licensee unable to fulfill the continuing education requirements may apply to the board for an extension of time in which to meet educational requirements. Extensions of up to three months

may be granted by the board or its designee. Licensees granted an extension must pay the late fee defined in Subsection F of 16.21.2.8 NMAC to cover the cost of additional processing requirements.

**B.** A licensee who is unable to fulfill the requirements within the three month extension must apply to the board for an additional extension.

[16.21.8.16 NMAC - Rp, 16.21.8.16 NMAC 5/3/2019]

#### **HISTORY of 16.21.8 NMAC:**

##### **Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives: Rule VII, Continuing Education, filed 7/21/1980.

Rule VII, Continuing Education, filed 10/6/1987.

Rule VII, Continuing Education, filed 8/18/1989.

##### **History of Repealed Material:**

Rule VI, Renewal Of License (filed 8/18/1989), repealed 10/15/2004.

16.21.8 NMAC, Podiatrists - Continuing Education filed 9/15/2004, Repealed effective 5/3/2019.

##### **Other History:**

Rule VII, Continuing Education (filed 8/18/1989) was renumbered, reformatted and replaced by 16.21.8 NMAC, Continuing Education, effective 10/15/2004.

16.21.8 NMAC, Podiatrists - Continuing Education filed 9/15/2004 was replaced by 16.21.8 NMAC, Podiatrists - Continuing Education effective 5/3/2019.

---

## **REGULATION AND LICENSING DEPARTMENT PODIATRY BOARD**

### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 21 PODIATRISTS PART 10 LAPSE OF LICENSE AND REINSTATEMENT**

#### **16.21.10.1 ISSUING**

**AGENCY:** Regulation and Licensing Department, Board of Podiatry.

[16.21.10.1 NMAC - Rp, 16.21.10.1 NMAC 5/3/2019]

#### **16.21.10.2 SCOPE:**

Podiatrists licensed in New Mexico who do not submit an application for license renewal within 60 days of the expiration date.

[16.21.10.2 NMAC - Rp, 16.21.10.2 NMAC 5/3/2019]

#### **16.21.10.3 STATUTORY**

**AUTHORITY:** This rule is promulgated pursuant to the Podiatry Act, 61-8-10 and 61-8-10.1 NMSA 1978.

[16.21.10.3 NMAC - Rp, 16.21.10.3 NMAC 5/3/2019]

#### **16.21.10.4 DURATION:**

Permanent.

[16.21.10.4 NMAC - Rp, 16.21.10.4 NMAC 5/3/2019]

#### **16.21.10.5 EFFECTIVE**

**DATE:** May 3, 2019 unless a later date is cited at the end of a section.

[16.21.10.5 NMAC - Rp, 16.21.10.5 NMAC 5/3/2019]

#### **16.21.10.6 OBJECTIVE:**

To establish the procedures and policies for podiatry licenses that are not renewed within 60 days of the date of expiration.

[16.21.10.6 NMAC - Rp, 16.21.10.6 NMAC 5/3/2019]

#### **16.21.10.7 DEFINITIONS:**

[RESERVED]

#### **16.21.10.8 LICENSE**

**SUSPENSION FOR NON-RENEWAL:** Unless an application for license renewal is received by the board office, or post-marked, before March 1, the license may be summarily suspended.

[16.21.10.8 NMAC - Rp, 16.21.10.8 NMAC 5/3/2019]

#### **16.21.10.9 REINSTATEMENT OF SUSPENDED LICENSE:**

A podiatrist may request reinstatement of a lapsed license within three years

from the date the license expired by notifying the board in writing. Upon receipt of the request for reinstatement, board staff will send a reinstatement application. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. The following information is required for the request to be considered:

**A.** a completed application, payment of the reinstatement fee, any delinquent renewal fees, and proof of sixteen hours of continuing education per the year of renewal and each full year the license was allowed to lapse;

**B.** the application may be approved by the designee of the board if the application is complete and all requirements have been fulfilled;

**C.** verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office from the other state(s) and must attest to the status, issue date, license number, and other information contained in the form;

**D.** the board required reports from the national practitioners data bank, or other national reporting organization, and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed, or has previously been licensed as a podiatrist in another state;

**E.** no podiatrist shall reactivate or resume their podiatric practice until his or her lapsed license is reinstated and a new license is issued;

**F.** upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally

accept the approval of the application at the next scheduled meeting.

[16.21.10.9 NMAC - Rp, 16.21.10.9 NMAC 5/3/2019]

**16.21.10.10  
REINSTATEMENT FOR  
LICENSEES WHO PRACTICE  
AS MEDICAL OFFICERS IN  
THE UNITED STATES SERVICE:**

Licensed podiatrists who practice podiatry in the uniformed services may reinstate their expired New Mexico license within three months after the termination of such service without payment of any renewal, late or reinstatement fees as per the Podiatry Act, Subsection C of Section 61-8-10 NMSA 1978. Individuals using this option must notify the board prior to the expiration date of their license that they will not renew until the time they terminate their uniformed service practice.

[16.21.10.10 NMAC - Rp, 16.21.10.10 NMAC 5/3/2019]

**HISTORY of 16.21.10 NMAC:**

**Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

Rule VI, Renewal of License, filed 7/21/1980;

Rule VI, Renewal of License, filed 8/18/1989.

**History of the Repealed Material:**

Rule VI, Renewal of License (filed 8/18/1989), repealed 10/15/2004. 16.21.10 NMAC, Podiatrists - Lapse of License and Reinstatement filed 9/15/2004, Repealed effective 5/3/2019.

**Other History:**

That applicable portion of Rule VI, Renewal of License (filed 8/18/1989) was replaced by 16.21.10 NMAC, Lapse of License and Reinstatement, effective 10/15/2004.

16.21.10 NMAC, Podiatrists - Lapse of License and Reinstatement filed 9/15/2004 was replaced by 16.21.10 NMAC, Podiatrists - Lapse of License and Reinstatement effective 5/3/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
PODIATRY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 21 PODIATRISTS  
PART 11 DISCIPLINARY  
PROCEEDINGS**

**16.21.11.1 ISSUING**

**AGENCY:** Regulation and Licensing Department, Board of Podiatry.

[16.21.11.1 NMAC - Rp, 16.21.11.1 NMAC 5/3/2019]

**16.21.11.2 SCOPE:** The provisions of Part 11 apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a podiatrist licensed by the board.

[16.21.11.2 NMAC - Rp, 16.21.11.2 NMAC 5/3/2019]

**16.21.11.3 STATUTORY**

**AUTHORITY:** This rule is promulgated pursuant to the Podiatry Act, 61-8-6 NMSA 1978, 61-8-11 NMSA 1978, and 61-8-13 NMSA 1978.

[16.21.11.3 NMAC - Rp, 16.21.11.3 NMAC 5/3/2019]

**16.21.11.4 DURATION:**

Permanent.

[16.21.11.4 NMAC - Rp, 16.21.11.4 NMAC 5/3/2019]

**16.21.11.5 EFFECTIVE**

**DATE:** May 3, 2019, unless a different date is cited at the end of a section.

[16.21.11.5 NMAC - Rp, 16.21.11.5 NMAC 5/3/2019]

**16.21.11.6 OBJECTIVE:**

To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to define conduct that constitutes incompetent or unprofessional practice.

[16.21.11.6 NMAC - Rp, 16.21.11.6 NMAC 5/3/2019]

**16.21.11.7 DEFINITIONS:**  
[RESERVED]

**16.21.11.8 COMPLAINTS:**

Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board. The complaint will be reviewed by the board and any subsequent disciplinary action shall conform with the Uniform Licensing Act, Sections 61-1-1 *et. seq.*, NMSA 1978.

**A.** No member of the board or any investigators or representatives appointed by the board shall bear liability or be subject to civil damages or criminal prosecutions for any action undertaken or performed within the proper functions of the board.

**B.** No person or legal entity providing information to the board whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

**C.** All written and oral communications made by any person to the board or the committee relating to actual or potential disciplinary action, which includes complaints made to the board, shall be confidential communications and are not public records for the purposes of the Public Records Act.

**D.** Information contained in compliance files is public information and subject to disclosure following formal disciplinary proceedings.

[16.21.11.8 NMAC - Rp, 16.21.11.8 NMAC 5/3/2019]

**16.21.11.9 ACTIONS:** The board may take any action authorized by the Podiatry Act, Section 61-8-1 *et. seq.*, NMSA 1978 and the Uniform Licensing Act, 61-1-1 *et. seq.* NMSA 1978 if the board determines that a licensee has violated any of the provisions of the Podiatry Act, the rules, or the Impaired Health Care Provider Act, 61-7-1 NMSA 1978.

[16.21.11.9 NMAC - Rp, 16.21.11.9 NMAC 5/3/2019]

**16.21.11.10 SUSPENSION, REVOCATION OR REFUSAL OF A LICENSE:** For the purpose of the Podiatry Act, Section 61.8.11.10 NMSA 1978 of, the following may apply.

**A.** “Gross negligence” or “gross incompetency” means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence on the part of the podiatrist as to render the podiatrist unfit to hold himself out to the public as a licensed podiatrist.

**B.** “Unprofessional conduct” means, but is not limited to:

**(1)** performing, or holding oneself out as able to perform, professional services beyond the scope of one’s license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the profession;

**(2)** practicing beyond the scope of practice of a podiatrist as defined by the Podiatry Act, Section 61-8-1 NMSA 1978, or board rule;

**(3)** failure of a podiatrist to comply with the following advertising guidelines:

**(a)** shall not advertise in a false, fraudulent or misleading manner;

**(b)** shall include in the advertisement the podiatrist’s name or medical group name, address and telephone number;

**(4)** the making of false or misleading statement in communication with patients or potential patients;

**(5)** the use of misleading or deceptive titles or designations in a name or title of a podiatric practice, including the unauthorized advertisement of a specialty designation;

**(6)** failure to release to a patient copies of that patient’s records and x-rays;

**(7)** conviction of a felony; a certified copy of the record of the court of conviction shall be proof of such conviction;

**(8)** impersonating another person licensed to practice podiatry or permitting or allowing any person to use his license or certificate of registration;

**(9)** deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another podiatrist licensed or applying for licensure by the board;

**(10)** accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a professional partnership, association, HMO, or similar association shall not be construed as fee-splitting;

**(11)** injudicious prescribing, administration, or dispensing of any drug or medicine;

**(12)** sexual misconduct;

**(13)** the use of a false, fraudulent or deceptive statement in any document connected with the practice of podiatry;

**(14)** the falsifying of medical records, whether or not for personal gain;

**(15)** any intentional conduct or practice which is harmful or dangerous to the health of the patient;

**(16)** fraud, deceit or misrepresentation in any renewal or reinstatement application;

**(17)** obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;

**(18)** cheating on an examination for licensure;

**(19)** violation of any order of the board, including any probation order;

**(20)** treating patients when the podiatrist is under the influence of alcohol, illegal drugs, or injudicious use of prescription medications; or

**(21)** failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

**(22)** willful abandonment of a patient;

**(23)** has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation;

**(24)** breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American podiatric medical association.

[16.21.11.10 NMAC - Rp, 16.21.11.10 NMAC 5/3/2019]

**16.21.11.11 COMPLAINT COMMITTEE:** The chair of the board shall appoint at least one member of the board to serve on the complaint committee along with the board’s compliance liaison. A complaint committee shall review each complaint charging a licensed podiatrist with unprofessional conduct or other violations under the Podiatry Act.

