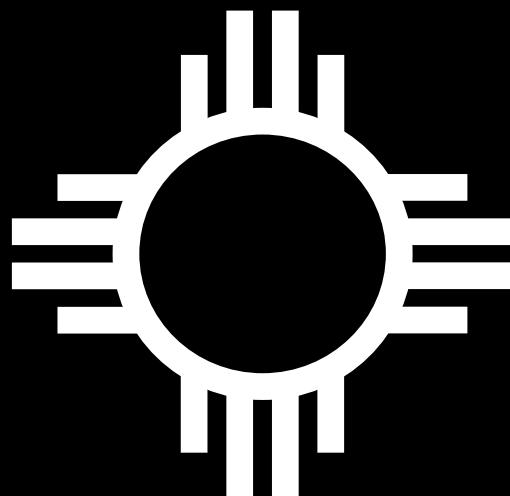


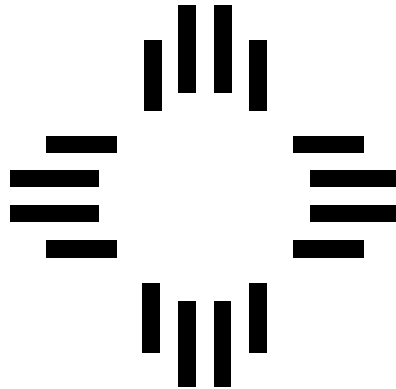
**NEW
MEXICO
REGISTER**



Volume XV
Issue Number 2
January 30, 2004

New Mexico Register

Volume XV, Issue Number 2
January 30, 2004



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2004

COPYRIGHT © 2004
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XV, Number 2

January 30, 2004

Table of Contents

Notices of Rulemaking and Proposed Rules

Architects, Board of Examiners for	
Special Meeting	15
Energy, Minerals and Natural Resources Department	
State Parks Division	
Notice of Public Hearing on Proposed Amendments to State Park Rules	15
Personnel Board, State	
State Personnel Board Public Rules Hearing	15
Public Safety, Department of	
Training and Recruiting Division - Law Enforcement Academy	
Notice NM Law Enforcement Academy Board Meeting and Public Hearing	15
Workers' Compensation Administration	
Notice of Public Hearing	16

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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Children, Youth and Families Department

Family Services Division

8.15.2 NMAC	A/E	Requirements for Child Care Assistance Programs for Clients and Child Care Providers	17
-------------	-----	--	----

Educational Retirement Board

2.82.8 NMAC	Rn & A	Investment Policies and Practices	19
-------------	--------	---	----

Environmental Improvement Board

20.7.3 NMAC	Rn & A	Liquid Waste Disposal	19
-------------	--------	-----------------------------	----

Nursing Home Administrators Board

16.13.2 NMAC	A	Fees	24
16.13.3 NMAC	A	Application for Licensure by Examination	24
16.13.4 NMAC	A	Examination of Approved Applicants	26
16.13.5 NMAC	A	Application for Licensure by Reciprocity	26
16.13.7 NMAC	A	License Issuance	27
16.13.17 NMAC	A	Disciplinary Proceedings	27
16.13.18 NMAC	A	Grounds for Disciplinary Action	28

Pharmacy, Board of

16.19.4 NMAC	A	Pharmacist	29
--------------	---	------------------	----

Physical Therapy Board

16.20.1 NMAC	A	Physical Therapists - General Provisions	30
16.20.3 NMAC	A	Issuance of Licenses	30
16.20.8 NMAC	A	Continuing Education	31
16.20.9 NMAC	A	Education Criteria for Foreign-Educated Applicants	33
16.20.10 NMAC	A	Direct Care Requirements	33

Public Regulation Commission

Transportation Division

SCC Rule 77-4	R	Repeal of New Mexico Ambulance Tariff No. 3-B.	34
---------------	---	---	----

Public Safety, Department of

Motor Transportation Division

18.2.3 NMAC	A	Motor Carrier Safety	34
18.19.8 NMAC	A	Height and Weight of Vehicles and Loads	35

Regulation and Licensing Department

Financial Institutions Division

12.15.4 NMAC N Home Loan Protection Act - High Cost Loans: Repayment Ability, Financial Ratios and Guidelines 38

Workers' Compensation Administration

11.4.7 NMAC A / E Payments for Health Care Services 38

Other Material Related to Administrative Law

Architects, Board of Examiners for

Regular Meeting 45

Public Records, Commission of

Historical Records Advisory Board

Notice of Meeting 45

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 available free at <http://www.nmcpr.state.nm.us/nmregister>

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) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for Architects

PO Box 509
Santa Fe, NM
505-827-6375

Special Meeting

The New Mexico Board of Examiners for Architects will hold a rules hearing on March 2, 2004 to discuss changes to rules 16.30.3.11 NMAC, Registration Renewal and 16.30.3.13 NMAC, Renewal of an Expired Certificate. This special meeting will be held at the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 10:00 am and is open to the public. Any persons with disabilities requiring special accommodations should contact the Board office at 505-827-6376 by February 25, 2004.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

Notice of Public Hearing ON PROPOSED AMENDMENTS TO STATE PARK RULES

The New Mexico State Parks Division of the Energy, Minerals and Natural Resources Department will hold a public hearing at 5:30 p.m. on February 25, 2004, in Porter Hall, located at 1220 South St. Francis Dr., Santa Fe, New Mexico. Entrance is located on the first floor northeast side of the Energy Minerals and Natural Resources Building, (also known as the Pinon Building).