**A.** The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

**B.** Upon completion of an investigation, the complaint committee shall submit its recommendations to the board

**C.** The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with an investigative subpoena may result in the board seeking an order from the district court directing the subject of the investigative subpoena to comply. [16.21.11.11 NMAC - N, 5/3/2019]

**16.21.11.12 INVESTIGATIVE SUBPOENAS:** The board designee of the board is authorized to issue

investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations. [16.21.11.12 NMAC - Rp, 16.21.11.11 NMAC 5/3/2019]

**16.21.11.13 DELEGATION OF AUTHORITY:** The authority of the New Mexico board of podiatry to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in Sections 40-5A-1 to -13 NMSA 1978, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall be not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution. [16.21.11.13 NMAC - Rp, 16.21.11.12 NMAC 5/3/2019]

**HISTORY of 16.21.11 NMAC:**  
**Pre-NMAC History:**  
The material in this part was derived from that previously filed with the commission of public records - state records center and archives: Rule VIII, Dishonest or Unprofessional Conduct Defined, filed 7/21/1980; Rule X, Gross Malpractice Defined, filed 7/21/1980; Rule XV, Complaints and Disciplinary Proceedings, filed 1/28/1991.

**History of the Repealed Material:**  
Rule VIII, Dishonest or Unprofessional Conduct Defined (filed 7/21/1980); Rule X, Gross Malpractice Defined (filed 7/21/1980); and Rule XV, Complaints and Disciplinary Proceedings (filed 1/28/1991) all repealed 10/15/2004. 16.21.11 NMAC, Podiatrists - Disciplinary Proceedings filed 9/15/2004, Repealed effective 5/3/2019.

**Other History:**

Those applicable portions of Rule VIII, Dishonest Or Unprofessional Conduct Defined (filed 7/21/1980); Rule X, Gross Malpractice Defined (filed 7/21/1980); and Rule XV, Complaints and Disciplinary Proceedings (filed 1/28/1991) were replaced by 16.21.11 NMAC, Disciplinary Proceedings, effective 10/15/2004. 16.21.11 NMAC, Podiatrists - Disciplinary Proceedings filed 9/15/2004 was replaced by 16.21.11 NMAC, Podiatrists - Disciplinary Proceedings effective 5/3/2019.

**REGULATION AND  
LICENSING DEPARTMENT  
PODIATRY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 21 PODIATRISTS  
PART 12 MANAGEMENT  
OF MEDICAL RECORDS**

**16.21.12.1 ISSUING AGENCY:** Regulation and Licensing Department, Board of Podiatry hereafter called the board. [16.21.12.1 NMAC - Rp, 16.21.12.1 NMAC 5/3/2019]

**16.21.12.2 SCOPE:** This part governs the use management of medical records that are created and maintained as part of the practice of a podiatrist who has physical possession or ownership of the records. [16.21.12.2 NMAC - Rp, 16.21.12.2 NMAC 5/3/2019]

**16.21.12.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to and in accordance with the Podiatry Act, Section 61-8-9 NMSA 1978. [16.21.12.3 NMAC - Rp, 16.21.12.3 NMAC 5/3/2019]

**16.21.12.4 DURATION:** Permanent. [16.21.12.4 NMAC - Rp, 16.21.12.4 NMAC 5/3/2019]

**16.21.12.5 EFFECTIVE DATE:** May 3, 2019 unless a later date is cited at the end of a section. [16.21.12.5 NMAC - Rp, 16.21.12.5 NMAC 5/3/2019]

**16.21.12.6 OBJECTIVE:**  
This part establishes requirements and procedures for management of medical records. [16.21.12.6 NMAC - Rp, 16.21.12.6 NMAC 5/3/2019]

**16.21.12.7 DEFINITIONS:**  
“**Medical record**” means all information maintained by a podiatrist relating to the past, present or future physical health or condition of a patient, and for the provision of health care to a patient. This information includes, but is not limited to, the podiatrist’s notes, reports, summaries, x-rays, laboratory and other diagnostic test results. A patient’s complete medical record includes information generated and maintained by the podiatrist, as well as information provided to the podiatrist by the patient, by any other podiatrist who has consulted with or treated the patient, and other information acquired by the health care provider about the patient in connection with the provision of health care to the patient. [16.21.12.7 NMAC - Rp, 16.21.12.7 5/3/2019]

**16.21.12.8 RELEASE OF MEDICAL RECORDS:** Podiatrists must provide copies of medical records to a patient or to another podiatrist when legally requested to do so. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the podiatrist should act as the patient’s advocate and work to facilitate the patient’s request for records.

**A.** Medical records may not be withheld because an account is overdue or a bill for treatment, medical records, or other services is owed.

**B.** A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is \$1.00 per page for the first 25 pages, and \$0.10 per page thereafter. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Podiatrists charging for the cost of reproduction of medical records shall give consideration to the ethical and professional duties owed to other podiatrists and their patients. [16.21.12.8 NMAC - Rp, 16.21.12.8 NMAC 5/3/2019]

**16.21.12.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:**

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current podiatrist to the new treating podiatrist. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating podiatrist.

**A.** Active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice.

**B.** Whenever possible, patients should be notified within at least 30 days after the death of their podiatrist.

**C.** Notification may be satisfied using any of the following methods:

(1) by placing a notice in at least one newspaper in the local practice area; notice should advise patients where their medical records will be stored; notice should include any pertinent information the patient may need for obtaining or transferring the records, including the name, mailing address and telephone number of a contact person with access to the stored records; notification should run a minimum of two times per month for three

months to reach a maximum number of patients; or

(2) by written or electronic mail; or

(3) by individual correspondence to the patient's last known physical or electronic mail address.

**D.** Notification should include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed; and

(4) cost of recovering/transferring records.

**E.** A podiatrist or podiatrist group should not withhold patient lists or other information from a departing podiatrist that is necessary for notification of patients.

**F.** Patients of a podiatrist who leaves a group practice must be notified the podiatrist is leaving, notified of the podiatrist's new address and offered the opportunity to have their medical records transferred to the departing podiatrist at their new practice.

**G.** When a practice is sold, all active patients must be notified that the podiatrist is transferring the practice to another podiatrist or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another podiatrist or entity of their choice.

[16.21.12.9 NMAC - Rp, 16.21.12.9 NMAC 5/3/2019]

**16.21.12.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS:**

**A.** Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes unprofessional conduct under the

board's rules adopted pursuant to Subsection H of 61-8-11 NMSA 1978. Podiatric physicians must maintain and make available upon request a written copy of their policy or their employer's policy for medical record retention, maintenance and destruction.

**B.** Written medical record policy shall include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed; and

(4) cost of obtaining copies of records, and of recovering records/transferring records.

**C.** Electronic medical record policy shall include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before destroyed;

(4) a data backup plan, disaster recovery plan and storage which ensures retrievability into reasonably usable form on a timely basis upon any request; and

(5) transfer of data via electronic file with appropriate safeguards to ensure patient confidentiality.

**D.** Podiatric physicians must retain medical records that they own for at least seven years. Medical records for patients who are minors must be retained for at least two years beyond the date that the patient is 18 years old.

**E.** Podiatric physicians shall retain medical billing information for at least two years after the date of last treatment.

**F.** A log must be kept of all charts destroyed, including the patient's name and date of record destruction.

**G.** If conversion of hard copies of medical records occurs to electronic format, the hard copy shall be retained by the physician for a minimum of 30 days after electronic transfer has occurred.

**H.** Destruction of medical records must be such that confidentiality is maintained. Records must be destroyed by shredding, incinerating (where permitted) or by other method of permanent destruction, including purging of medical records from a computer hard drive, server hard drive or other computer media or disk in accordance with existing practices for data deletion then available.

[16.21.12.10 NMAC - Rp,  
16.21.12.10 NMAC 5/3/2019]

**History of 16.21.12 NMAC:**  
[RESERVED]

**History of the Repealed Material:**  
16.21.12 NMAC, Podiatrists -  
Management of Medical Records  
filed 6/14/2007, Repealed effective  
5/3/2019.

**Other History:**

16.21.12 NMAC, Podiatrists -  
Management of Medical Records filed  
6/14/2007 was replaced by 16.21.12  
NMAC, Podiatrists - Management  
of Medical Records filed 6/14/2007  
effective 5/3/2019.

---

**SUPERINTENDENT OF  
INSURANCE, OFFICE OF**

The Superintendent of Insurance, after a rule hearing conducted on March 18, 2019, has approved a repeal of its rule 13.10.8 NMAC, Health Insurance for Seniors (filed 1/1/2006). The rule was adopted on April 11, 2019 and is effective April 23, 2019.

The Superintendent of Insurance, after a rule hearing conducted on April 1, 2019, has approved a repeal of its rule 13.21.2 NMAC, Qualifications

and Admissions (filed 02/14/2019 and effective from March 1, 2019 to April 29, 2019). A replacement rule, 13.21.2 NMAC, Qualifications and Admissions, was adopted on April 11, 2019 and is effective April 30, 2019.

The Superintendent of Insurance, after a rule hearing conducted on April 1, 2019, has approved a repeal of its rule 13.21.3 NMAC, Procedural Rules for Public Rule Hearings (filed 02/14/2019 and effective from March 1, 2019 to April 29, 2019). A replacement rule, 13.21.3 NMAC, Procedural Rules for Public Rule Hearings, was adopted on April 11, 2019 and is effective April 30, 2019.

The Superintendent of Insurance, after a rule hearing conducted on April 1, 2019, has approved a repeal of its rule 13.21.4 NMAC, Administrative Hearings (filed 02/14/2019 and effective from March 1, 2019 to April 29, 2019). A replacement rule, 13.21.4 NMAC, Administrative Hearings, was adopted on April 11, 2019 and is effective April 30, 2019.

---

**SUPERINTENDENT OF  
INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 21 PATIENT'S  
COMPENSATION FUND  
PART 1 GENERAL  
PROVISIONS**

**13.21.1.1 ISSUING**  
**AGENCY:** New Mexico  
Superintendent of Insurance (the  
superintendent).  
[13.21.1.1 NMAC – N, 4/30/2019]

**13.21.1.2 SCOPE:** The rules  
of Chapter 21 provide for and govern  
the organization, administration, and  
defense of the New Mexico Patient's  
Compensation Fund (the fund or PCF)  
by the superintendent.  
[13.21.1.2 NMAC – N, 4/30/2019]

**13.21.1.3 STATUTORY  
AUTHORITY:** Section 41-5-25  
NMSA 1978; 1.24.25.8 NMAC.  
[13.21.1.3 NMAC – N, 4/30/2019]

**13.21.1.4 DURATION:**  
Permanent.  
[13.21.1.4 NMAC – N, 4/30/2019]

**13.21.1.5 EFFECTIVE  
DATE:** April 30, 2019, unless a later  
date is cited at the end of a section.  
[13.21.1.5 NMAC – N, 4/30/2019]

**13.21.1.6 OBJECTIVE:**  
The rules of Chapter 21 are adopted  
and promulgated to ensure that the  
*Patient's Compensation Fund* is  
organized, administered, and operated  
on a financially and actuarially sound  
basis so as to achieve the purpose  
for which it was established. The  
rules adopted in Chapter 21 shall be  
construed, interpreted, and applied to  
achieve the purposes and objectives  
for which the PCF was established.  
[13.21.1.6 NMAC – N, 4/30/2019]

**13.21.1.7 DEFINITIONS:**  
This chapter adopts the definitions  
found in Section 41-5-3 NMSA 1978,  
in Section 14-4-2 NMSA 1978, and in  
1.24.1.7 NMAC. In addition:

**A. "Base coverage"**  
means the medical malpractice  
liability coverage, as required by  
the MMA or as determined by the  
superintendent for a hospital or  
outpatient health care facility, that  
must be provided by an insurance  
policy issued to a health care  
provider;

**B. "Fund" or "PCF"**  
means the *Patient's Compensation  
Fund* established by Section 41-5-25  
NMSA 1978;

**C. "Hospital"** means  
a person who is licensed to operate  
one or more facilities located in  
New Mexico that provide inpatient  
and outpatient medical or surgical  
services, or both;

**D. "Individual"**  
means a human being;

**E. "Insured"** means  
a health care provider insured under  
a medical malpractice liability  
insurance policy;

**F. "MMA"** means the  
New Mexico Medical Malpractice  
Act, Sections 41-5-1 through 41-5-29  
NMSA 1978;

**G. "Occurrence  
coverage"** means malpractice liability

insurance for medical malpractice that occurs during the policy term, regardless of when the claim was reported;

**H. “Outpatient health care facility”** means a person who is licensed to operate one or more facilities located in New Mexico that provide outpatient medical or surgical services, or both;

**I. “Person”** includes an individual and every other form of legal entity;

**J. “Qualified health care provider”** or **“QHP”** means a health care provider, as defined in Subsection A of Section 41-5-1 NMSA 1978, who is admitted to the fund pursuant to these rules;

**K. “Self-insured”** means a person who satisfies, or seeks to satisfy, the requirements for becoming a “qualified health care provider” by depositing funds with the superintendent; and

**L. “Superintendent’s actuary”** means a person employed by or contracted by the superintendent to provide actuarial services to the fund.  
[13.21.1.7 NMAC – N, 4/30/2019]

**13.21.1.8 POWERS OF THE SUPERINTENDENT:**

Without limiting any of the superintendent’s powers, the superintendent shall have the power to:

**A.** receive and process health care provider requests for admission to the fund;

**B.** determine whether applicants for admission satisfy the standards of financial responsibility and possess the other qualifications for admission specified by these rules;

**C.** timely collect surcharges from, or paid by insurers on behalf of, health care providers;

**D.** certify periods of admission of qualified health care providers;

**E.** process claims against qualified health care providers or the fund in accordance with the MMA and these rules;

**F.** collect and maintain claims experience and surcharge data;

**G.** purchase insurance for the fund and its obligations;

**H.** retain actuarial, legal and claim adjusting services for the fund;

**I.** negotiate reasonable and appropriate compromises and settlements of the fund’s liability respecting any claim against the fund;

**J.** pay judgments, settlements, arbitration awards, and medical expenses for which the fund is responsible;

**K.** discharge and perform such other duties, responsibilities, functions, and activities as are expressly or impliedly imposed on the superintendent by the MMA or as specified by these rules.  
[13.21.1.8 NMAC – N, 4/30/2019]

**13.21.1.9 EXPENSES OF ADMINISTRATION AND DEFENSE:**

All expenses incurred for, by, or on behalf of the superintendent in the administration, operation, and defense of the fund shall be borne by the fund.  
[13.21.1.9 NMAC – N, 4/30/2019]

**13.21.1.10 REFERENCE TO OTHER DOCUMENTS:**

When a rule issued by the superintendent relating to the MMA or the PCF refers to another rule, regulation, statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute, or document.  
[13.21.1.10 NMAC – N, 4/30/2019]

**13.21.1.11 INTERPRETATION OF TERMS:**

Unless the context otherwise requires:

**A. Singular/plural.** Words used in the singular include the plural; words used in the plural include the singular;

**B. Gender.** Words used in the neuter gender include the masculine and the feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

**C. Permissive/mandatory.** May is permissive; shall and must are mandatory.  
[13.21.1.11 NMAC – N, 4/30/2019]

**13.21.1.12 USE OF PRESCRIBED FORMS:** The superintendent may prescribe forms to carry out certain requirements of Chapter 21 of these rules. Prescribed forms must be used when a form exists for the purpose, unless these rules state otherwise or the superintendent waives this requirement. The superintendent will accept filings made on photocopies of prescribed forms, provided they are legible.  
[13.21.1.12 NMAC – N, 4/30/2019]

**13.21.1.13 ADDRESS FOR FILING DOCUMENTS:**

**A. By mail.** Patient’s Compensation Fund, c/o Superintendent of Insurance, P.O. Box 1269, Santa Fe, NM 87504-1269.

**B. In person.** Patient’s Compensation Fund, c/o Superintendent of Insurance, Office of Superintendent of Insurance, Old P.E.R.A. Building, Fourth Floor, 1120 Paseo de Peralta, at the corner of Old Santa Fe Trail, Santa Fe, New Mexico.

**C. PCF Website.** <https://osi.state.nm.us/patient-compensation-fund/index.html>  
[13.21.1.13 NMAC – N, 4/30/2019]

**13.21.1.14 SEVERABILITY:**

If any provision of Chapter 21 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 21 these rules which can be given effect without the invalid provisions or applications, and to this end the several provisions of Chapter 21 of these rules are hereby declared severable.  
[13.21.1.14 NMAC – N, 4/30/2019]

**History of 13.21.1 NMAC: [RESERVED]**



**SUPERINTENDENT OF  
INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 21 PATIENT'S  
COMPENSATION FUND  
PART 2 QUALIFICATIONS  
AND ADMISSIONS**

**13.21.2.1 ISSUING**

**AGENCY:** The New Mexico Superintendent of Insurance.  
[13.21.2.1 NMAC – Rp, 13.21.2.1 NMAC, 4/30/2019]

**13.21.2.2 SCOPE:** The rules in this part govern the qualification and admission of health care providers to the PCF.  
[13.21.2.2 NMAC – Rp, 13.21.2.2 NMAC, 4/30/2019]

**13.21.2.3 STATUTORY**

**AUTHORITY:** Section 41-5-25 NMSA 1978.  
[13.21.2.3 NMAC – Rp, 13.21.2.3 NMAC, 4/30/2019]

**13.21.2.4 DURATION:**

Permanent.  
[13.21.2.4 NMAC – Rp, 13.21.2.4 NMAC, 4/30/2019]

**13.21.2.5 EFFECTIVE**

**DATE:** April 30, 2019, unless a later date is cited at the end of a section.  
[13.21.2.5 NMAC – Rp, 13.21.2.5 NMAC, 4/30/2019]

**13.21.2.6 OBJECTIVE:**

The rules in this part are intended to ensure that health care providers are qualified for and admitted to the PCF on a financially and actuarially sound basis.  
[13.21.2.6 NMAC – Rp, 13.21.2.6 NMAC, 4/30/2019]

**13.21.2.7 DEFINITIONS:**

This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC.  
[13.21.2.7 NMAC – Rp, 13.21.2.7 NMAC, 4/30/2019]

**13.21.2.8 BASIC QUALIFICATIONS FOR ADMISSION TO THE FUND:** To be eligible for admission to the fund, a person shall:

**A.** be a health care provider, as defined by the MMA or by these rules, who is engaged in the provision of health care services within the state of New Mexico, and is not organized solely or primarily for the purpose of qualifying for admission to the fund;

**B.** demonstrate and maintain, to the satisfaction of and in the manner specified by the superintendent and in accordance with the standards prescribed by these rules, or as otherwise provided by law, financial responsibility for, and with respect to, malpractice or professional liability claims asserted against the person or institution;

**C.** apply for admission pursuant to these rules; and

**D.** pay the applicable surcharges to the fund.

[13.21.2.8 NMAC – Rp, 13.21.2.8 NMAC, 4/30/2019]

**13.21.2.9 FINANCIAL RESPONSIBILITY - INSURANCE:**

**A.** To establish and maintain financial responsibility using insurance, the health care provider, or authorized representative of the health care provider, shall submit proof that the health care provider is or will be insured under a policy of malpractice liability insurance with indemnity limits of \$200,000 per occurrence.

**B.** To be acceptable as evidence of malpractice liability insurance, an insurance policy:

**(1)** shall be issued by an insurer:

**(2)** shall be on an occurrence coverage form approved by the superintendent;

**(3)** shall provide for the insurer's assumption of the defense of any covered claim, without limitation on the insurer's maximum obligation respecting the cost of defense;

**(4)** shall, except for a hospital or outpatient

health care facility, provide coverage for not more than three separate occurrences; and

**(5)** shall be nonassessable.

**C.** The proof required by Subsection A of this section shall be issued and executed by an officer or authorized agent of the applicant health care provider's insurer and shall specifically identify the policyholder, the named insureds under such policy, the policy period, and the limits of coverage. Upon request by the superintendent, such certification shall be accompanied by a certified true copy of the policy, or identification of the SERFF numbers of the specific policy form(s) previously filed with and approved by the superintendent.

**D.** Upon request, the superintendent shall advise applicants as to whether any specified policy form has been approved pursuant to this rule, or provide a list of all policy forms so approved.

**E.** The occurrence coverage required by this rule to demonstrate the requisite financial responsibility for qualification with the fund shall be deemed to be continuing without a lapse in coverage by the fund, provided that the health care provider meets the premium payment conditions of the underlying coverage and timely meets the surcharge payment conditions of these rules, as applicable.

[13.21.2.9 NMAC – Rp, 13.21.2.9 NMAC, 4/30/2019]

**13.21.2.10 FINANCIAL RESPONSIBILITY - SELF-INSURANCE:** An individual health care provider, except for a hospital or outpatient health care facility, may qualify for admission to the fund by having continuously on deposit the sum of \$600,000 in cash, as long as the following conditions are met:

**A.** The deposit shall be conditioned only for, dedicated exclusively to, and held in trust for the benefit and protection of and as security for the prompt payment of all medical malpractice claims arising or asserted against the health care provider.

**B.** A self-insured health care provider shall be required to execute a pledge agreement for the money on deposit prescribed and supplied by the superintendent.

**C.** Sums on deposit with the superintendent pursuant to this rule shall not be assigned, transferred, mortgaged, pledged, hypothecated, or otherwise encumbered by the health care provider nor shall any such deposit be subject to writ of attachment, sequestration, or execution except pursuant to a final judgment or court-approved settlement issued or made in connection with and arising out of a malpractice claim against the health care provider.

**D.** To maintain financial responsibility for continuing qualification with the fund, a self-insured health care provider shall at all times maintain the sum on deposit provided for by this rule at not less than \$600,000. The value of the health care provider's deposit shall be deemed impaired when any portion is seized or released pursuant to judicial process.

**E.** In the event that a self-insured health care provider's deposit provided for by this rule becomes impaired, the superintendent shall give written notice of such impairment to the self-insured health care provider, and the self-insured health care provider shall, unless a longer period is provided for by the superintendent, have five days from receipt of such notice to make such additional deposit as will restore the minimum deposit value prescribed by this rule. A self-insured health care provider's qualification with the fund shall terminate on and as of the later of the last day set by these rules or, if applicable, by the superintendent, if the self-insured health care provider has not on or prior to such date restored the minimum deposit value prescribed by this rule. In the case of multiple self-insured health care providers approved by the superintendent to post one deposit, as set forth in Subsection B of this section, the admission to the fund of each member of the group or each

related entity shall terminate on and as of the last day set by these rules or, if applicable, by the superintendent, if the self-insured health care provider has not on or prior to such date restored the minimum deposit value prescribed by this rule.

**F.** A self-insured health care provider shall, within 120 days of receiving notice of a request for review of a malpractice claim, submit a report to the superintendent of the anticipated exposure to the fund and the self-insured health care provider and containing sufficient details supporting the anticipated exposure. In addition, said self-insured health care provider shall provide updates to the superintendent when significant changes in anticipated exposure occur.

**G.** A self-insured health care provider who has evidenced financial responsibility pursuant to this rule may withdraw the deposit prescribed by this rule upon authorization of the superintendent. All money shall remain on deposit and pledged to the PCF during the term of the health care provider's admission as a self-insured health care provider with the fund and for the longer of a three-year period following termination of such admission or as long as any medical malpractice claim is pending, whether with the medical review commission or in a court of competent jurisdiction. After this time period, authorization may be given when the health care provider files with the executive director, not less than 30 days prior to the date such withdrawal is to be effected, a certificate signed by the health care provider, certifying:

(1) the date the health care provider terminated admission to the fund as a self-insured health care provider;

(2) that there are no medical malpractice claims pending with the medical review commission or in a court of competent jurisdiction;

(3) that there are no unpaid final judgments or settlements against or made by the health care provider in connection

with or arising out of a malpractice claim; and

(4) that there are no unasserted medical malpractice claims which are probable of assertion against the health care provider.

**H.** Effective as of the date on which a self-insured health care provider's deposit is withdrawn pursuant to this rule, the health care provider's admission to and qualification with the fund shall be terminated.

**I.** The deposit with the superintendent shall provide coverage for not more than three separate occurrences, and the limit that shall be paid from the deposit for each occurrence is \$200,000.

**J.** The acceptance by the superintendent of the self-insurance deposit described in this rule does not create in the superintendent or the PCF a duty to defend any health care provider making a deposit under this rule. [13.21.2.10 NMAC – Rp, 13.21.2.10 NMAC, 4/30/2019]

#### **13.21.2.11 ADDITIONAL QUALIFICATIONS FOR HOSPITALS AND OUTPATIENT HEALTH CARE FACILITIES:**

**A.** The superintendent shall perform a risk assessment for each applicant hospital or outpatient health care facility. If the hospital or outpatient care facility will establish and maintain financial responsibility with medical malpractice liability insurance, the superintendent may consider the information and documents that the applicant submitted to its insurer, all of which shall be provided to the superintendent by, or on behalf of, the applicant, along with all other information that the superintendent has or requests of the applicant. If the hospital or outpatient care facility will be self-insured, the risk assessment shall be based on information requested by the superintendent upon forms prescribed and supplied by the superintendent. The superintendent may request and consider any additional information pertinent to a risk assessment.

**B.** Based on the risk assessment the superintendent shall determine each hospital's or outpatient health care facility's base coverage and coverage terms, or, if self-insured, the required deposit, pursuant to the procedures of this section.

**C.** The risk assessment for each hospital or outpatient health care facility shall be required when the hospital or outpatient health care facility applies the first time for admission to the fund, and may be required at any other time the superintendent deems it necessary or advisable.

[13.21.2.11 NMAC – Rp, 13.21.2.11 NMAC, 4/30/2019]

**13.21.2.12 CONFIDENTIAL INFORMATION:** Any health care provider who seeks qualification and admission to the PCF may designate any information the applicant is required to submit to the superintendent as confidential. Any such information shall be submitted with a statement from the applicant setting forth the reasons the applicant desires the information to be deemed confidential, and citing any applicable statutory provisions or court rules supporting its claim of confidentiality. The superintendent shall make a determination whether to treat the information as confidential after a hearing pursuant to the procedures of 13.21.4 NMAC.

[13.21.2.12 NMAC – Rp, 13.21.2.12 NMAC, 4/30/2019]

**13.21.2.13 ADMISSION PROCEDURE:**

**A.** An application for admission to the fund shall be made through the PCF website, which shall require the applicant to provide a legal name; professional license, certification, or registration number; information relating to the nature and scope of the applicant's practice sufficient to identify the class or category of the practitioner; information on malpractice claims previously concluded or then pending against the applicant; and such other information as the superintendent may require.

**B.** The application shall be accompanied by evidence of financial responsibility in the form prescribed by these rules and in the case of a health care provider, other than a hospital or outpatient health care facility, the applicable surcharge. The applicable surcharge for a hospital or outpatient health care facility shall be determined by the superintendent on the basis of the application and risk assessment, as provided by these rules.

**C.** If the superintendent determines that an applicant does not meet the qualifications for admission to the fund set forth in the MMA and these rules, the superintendent shall issue an order to that effect and notify the applicant within 15 days of receipt of the completed application. The applicant may within 15 days of receipt of the issuance of the order, appeal the determination to the superintendent by mailing a notice of appeal to the superintendent. The provisions of 13.21.4 NMAC shall apply to the appeal.

[13.21.2.13 NMAC – Rp, 13.21.2.13 NMAC, 4/30/2019]

**13.21.2.14 ORDER OF ADMISSION:**

**A.** Upon approval for admission into the fund, the superintendent shall issue and deliver to the health care provider an order of admission to the fund, which shall:

(1) identify the health care provider;

(2) state that the health care provider has qualified for admission to the fund pursuant to Section 41-5-5 NMSA 1978;

(3) specify the effective date and term of such admission; and

(4) for a hospital or outpatient health care facility for whom a base coverage or surcharge has been set, the amount of the base coverage or surcharge.

**B.** Duplicate or additional orders of admission shall be available to and upon the request of a qualified health care provider or the qualified health care provider's attorney, or professional liability

insurance underwriter, when such certification is required to evidence admission to or qualification with the fund in connection with an actual or proposed malpractice claim against the health care provider.

**C.** A copy of each order of admission shall be available for public inspection at the main office of the superintendent on the day it is issued, and a copy of the order shall be posted on the PCF website as soon as practicable. Any person aggrieved by the admission of any qualified health care provider to the fund or by the conditions of the health care provider's admission may, within 15 days of issuance of the order, appeal the admission to the superintendent by mailing a notice of appeal to the superintendent. The filing of an appeal shall not operate to stay the order of admission or suspend the conditions of admission. The provisions of 13.21.4 NMAC shall apply to the appeal.

**D.** On the effective date of these rules, or as soon thereafter as practicable, the superintendent shall issue an order of admission (and if applicable a subsequent order of admission renewing the admission) pursuant to this rule for every qualified health care provider first admitted to the fund since January 1, 2017.

[13.21.2.14 NMAC – Rp, 13.21.2.14 NMAC, 4/30/2019]

**13.21.2.15 EXPIRATION OF ADMISSION AND RENEWAL OF ADMISSION:**

**A.** Admission to the fund expires:

(1) as to a health care provider evidencing financial responsibility other than by self-insurance, on and as of:

(a) the effective date and time of termination or cancellation of the policy of the health care provider's malpractice liability coverage; or

(b) the last day of the applicable period for which the prior annual surcharge applied in the event that the annual surcharge for renewal coverage is not

paid by the health care provider to the insurer on or before 30 days following the expiration of the prior admission period.

(2) as to a self-insured health care provider on and as of:

(a) the effective date and time of termination, cancellation or impairment of the health care provider's financial responsibility; or

(b) the last day of the applicable period for which the prior surcharge applied in the event that the surcharge for renewal coverage is not paid by the health care provider to the superintendent on or before 30 days following the expiration of the prior admission period.

**B.** Admission to the fund must be renewed by each qualified health care provider on or before expiration of the admission period in accordance with these rules. [13.21.2.15 NMAC – Rp, 13.21.2.15 NMAC, 4/30/2019]

**13.21.2.16 TERMINATION OF ADMISSION:**

**A.** A health care provider's admission to the fund shall terminate:

(1) as to a health care provider evidencing financial responsibility by proof of insurance pursuant to these rules, on and as of the effective date of cancellation of the health care provider's occurrence coverage;

(2) as to a self-insured health care provider on and as of any date on which:

(a) the health care provider ceases to maintain financial responsibility in the amount and form prescribed by these rules; or

(b) the health care provider fails, within the allowed time after notice by the superintendent, to provide additional security for financial responsibility when existing financial responsibility security is impaired as provided in these rules.

(3) on any date that the health care provider's professional or institutional license, certification, or registration is suspended or revoked or that the health care provider ceases to be a health care provider as defined by the MMA or these rules or otherwise ceases to be eligible for admission to the fund.

**B.** Upon written notice to a health care provider, or such provider's authorized representative, the superintendent may terminate a health care provider's admission to the fund, effective 30 days following the mailing by registered or certified mail, return receipt requested, or giving of such notice in the event that a qualified health care provider has failed or refused to timely provide any reports or submit any information or data required to be reported or submitted by these rules. If, within 30 days of receipt of such a notice, a health care provider furnishes to the superintendent any and all delinquent reports, information, and data, as specified by such notice, the health care provider's admission to the fund may be continued in effect, provided that the health care provider remains otherwise qualified for admission to the fund.

**C.** If the superintendent terminates a health care provider's admission to the fund, the superintendent shall notify the provider within 15 days of receipt of the cancellation or termination. The health care provider may, within 15 days of receipt of the notice, appeal the determination by mailing a notice of appeal to the superintendent. The provisions of 13.21.4 NMAC shall apply to the appeal. [13.21.2.16 NMAC – Rp, 13.21.2.16 NMAC, 4/30/2019]

**13.21.2.17 PCF ACTUARY:**

**A.** In accordance with the provisions of law applicable to contracting for personal, professional, or consulting services, the superintendent may employ or hire a qualified and competent actuary (the "superintendent's actuary") to advise and consult the superintendent

on all aspects of the superintendent's administration, operation, and defense of the fund which require application of actuarial science.

**B.** The superintendent's actuary may be asked to evaluate or recommend:

(1) the claims experience data required for risk assessments;

(2) the establishment, maintenance, and adjustment of reserves on individual claims against the fund and the establishment, maintenance, and adjustment of reserves for incurred but not reported claims;

(3) surcharges, rated and classified according to the several classes or risks against which the fund provides compensation, that shall reasonably ensure that the fund is sufficiently funded so as to be and remain financially and actuarially capable of providing the compensation for which it is organized;

(4) each hospital's or outpatient health care facility's base coverage and coverage terms upon initial admission into the fund, and whether additional charges need to be made for initial admission to the fund; and

(5) any other actuarial questions affecting the administration, operation, and defense of the fund.

[13.21.2.17 NMAC – Rp, 13.21.2.17 NMAC, 4/30/2019]

**13.21.2.18 BI-ANNUAL ACTUARIAL STUDY:**

**A.** At least bi-annually, as required by Section 41-5-25 NMSA 1978, the superintendent shall cause an independent actuary to perform an actuarial study of the fund, and of the surcharges necessary and appropriate to ensure that it is and remains financially and actuarially sound.

**B.** In the performance of the actuarial study, the independent actuary shall employ sound actuarial principles.

[13.21.2.18 NMAC – Rp, 13.21.2.18 NMAC, 4/30/2019]

**13.21.2.19 SURCHARGES:**

**A.** For a health care provider other than a hospital or outpatient care facility, the superintendent shall determine surcharges based on classifications and categories of medical malpractice liability risks underwritten by the fund with respect to practice type or specialties as determined and specified in an actuarial study pursuant to this rule.

**B.** For a hospital or outpatient care facility, the superintendent shall determine surcharges considering the process or directions specified in an actuarial study, pursuant to this rule.

**C.** Surcharges, rates and classifications used, assessed, imposed or collected by the fund prior to the effective date of these rules shall remain valid and effective until superseded by order issued pursuant to 13.21.4 NMAC, or for 180 days after the effective date of these rules, whichever first occurs. Subsequent adoption or amendment of surcharges, rates and classifications shall be effective only upon issuance of an order pursuant to 13.21.4 NMAC. [13.21.2.19 NMAC – Rp, 13.21.2.19 NMAC, 4/30/2019]

**13.21.2.20 PAYMENT OF SURCHARGES:**

**A.** An insured health care provider must pay the applicable surcharge to the medical malpractice liability insurer within 30 days of the inception of coverage, and within 30 days of the inception of each period of renewal coverage;

**B.** A self-insured health care provider must pay the applicable surcharge within 30 days of the requested date for admission into the fund, and within 30 days of the inception of each renewal period. [13.21.2.20 NMAC – Rp, 13.21.2.20 NMAC, 4/30/2019]

**13.21.2.21 ADMISSION DATE:**

**A.** A health care provider who applied for admission to the fund prior to the effective date of these rules, and who was approved

for admission prior to the effective date of these rules, shall be admitted to the fund as of the date of the prior application.

**B.** A health care provider whose first application for admission to the fund is made after the effective date of these rules, and who is approved for admission pursuant to these rules, will be admitted to the fund as of the date of initial application.

**C.** Under Sections A and B of this Section, the admission date for an insured health care provider who applies to participate in the fund, and who pays all applicable surcharges to the fund, within 60 days of the inception of the base coverage, shall relate back to the inception date of the base coverage. [13.21.2.21 NMAC – Rp, 13.21.2.21 NMAC, 4/30/2019]

**History of 13.21.2 NMAC:**

13.21.2 NMAC, Qualifications and Admissions, effective 3/1/2019.

**History of Repealed Material:**

13.21.2 NMAC, Qualifications and Admissions, filed 3/1/2019 was repealed and replaced by 13.21.2 NMAC, Qualifications and Admissions, effective 4/30/2019.

---

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 21 PATIENT'S  
COMPENSATION FUND  
PART 3 PROCEDURAL  
RULES FOR PUBLIC RULE  
HEARINGS**

**13.21.3.1 ISSUING**

**AGENCY:** New Mexico Superintendent of Insurance. [13.21.3.1 NMAC – Rp, 13.21.3.1 NMAC, 4/30/2019]

**13.21.3.2 SCOPE:** This rule applies to all proceedings relating to the PCF in which the superintendent adopts rules as required by law. [13.21.3.2 NMAC – Rp, 13.21.3.2 NMAC, 4/30/2019]

**13.21.3.3 STATUTORY**

**AUTHORITY:** Section 14-4-5.8 NMSA 1978. [13.21.3.3 NMAC – Rp, 13.21.3.3 NMAC, 4/30/2019]

**13.21.3.4 DURATION:**

Permanent. [13.21.3.4 NMAC – Rp, 13.21.3.4 NMAC, 4/30/2019]

**13.21.3.5 EFFECTIVE**

**DATE:** April 30, 2019, unless a later date is cited at the end of a section. [13.21.3.5 NMAC – Rp, 13.21.3.5 NMAC, 4/30/2019]

**13.21.3.6 OBJECTIVE:**

To provide procedural rules for public rule hearings for use by the superintendent consistent with the State Rules Act in the organization, administration, and defense of the PCF and to facilitate public engagement with the superintendent's rulemaking process in a transparent, organized, and fair manner. [13.21.3.6 NMAC – Rp, 13.21.3.6 NMAC, 4/30/2019]

**13.21.3.7 DEFINITIONS:**

This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC. In addition:

**A. "Final order"** also means "concise explanatory statement" as described in Section 14-4-5.5 NMSA 1978;

**B. "Logical outgrowth"** occurs when a final rule differs from the proposed rule if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period;

**C. "Recommended decision"** means the written decision of any designated hearing officer which contains a description of the rulemaking proceeding, a summary of any written comments submitted to the superintendent, a summary of any oral comments made at the public hearing, any analysis or

conclusions of the designated hearing officer, and recommendations to the superintendent concerning adoption, rejection, or amendment of the proposed rule.

[13.21.3.7 NMAC – Rp, 13.21.3.7 NMAC, 4/30/2019]

### **13.21.3.8 INITIATION OF THE RULEMAKING PROCESS BY THE SUPERINTENDENT:**

**A.** The rulemaking process may be initiated by the superintendent through a notice for a rule hearing that is publicly posted pursuant to this rule.

**B.** The superintendent shall proceed with the rulemaking process by posting public notice, publishing the proposed rule for comment, and setting a public rule hearing in accordance with the State Rules Act and any other applicable law.

**C.** Once the superintendent initiates the rulemaking process, the superintendent must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[13.21.3.8 NMAC – Rp, 13.21.3.8 NMAC, 4/30/2019]

### **13.21.3.9 INITIATION OF THE RULEMAKING PROCESS BY THE PUBLIC:**

**A.** Any person may file a petition for rulemaking with the superintendent.

**B.** A petition for rulemaking shall be made in writing and include an explanation of the purpose or statement of reasons for the proposed rule. A petition shall include a citation to the legal authority authorizing the superintendent to adopt the rule and a copy of or citation to technical information, if any, that serves as the basis for the proposed rule. A petition should be as clear as possible and may include the proposed rule in underline and strikethrough format, consistent with requirements of the state records administrator.

**C.** The superintendent shall, if required by law, consider the petition and make a determination

within 30 calendar days whether to grant or deny the petition. If the superintendent denies the petition, the superintendent shall issue a final order explaining the reason for denial. No affirmative duty to respond to a public petition is created by these rules. If a public right to petition the superintendent exists under the MMA, the superintendent must follow all timelines or responses governed by the MMA.

**D.** Once the superintendent initiates the rulemaking process, the superintendent must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[13.21.3.9 NMAC – Rp, 13.21.3.9 NMAC, 4/30/2019]

**13.21.3.10 RULEMAKING NOTICE:** The superintendent shall provide to the public, as defined in Section 14-4-2 NMSA 1978, notice of the proposed rulemaking a minimum of 30 calendar days prior to the public rule hearing and in accordance with requirements of Section 14-4-5.2 NMSA 1978.

[13.21.3.10 NMAC – Rp, 13.21.3.10 NMAC, 4/30/2019]

### **13.21.3.11 WRITTEN COMMENT PERIOD:**

**A.** The public comment period must be at least 30 calendar days, beginning after publication of the notice in the New Mexico register and issuance of the rulemaking notice. The superintendent shall not adopt a proposed rule before the end of the public comment period.

**B.** As long as the public comment period is at least 30 calendar days, the public comment period will close for initial comments at 4:00 p.m. on the day of the public hearing, or on the last day of the public hearing if the public hearing extends for more than one day. For purposes only of responses to written comments or oral comments at the public hearing, the public comment period will extend at least 10 calendar days beyond the public hearing or close of the 30 day comment

period, whichever is later, unless the necessity of adopting or publishing the rule by a certain date makes the extension of the public comment period impractical.

**C.** A person may submit, by mail or in electronic form, written comments or responses to comments on a proposed rule, and those comments or responses shall be made part of the record. Written comments may be submitted through the end of the public comment period, and responses to comments may be submitted for an additional 10 days, unless the necessity of adopting or publishing the rule by a certain date makes a response period impractical.

**D.** The superintendent may decide to amend the comment period, or response period, if the superintendent provides to the public, as defined in Section 14-4-2 NMSA 1978, notice of the changes.

**E.** The superintendent shall post all written comments and responses on the PCF website, as soon as practicable, and no more than three business days following receipt to allow for public review. All written comments and responses received by the superintendent shall also be available for public inspection at the main office of the superintendent. [13.21.3.11 NMAC – Rp, 13.21.3.11 NMAC, 4/30/2019]

### **13.21.3.12 PUBLIC HEARING:**

**A.** Prior to adopting a proposed rule, the superintendent must hold a public rule hearing. The purpose of the hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The superintendent, at the superintendent's discretion, directly or through a designated hearing officer, may determine whether to hold more than one hearing.

**B.** The superintendent may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification

purposes only, but should refrain from providing opinions or engaging in discussion regarding the merits of the proposed rule or any public comment presented. All written comments submitted during the public comment period, as well as any written comments submitted during the hearing, will be made part of the record.

**C.** Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath unless required by law or separate rule. Any individual who provides public comment at the hearing may be questioned by the superintendent or hearing officer or, at the discretion of the superintendent or hearing officer, or as otherwise provided by law, by other persons at the hearing.

**D.** The hearing shall be conducted in a fair and equitable manner. The superintendent or hearing officer may determine the format in which the hearing is conducted (e.g. introduction of each part or section one at a time for comment), but the hearing will be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record.

**E.** The rules of evidence do not apply to public rule hearings and the superintendent or hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

**F.** The superintendent must hold the hearing in a venue that reasonably accommodates all persons who wish to participate or observe, and appropriate audio equipment should be secured to ensure all in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices. Hearings shall be open to the public, but are not subject to the New Mexico Open Meetings Act.

**G.** The hearing shall be recorded by any stenographic method in use in the district court or by audio recording.

[13.21.3.12 NMAC – Rp, 13.21.3.12 NMAC, 4/30/2019]

**13.21.3.13 RULEMAKING RECORD AND ADOPTION OF RULE:**

**A.** The superintendent shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly. Pre-filed written comments are part of the rulemaking record without the need for formal admission. Pre-filed comments include, but are not limited to: the petition; public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent electronically; the proposed rule in underline and strikethrough format; and any written comment submitted during the comment period prior to the rule hearing. Written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

**B.** If the rule hearing is conducted by a designated hearing officer, the complete rulemaking record, including any memoranda summarizing the contents of the hearing, if written, shall be compiled and forwarded to the superintendent with sufficient time to review. The superintendent shall review the rulemaking record or the hearing officer's recommended decision before rendering a final decision on the proposed rule.

**C.** The superintendent may adopt, amend, or reject the proposed rule. Any amendments to the proposed rule must fall within the scope of the current rulemaking proceeding. Amendments to a proposed rule are within the scope of the rulemaking if the amendments:

(1) are a logical outgrowth of the rule proposed in the notice; or

(2) are proposed, or are reasonably suggested, by comments made during the comment period, and the 10 day response period after the close of the comment period has been provided, and

(a) any person affected by the adoption of the rule, if amended, should have reasonably expected that any change from the published proposed rule would affect that person's interest; or

(b) the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule.

**D.** The date of adoption of the proposed rule shall be the date the final order is signed by the superintendent, unless otherwise specified in the final order.

**E.** The final order may adopt by reference some or all of any recommended decision and shall include by reference or otherwise, but not be limited to, the following:

(1) citation to specific statutory or other authority authorizing the rule;

(2) effective date of the rule;

(3) date of adoption of the rule, if different than the date of the final order;

(4) reasons for adopting the rule, including any findings otherwise required by law of the superintendent, and a summary of any independent analysis done by the superintendent;

(5) reasons for any change between the published proposed rule and the final rule; and

(6) reasons for not accepting substantive arguments made through public comment.

[13.21.3.13 NMAC – Rp, 13.21.3.13 NMAC, 4/30/2019]

**13.21.3.14 FILING AND PUBLICATION; EFFECTIVE DATE:**

**A.** Within 15 calendar days after the date of adoption of a rule, the superintendent shall file the adopted rule with the state records

administrator and shall provide to the public the adopted rule and final order in accordance with the State Rules Act.

**B.** Unless another date is stated in the superintendent’s final order, or otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico register.

[13.21.3.14 NMAC – Rp, 13.21.3.14 NMAC, 4/30/2019]

**13.21.3.15 EMERGENCY RULES:** The superintendent shall comply with the rulemaking procedures in Section 14-4-5.6 NMSA 1978, regarding the promulgation of emergency rules.

[13.21.3.15 NMAC – Rp, 13.21.3.15 NMAC, 4/30/2019]

**History of 13.21.3 NMAC:**  
13.21.3 NMAC, Procedural Rules For Public Rule Hearings, effective 3/1/2019.

**History of Repealed Material:**  
13.21.3 NMAC, Procedural Rules For Public Rule Hearings, effective 3/1/2019 was repealed and replaced by 13.21.3 NMAC, Procedural Rules For Public Rule Hearings, effective 4/30/2019.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 21 PATIENT’S  
COMPENSATION FUND  
PART 4 ADMINISTRATIVE  
HEARINGS**

**13.21.4.1 ISSUING AGENCY:** New Mexico Superintendent of Insurance.  
[13.21.4.1 NMAC – Rp, 13.21.4.1 NMAC, 4/30/2019]

**13.21.4.2 SCOPE:** Except as otherwise provided, the rules in this part govern every adjudicatory proceeding and every surcharge rate proceeding conducted pursuant to a notice of hearing issued by the superintendent on any matter

delegated to the superintendent under the Medical Malpractice Act (MMA) or the rules adopted in Chapter 21 of Title 13 of the New Mexico Administrative Code, and to any request for hearing submitted to the superintendent, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted.

[13.21.4.2 NMAC – Rp, 13.21.4.2 NMAC, 4/30/2019]

**13.21.4.3 STATUTORY AUTHORITY:** Section 41-5-25 NMSA 1978.

[13.21.4.3 NMAC – Rp, 13.21.4.3 NMAC, 4/30/2019]

**13.21.4.4 DURATION:** Permanent.

[13.21.4.4 NMAC – Rp, 13.21.4.4 NMAC, 4/30/2019]

**13.21.4.5 EFFECTIVE DATE:** April 30, 2019, unless a later date is cited at the end of a section.

[13.21.4.5 NMAC – Rp, 13.21.4.5 NMAC, 4/30/2019]

**13.21.4.6 OBJECTIVE:** The purpose of this rule is to provide procedures to govern administrative hearings held before the superintendent in his capacity administering the MMA.

[13.21.4.6 NMAC – Rp, 13.21.4.6 NMAC, 4/30/2019]

**13.21.4.7 DEFINITIONS:** This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC. In addition:

**A. “Attorney”** means only an individual who is licensed to practice law in New Mexico or who has requested temporary licensure under the New Mexico Supreme Court’s *pro hac vice* rules.

**B. “Day or Days”** shall be interpreted as follows, unless otherwise specified:

**(1) “Business day”** means Monday through Friday, excluding any days that state offices are officially closed;

**(2)** one to five days means only business days; and  
**(3)** six days or more means calendar days, including weekends and state holidays.

**C. “Hearing”** means an on-the-record adjudicatory proceeding or surcharge rate proceeding before the superintendent or the before a hearing officer appointed by the superintendent.

**D. “Hearing officer”** is the superintendent, or a person designated by the superintendent, to serve as a neutral decision maker in a proceeding.

**E. “Order”** means any directive, command, determination of a disputed issue, or ruling on a disputed matter issued by the superintendent or a hearing officer in a proceeding governed by these rules.

**F. “OSI”** means the New Mexico office of superintendent of insurance.

**G. “Party”** means an entity who participates in a proceeding governed by these rules by order of the superintendent.

**H. “Pleading”** means any written request, motion, or proposed action filed by a party in a docketed proceeding, as set forth in 13.21.4.10 NMAC.

**I. “Proceeding”** means any formal adjudicatory or surcharge rate proceeding, case, or hearing conducted by the superintendent pursuant to these rules.

**J. “Request for hearing”** means a formal written request for an opportunity to appear before the superintendent and offer testimony, to call witnesses, present evidence and ask questions, that is submitted by a person with respect to a particular matter where the superintendent has statutory or regulatory authority to conduct an adjudicatory or surcharge rate proceeding.

**K. “Sua Sponte”** means any determination of the superintendent or of his designee made without prompting of the parties.

**L. “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.

[13.21.4.7 NMAC – Rp,13.21.4.7 NMAC, 4/30/2019]

#### **13.21.4.8 REVISION OF STANDING ORDERS:**

The superintendent may issue or withdraw standing procedural orders addressing general practice issues and filing protocols for the handling of matters to be adjudicated before the superintendent. Such standing orders will be available for public inspection at OSI office facilities, on the PCF website, and in any applicable information provided with a notice of hearing. Parties appearing before the superintendent are expected to comply with standing orders.

[13.21.4.8 NMAC – Rp,13.21.4.8 NMAC, 4/30/2019]

#### **13.21.4.9 REQUESTING A HEARING:**

**A. Written request required.** Any person seeking a hearing before the superintendent shall file a written request for a hearing using the form available on the PCF website or as otherwise directed by the superintendent. The request shall include all of the following:

(1) a brief summary identifying the nature of the dispute;

(2) the applicable statute, rule, bulletin, or order in dispute in the matter;

(3) a statement of the jurisdictional basis for the superintendent to adjudicate the matter;

(4) the triggering action of the superintendent, such as an order, denial, suspension, revocation, penalty, fine, rule, or interpretative publication;

(5) the requestor's reason for challenging that action or inaction; and

(6) the mailing address of the requestor.

#### **B. Request rejected.**

The superintendent may reject any request for hearing if the superintendent lacks jurisdiction to adjudicate the matter; the matter is moot; or the request for hearing is procedurally or substantively deficient.

(1) If a request for hearing is rejected, the superintendent will notify the requestor in writing with a brief explanation of the rejection.

(2) If the request for hearing is deficient for any reason other than lack of subject matter jurisdiction of mootness, the requestor may correct any deficiency and resubmit the request for hearing.

**C. Designation of hearing officer and docket.** Upon receipt of a request for hearing that contains all information required by Subsection A of this section and over which the superintendent has jurisdiction, the superintendent may designate a hearing officer to preside in the matter based on the knowledge, expertise, experience, efficiency, and staffing needs of the office. The superintendent may subsequently reassign the matter to a different hearing officer, if necessary. The superintendent shall assign a docket number to be referenced in all subsequent communications and filings concerning the matter.

**D. Intervenors.** Any person who claims an interest relating to the subject of a notice of hearing, and is so situated that the hearing may impair or impede the person's ability to protect that interest, may apply to intervene in the proceeding.

(1) In determining whether to allow or deny intervention, the superintendent shall consider the nature of the claimed interest of the applicant, the potential impact of the superintendent's decision on the applicant's ability to protect that interest, the timeliness of the application, the potential disruption of the proceedings and prejudice to existing parties if intervention were allowed.

(2) Whether to allow intervention at the sole discretion of the superintendent.

(3) OSI staff may intervene in any proceeding as a matter of right by filing a notice of intervention.

[13.21.4.9 NMAC – Rp,13.21.4.9 NMAC, 4/30/2019]

#### **13.21.4.10 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE, SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:**

##### **A. Representation.**

Unless otherwise expressly authorized by statute, only the person challenging the action or a bona fide majority owner if the party is a business entity, or that person's attorney may represent the person in a proceeding.

##### **B. Entry of appearance.**

Any attorney wishing to represent a party must file a formal written entry of appearance in the docket of the proceeding. The entry of appearance must list the attorney's mailing address, phone and fax number (if any), and an email address (if any). Any attorney wishing to substitute in for a previous attorney must file a substitution of counsel containing the same information required in the initial entry of appearance.

**C. Withdrawal.** An attorney who intends to withdraw from representation of a party must do so in accordance with the rules of professional conduct.

(1) Withdrawing counsel must file in the docket a written request to withdraw from representation that indicates when counsel notified the party of the withdrawal, and of the date and time of the scheduled hearing.

(2) The superintendent may deny a request to withdraw from representation only when withdrawal would have a clear, materially adverse effect on the represented party's interests and impede the conduct of a full, fair, and efficient hearing.

[13.21.4.10 NMAC – Rp,13.21.4.10 NMAC, 4/30/2019]

**13.21.4.11 FILING OF PLEADINGS:**

**A. Opening the docket.** A docket shall be opened in the PCF records management system immediately upon the superintendent’s determination that the requestor shall be granted a hearing.

(1) The superintendent shall direct that the requestor’s original request for hearing be filed to the docket.

(2) The superintendent shall establish the caption for the docket, which caption shall be used thereafter for any matters pertaining to the hearing. The caption shall establish the nature of the matter and shall include the docket number.

(3) Every written document that is submitted to the superintendent or exchanged between the parties for consideration, including pleadings such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the docket.

**B. Public access.** Unless otherwise determined by the superintendent upon consideration of a request by a party for confidentiality, all dockets shall be open for public inspection.

**C. Filing restrictions and service.**

(1) The PCF will accept filings through mail, facsimile, or electronic mail.

(2) Any item that is filed to the docket shall also be contemporaneously served upon all parties of record and on the hearing officer.

(3) All filings shall include a certificate of service that documents the method of service used. A represented party shall only be served through counsel.

(4) Electronic and in-person filing shall be accepted on business days between 8:00 am. and 4:00 pm. Pleadings will be marked as filed on the business day that the PCF receives the pleading.

**D. Filing requirements.**

(1) All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

(2) Absent any order to the contrary, no pleading shall exceed 10 pages, excluding the caption and certificate of service, of double-spaced (except for block quotations), 12-point font. Only relevant excerpts of a motion exhibit shall be filed, with the pertinent portions highlighted, underlined, or otherwise emphasized. All exhibits and attachments shall identify the total number of pages, and consecutive page numbers (e.g., “Page 1 of 10”). Only single-sided documents will be accepted for filing or into a record at a hearing.

**E. Request for concurrence.** Before submission of any motion, request for relief or request for continuance, the requesting party should make reasonable efforts to consult with each other party about that party’s position on the motion unless the nature of the pleading is such that it can be reasonably assumed the requested relief would be opposed. The moving party shall state the position of each other party in the pleading.

**F. Responses to pleadings.**

(1) Unless a different deadline has been established by the hearing officer, each non-moving party shall have 10 calendar days to file a written response to a pleading.

(2) If a deadline for filing falls on a non-business day, the deadline falls on the next business day.

(3) The hearing officer has the discretion to extend or shorten the response deadline.

(4) Failure to file a response in opposition may be presumed to be consent to the relief sought.

(5) The hearing officer is not required to make a default ruling on any motion if the relief sought could be contrary to the facts or law on the issues.

**G.** In the event of a procedural defect or other error with the manner, method, or content of a submitted pleading, the hearing officer or records manager may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to certify service, failure to comply with the page limitations, failure to confer with other parties, failure to use the form or follow the specific filing method required by the PCF, submission of double-sided documents, failing to properly number pages, failure to use the correct caption of reference the assigned docket number, or failure to comply with an applicable standing order. [13.21.4.11 NMAC – Rp, 13.21.4.11 NMAC, 4/30/2019]

**13.21.4.12 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:**

**A. Purpose of prehearing conferences.** The hearing officer may direct representatives for all parties to meet together or with the hearing officer present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending issues;

(2) stipulations and admissions of fact and of the contents and authenticity of documents;

(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of exhibits and expert, economic or technical witnesses;

(4) matters of which administrative notice will be taken; and

(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

**B. Conduct of prehearing conferences.**

(1) Prehearing conferences conducted by the hearing officer may be electronically, but not stenographically, recorded. Should a party request that the recording be transcribed, that party shall pay any costs of transcription.

(2) The hearing officer may issue a written order that recites the results of the conference. Such order shall include rulings upon matters considered at the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, unless superseded by a subsequent order.

**C. Status conferences.**

(1) The hearing officer may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

(2) The hearing officer may conduct a status conference upon the request of either party or on the hearing officer's own initiative, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.

[13.21.4.12 NMAC – Rp, 13.21.4.12 NMAC, 4/30/2019]

**13.21.4.13 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:**

**A. Location.**

(1) In the absence of any statutory requirements

to the contrary, all hearings conducted by the superintendent shall occur in Santa Fe, at the office of superintendent of insurance, unless the hearing officer orders the parties to appear at another location in New Mexico.

(2) The parties may express a mutual preference for location of the hearing in their request for hearing.

(3) In selecting a location other than Santa Fe, the hearing officer shall consider and give weight to the location and wishes of the parties, witnesses, access for a hearing officer with expertise in the matter, and the scheduling and staffing needs of the PCF.

(4) If selecting a location other than Santa Fe would cause an unreasonable, undue burden to any party, that party may file a written objection to the selected location within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The hearing officer will promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to another more reasonable location and the superintendent may designate another hearing officer if necessary.

**B. Notice.** The superintendent will notify the parties to the hearing of the date, time and place scheduled for the hearing at least seven days before the scheduled hearing. This notice will be directed to the party's attorney, or to the last known address of any unrepresented party. Notice will be sent via US mail unless the parties have requested an alternate method of notification that is acceptable to the superintendent.

[13.21.4.13 NMAC – Rp, 13.21.4.13 NMAC, 4/30/2019]

**13.21.4.14 TELEPHONIC, VIDEOCONFERENCE AND OTHER EQUIVALENT ELECTRONIC METHOD HEARINGS:**

**A.** If not otherwise prohibited by statute, rule, or court ruling, the hearing officer may conduct the hearing in person or by telephone, videoconference, or

other equivalent electronic method. The hearing officer shall cause a stenographic or audio recording to be made of all proceedings involving the presentation of evidence, points, authorities or argument pertaining to the merits of the matter before the hearing officer.

**B.** If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall so inform the parties. Either party may file a written objection to conducting the hearing by telephone, videoconference, or other equivalent electronic method within 10 days of the notice of hearing. Failure to timely object to the conduct of a telephone, videoconference, or other equivalent electronic method hearing constitutes consent to the hearing proceeding in that manner and waiver of any other applicable statutory in-county hearing requirement.

**C.** Upon receipt of a timely objection, the hearing officer shall consider the applicable legal requirements, the location of the parties and witnesses, the complexity of the particular matter, the availability of necessary electronic equipment for conduct of a full and fair hearing by telephone, videoconference, or other equivalent electronic method, and the basis of the objection in determining whether the hearing should occur at a specific location rather than via telephone, videoconference, or other equivalent electronic method.

**D.** Provided that the requesting party has not previously demanded an in-person hearing or otherwise objected to conducting the matter via telephone, videoconference, or other equivalent electronic methods, any party may request to appear directly or have a witness on their behalf appear via telephone, videoconference, or alternative electronic means by filing a request at least three business days before the scheduled hearing. The filing of a request to appear via telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete

waiver of any in-person, in-county hearing requirement and deemed as consent for all parties, all witnesses, and the hearing officer to appear via telephone, videoconference, or other equivalent electronic methods.

**E.** All parties appearing via telephone, videoconference, or other electronic method shall provide the hearing officer with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing.

**F.** Failure to follow the hearings officer's instructions for participating in the hearing via telephone, videoconference, or other equivalent electronic method will be treated as a non-appearance at the hearing.

**G.** Any technical issues shall be promptly reported to the hearing officer.

**H.** In the event that technical or other computer problems prevent a hearing by videoconference or other electronic method from occurring or otherwise interfere with maintaining or developing a complete record at the hearing, the parties agree and consent that the assigned hearing officer may continue the matter to a different time before expiration of the statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the remaining portion of the hearing via telephone.

**I.** If the assigned hearing officer determines during the course of the hearing, either *sua sponte* or upon argument of a party, that an in-person hearing is necessary to adequately complete the record, address credibility issues, or is otherwise necessary to ensure a full or fair hearing process, the hearing officer may recess a hearing occurring by telephone, videoconference, or other equivalent electronic method and reconvene the proceeding as an in-person hearing.

[13.21.4.14 NMAC – Rp, 13.21.4.14 NMAC, 4/30/2019]

#### **13.21.4.15 CONTINUANCES:**

**A.** At the request of a party, a witness, or upon the hearing officer's own determination, a hearing may be continued for good cause. The hearing officer shall consider only written continuance requests made at least three working days prior to the scheduled hearing absent extraordinary, unforeseen circumstances that the requesting party or witness could not have known earlier. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the hearing officer may grant or deny the request on the record at the hearing. No continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory jurisdictional deadline.

**B.** Within the jurisdictional time limits set by statute, the superintendent or hearing officer may *sua sponte* continue any matter as necessary to address PCF staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the hearing officer may contact the parties to inquire about the status of a scheduled case.

**C.** No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable jurisdictional time limit on the case.

[13.21.4.15 NMAC – Rp, 13.21.4.15 NMAC, 4/30/2019]

**13.21.4.16 ATTIRE AT HEARING:** All attorneys and other authorized representatives must be attired in a dignified, professional manner at all times during the hearing. Witnesses shall dress in a respectful manner. No attire or dress so flamboyant, disheveled, inflammatory, obscene, offensive or revealing as to create a distraction to the orderly conduct of the hearing will be permitted.

[13.21.4.16 NMAC – Rp, 13.21.4.16 NMAC, 4/30/2019]

#### **13.21.4.17 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE:**

**A. Burden of proof.** Unless otherwise specified by statute, the burden of proof in a proceeding is the preponderance of evidence.

**B. Presentation order.** The party with the burden of proof in the case will ordinarily present their case first, followed by the opposing party, if any, unless the hearing officer makes reasonable exceptions related to the availability of the witnesses and representatives or other scheduling concerns.

**C. Opening statements.** The hearing officer may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be adopted as evidence by sworn oath of the party-witness who made the opening statement.

**D. Testimony under oath.** All testimony must be given under oath and will be subject to questioning of each other party. The hearing officer may also ask questions of the witness as appropriate. At the hearing officer's discretion, redirect and re-cross may be allowed.

**E. Closing arguments.** The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the hearing officer, in writing after conclusion of the hearing.

**F. Post-hearing briefs.** The hearing officer may also order the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. The hearing officer will establish a timeline for submission of any post-hearing pleadings, including time for the parties to exchange briefs, as the hearing officer finds necessary. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing or submission.

**G. Rules of evidence.**  
**(1) Formal** rules of evidence and civil procedure shall not apply in a proceeding unless

otherwise expressly and specifically required by statute, regulation, or order of the hearing officer.

(2) Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded.

(3) A party may offer exhibits, such as records of transactions.

(a) The party shall have the exhibits numbered by the stenographer prior to the hearing.

(b) The party shall provide copies of the evidence to the stenographer, all parties and to the hearing officer.

(c) Exhibits must be introduced and explained by a witness, who must be prepared to answer questions from the parties and the hearing officer.

(d) The hearing officer shall be asked by the party offering an exhibit to accept the exhibit into evidence. The hearing officer may be asked to consider all exhibits introduced by a witness at the conclusion of that witness's testimony or at the conclusion of that party's case.

(e) The stenographer shall retain copies of all exhibits that are admitted and shall make them a part of the record.

(4) The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

**H. Hearsay evidence.** Hearsay evidence may be admitted in a proceeding.

**I. Taking notice.**  
(1) The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute.

(2) The hearing officer may take administrative notice at any stage in the proceeding, whether *sua sponte* or at the request of a party.

(3) A party may dispute the propriety of taking administrative notice, including the opportunity to refute a noticed fact.

**J. Objections.**

(1) A party objecting to evidence, qualifications of an expert, a line of questioning, or the response shall timely and briefly state the grounds for the objection.

(2) Rulings on objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

**K. Audio or video evidence.** Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained as part of the record.

**L. Size of exhibits.** In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer. The hearing officer may admit larger documentary exhibits presented at hearing, provided the proponent of such exhibits provides the hearing officer with a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. Arrangements to provide a reduced copy of a large exhibit shall be undertaken in advance of the hearing. Failure by the proponent to provide a reduced copy shall be deemed a withdrawal of the exhibit.

**M. Substitutions for objects.** In lieu of the introduction of tangible objects as exhibits, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object

for the record.

[13.21.4.17 NMAC – Rp,13.21.4.17 NMAC, 4/30/2019]

**13.21.4.18 WITNESSES, EXPERT WITNESSES, AND INVOCATION OF THE RULE:**

**A. Use of witnesses.**

Any person having relevant, material knowledge related to one of the issues in a hearing may testify as a witness under oath in a proceeding. Upon affirming the oath, the witness may be questioned by any party and by the hearing officer.

**B. Method of appearance.** Unless a more specific provision applies, witnesses are ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the hearing officer allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone or videoconference.

**C. Hearing officer as a witness.** The current or previously assigned hearing officer in a matter shall not be called and shall not be a witness in the proceeding.

**D. Use of expert witnesses.**

(1) If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party must identify the purported expert to the other parties and to the hearing officer at least seven days before the scheduled hearing, or with sufficient time before completion of the discovery deadline specified in a scheduling order to allow for deposition.

(2) The party shall include the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and a listing of any materials the expert reviewed as part of reaching his or her expert opinion.

(3) The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.

**E. Use of exclusionary rule.** At the hearing, any party can invoke the exclusionary rule, excluding all witnesses other than the real party in interest, their representative, one main case agent, and any designated expert witness from the proceeding until the time of their testimony. If the rule has been invoked, the witnesses shall not discuss their testimony with each other until the conclusion of the proceeding. When the rule has been invoked, any witness who remains in the hearing after conclusion of their testimony may not be recalled as a witness in the proceeding, except that any witness may observe the testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

**F. OSI staff as experts.**

(1) The hearing officer may request one or more members of OSI staff to be present at the hearing to assist the hearing officer with any matters within the expertise of the staff person.

(2) The staff person may be called as a witness by the hearing officer and examined by the parties and the hearing officer.

(3) Any party may call the staff person as a witness.

(4) Each other party will have the opportunity to cross-examine a staff person who is called as a witness. In the discretion of the hearing officer, the hearing officer may permit re-direct or re-cross examination of the staff person.

(5) The hearing officer shall not discuss the case with the staff person outside the hearing or off the record.

(6) Any staff person requested to be present by the hearing officer shall not be subject to the exclusionary rule.

[13.21.4.18 NMAC – Rp, 13.21.4.18 NMAC, 4/30/2019]

**13.21.4.19 HEARING OFFICER POWERS AND RESPONSIBILITIES:**

**A. General authority.** The superintendent may preside over PCF hearings or may designate a hearing officer to preside instead.

**B. Duties of the hearing officer.** The hearing officer shall conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings and maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in proceeding, including qualification of expert witnesses and admission of exhibits;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a docket to be opened and a complete record of a hearing to be made;

(12) to make and issue decisions and procedural orders;

(13) to issue subpoenas in the name of the superintendent;

(14) if acting on behalf of the superintendent, to issue a recommendation to the superintendent regarding the final resolution of the matter; and

(15) to appropriately sanction, up to exclusion, indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or other improper conduct that interferes with the conduct of a fair and orderly hearing or the development of a complete record.

**C. Independence of the hearing officer.** In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any other officer, employee or agent of OSI or the PCF, except that a hearing officer appointed by the superintendent shall be subject to the direction of the superintendent.

**D. Ex parte communication.** In the performance of these functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter. An improper *ex parte* communication occurs when the hearing officer discusses or otherwise communicates regarding the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

**E. Final order.** After a thorough review of the record and any recommendation prepared by a designated hearing officer, the superintendent shall issue a final order. No party or member of OSI or PCF staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence his final decision.

[13.21.4.19 NMAC – Rp, 13.21.4.19 NMAC, 4/30/2019]

**13.21.4.20 CLOSED OR PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF HEARING OFFICER:**

**A. Closed hearings.**

Unless otherwise provided by law, ordered by the hearing officer for good cause, or required to prevent disclosure of confidential information, all hearings and the record are open to the public. Any party to a proceeding may submit a written request to close the hearing and the record to the public, which shall be granted if authorized by statute, regulation, to preserve confidentiality or to protect a party from harassment or reprisal. Any proceedings and records that involve an individual's medical issues shall be closed to the public.

**B. Open hearings.**

If the hearing is open to the public, members of the public and the media may attend the hearing so long as they do not interrupt, interfere with, or impede the orderly, fair, and efficient hearing process. With prior consent of the hearing officer, media members may record the proceeding from a fixed location in the hearing room. The hearing officer may direct any member of the public, including media members, to leave the proceeding if they engage in any conduct that interferes with the hearing officer's ability to maintain order, develop the record, and provide a fair and efficient hearing process. The proceedings shall be made available telephonically to members of the public, including the media, upon prior request.

**C. Sealed records.**

Upon request of any party, and upon a showing of good cause, the hearing officer may seal a particular exhibit, document, or portions of a witness's testimony from public disclosure if such items contain statutorily-protected confidential information, privileged information, or otherwise contain private identification information of a party or third party that is immaterial to a substantive issue in the proceeding or if its materiality is substantially outweighed by the prejudice of public release of the information. Upon issuance of an order sealing such documents or exhibits, these records will remain under seal throughout the proceeding and shall be returned to

the submitting party at the conclusion of the appeal period or the appeal.

The opposing party shall be entitled to promptly review these documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process; however, the opposing party shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of these sealed documents to any other party outside of the hearing process.

**D. Notes of**

**deliberation.** The hearing officer's notes taken during the course of the hearing, notes generated during the decision-making process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure.

[13.21.4.20 NMAC – Rp,13.21.4.20 NMAC, 4/30/2019]

**13.21.4.21 SUBPOENAS:**

Any request for issuance of subpoenas in matters subject to these rules shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the powers of the superintendent.

Any subpoena issued shall be in the name of the superintendent.

The party requesting the subpoena shall prepare a proposed subpoena, submit the proposed subpoena to each other party and to the hearing officer for approval, and shall timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 days-notice before compelled attendance at a hearing or deposition, and at least 10 days-notice before compelled production of materials.

All returns or certificates of service on served subpoenas shall be filed in the docket of the proceeding, copied to the opposing party, and shall be made part of the record of the proceeding.

[13.21.4.21 NMAC – Rp,13.21.4.21 NMAC, 4/30/2019]

**13.21.4.22 LANGUAGE**

**INTERPRETERS:** A party to a proceeding who needs language interpreter services for translation of one language into another is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a matter before the superintendent must be approved by the hearing officer and must affirm the interpreter's oath applicable in New Mexico courts. Upon reasonable notice by the party, any interpreter required to be provided under the Americans with Disabilities Act shall be provided for by the superintendent. [13.21.4.22 NMAC – Rp,13.21.4.22 NMAC, 4/30/2019]

**13.21.4.23 FAILURE TO APPEAR:****A. Entry of default**

**order.** If a party fails to appear for a properly noticed hearing, either in person, through a permissible representative or telephonically with prior approval of the hearing officer, the person waives the right to protest or challenge superintendent's action that is the subject of the hearing notice. The matter shall go on the record for the limited purpose of addressing notice and non-appearance, and a final order shall be entered based on the waiver of the hearing by failing to appear.

**B. Evidence of notice.**

In considering the non-appearance and whether the person received appropriate notice necessitating issuance of the order, the hearing officer may consider the contents of the docket, information conveyed to or known by the superintendent, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by any present party, all of which may be addressed on the record of the hearing or in any subsequent order.

**C. Written order required.** Oral rulings based on a party’s failure to appear are not final until reduced to writing. The hearing officer may issue a different written order as new information arises after the hearing regarding whether the notice of hearing was properly sent to the correct address or otherwise properly served.  
[13.21.4.23 NMAC – Rp, 13.21.4.23 NMAC, 4/30/2019]

**13.21.4.24**

**RECONSIDERATION:**

**A. Time to file.**

A party may file a motion for reconsideration within 15 days after the date of the final order. Any other party may file a response no more than 15 days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically. A timely filed motion for reconsideration should be decided based on the merits, whether or not a response is filed.

**B. Posture.**

The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

**C. Basis for motion.**

Motions for reconsideration shall not endeavor to present new evidence previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors or omissions contained in the final decision and order.

[13.21.4.24 NMAC – Rp, 13.21.4.24 NMAC, 4/30/2019]

**13.21.4.25 APPEALS FOLLOWING HEARING:**

Any party who has exhausted all administrative remedies available under these rules and who is adversely affected by a final order or decision

in an adjudicatory proceeding or surcharge rate proceeding may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Each order issued by the superintendent after an adjudicatory proceeding or surcharge rate proceeding shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall promptly provide a court-endorsed copy of the appeal to the superintendent so that the PCF records manager can prepare and submit the proper record.

[13.21.4.25 NMAC – Rp, 13.21.4.25 NMAC, 4/30/2019]

**13.21.4.26 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE RECORD:**

Any party may access and copy any written document filed to the docket. Copies of an audio recording or written transcript of the proceeding shall be arranged through the stenographic service. The PCF may charge a reasonable fee for copies made, consistent with OSI’s fee schedule under the Inspection of Public Records Act. The superintendent may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record.

[13.21.4.26 NMAC – Rp, 13.21.4.26 NMAC, 4/30/2019]

**History of 13.21.4 NMAC:**

13.21.4 NMAC, Administrative Hearings, effective 3/1/2019.

**History of Repealed Material:**

13.21.4 NMAC, Administrative Hearings, effective 3/1/2019 was repealed and replaced by 13.21.4 NMAC, Administrative Hearings, effective 4/30/2019.

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**Explanatory paragraph: This is an amendment to 13.10.25 NMAC, Paragraph (2) of Subsection G of Section 11, effective 4/23/2019. Subsections A through F and Paragraph (1) of Subsection G were not published as no changes were made.**

\*\*\*

**(2) Plan L.**

Standardized Medicare Supplement benefit Plan L shall consist of the following:

**(a)** the benefits described in Subparagraphs (a), (b) (c) and (i) of Paragraph (1) of this subsection;

**(b)** the benefit described in Subparagraphs (d) (e), (f), (g), and (h) of Paragraph (1) of this subsection, but substituting seventy-five percent for fifty percent; and

**(c)** the benefit described in Subparagraph (j) of Paragraph (1), but substituting \$2000 for \$4000.

[13.10.25.11 NMAC - Rp, 13.10.25.11 NMAC, 1/1/2019; A/E, 1/1/2019; A, 4/23/2019]

\*\*\*

**END OF ADOPTED RULES**



# 2019 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us>. For further information, call 505-476-7941.