The purpose of the hearing is to consider proposed rule changes to:

***19.5.1 NMAC: General Provisions:** To identify and update definitions that applies to all parts in 19.5 NMAC.

***19.5.5 NMAC: Concessions Activities:** To omit the inclusion of Friends Groups from the rule.

***19.5.6 NMAC: Park Fees:** To amend the fee schedule **a)** by increasing the Day Use per vehicle from \$4.00 to \$5.00 including the Rio Grande Nature Center and Living

Desert, **b)** by adding an Annual Overnight Camping Permit for New Mexico Residents and Out of State Visitors, **c)** by reinstating the Annual Day Use Permit statewide, with a staggered increase in fees and **d)** by increasing the Concession Permit, Guide Card and Administrative Fee.

The hearing will be conducted in accordance with the Open Meetings Act, NMSA 1 978, Section 10-15-1 et seq.; and the Energy, Minerals and Natural Resources Department Guidelines for Rulemaking (OFS 118). A copy of proposed regulations is available upon written request to **DRAFT REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, NM 87504-1147, or downloading a copy at www.nmparks.com, or calling (505) 476-3355 to request a draft.

Individuals are invited to make oral comments on the proposed regulations at the hearing or by submitting written comment no later than 5:00 p.m. on March 3, 2004. Comments shall be sent to **DRAFT REGULATIONS SECTION**, NM State Parks Division, P.O. Box 1147, Santa Fe, New Mexico 87504-1147; or nmparks@state.nm.us. If you are an individual with a disability who is in need of 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 Doris Archuletta, at least one week prior to the hearing or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact New Mexico voice relay at 1-800-659-1779 or TTD 1-800 659-8331. TDD, if a summary or other type of accessible format is needed. Public documents can be provided in various formats if needed.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Friday March 12, 2004. The meeting will be held during the Board's regular business meeting beginning at 9:00 a.m., located at the Leo Griego Auditorium in the Willie Ortiz Building (State Personnel Office) at 2600 Cerrillos Road, Santa Fe, New Mexico, 87503.

The purpose of the Rule Hearing is to consider amending complaints; just cause; and performance appraisal.

A final agenda for the board meeting will be available at the board office on Tuesday March 2, 2004. Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. Monday, March 1, 2004 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87503, attention, Sandra Perez.

Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.state.nm.us/spo/.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY TRAINING AND RECRUITING DIVISION Law Enforcement Academy

NOTICE NM LAW ENFORCEMENT ACADEMY BOARD MEETING AND PUBLIC HEARING

The New Mexico Law Enforcement Academy Board will hold a Work Session on Thursday, February 26, 2004 at 9:00 a.m., at the Roger A. Hoisington APD Training Academy located at 5412 Second St., Albuquerque, New Mexico, Classroom A. In conjunction with the Work Session the New Mexico Law Enforcement Academy will hold its next regular scheduled Board Meeting, followed by a Public Hearing regarding the following rules:

10.29.7.8 NMAC (2004-2005 Training Cycle)

Copies of proposed plans, standards, requirements, or rules may be obtained by calling (505) 827-9210. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign

language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Major Ted Branch, (505) 827-9249, as soon as possible. Public documents can be provided in various accessible formats. Please contact Inspector Ted Branch or Susan Patterson if additional information is needed.

**NEW MEXICO WORKERS'
COMPENSATION
ADMINISTRATION**

NOTICE OF PUBLIC HEARING

Notice is hereby given that on Thursday, January 29, 2004, commencing at 1:30 p.m., the New Mexico Workers' Compensation Administration will conduct a public hearing on the emergency rule change to Part 7 of the Workers' Compensation Rules. The hearing will also consider changes to the medical fee schedule (MAP). The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, NM. Videoconferencing may also be made available in the WCA Field Offices. Please contact Renee Blechner at (505) 841-6083 by January 22, 2004, to reserve videoconferencing. Proposed rule changes will be available on January 13, 2004. Copies of the changes to the proposed fee schedule will also be available on January 13, 2004.

Comments made in writing and at the public hearing will be taken into consideration. Written comments pertaining to these issues will be accepted until the close of business on Monday, February 23, 2004. Oral comments will be limited to five (5) minutes per speaker.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, (505) 841-6000, for copies of the fee schedule. If you intend to request a copy by mail, please inquire at the WCA Clerk's Office about the postage cost and envelope size needed to accommodate your request. Plan on including a post-paid, self-addressed envelope with your request.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact Renee Blechner at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

This is an emergency amendment to 8.15.2.17 NMAC, effective January 7, 2004.

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child’s enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the fourteen (14) calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (Part time 1).

F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (Full time).

G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (Part time 3) regardless of provider type.

H. Monthly reimbursement rates

Licensed child care centers								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$467.84	\$352.60	\$350.88	\$264.45	\$233.92	\$176.30	\$116.96	\$88.15
Toddler	\$417.19	\$345.00	\$312.89	\$258.75	\$208.60	\$172.50	\$104.30	\$86.25
Pre-school	\$386.48	\$322.50	\$289.86	\$241.88	\$193.24	\$161.25	\$96.62	\$80.63
School age	\$337.11	\$311.75	\$252.83	\$233.81	\$168.56	\$155.88	\$84.28	\$77.94
Licensed group homes (capacity: 7-12)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$370.48	\$324.38	\$277.86	\$243.29	\$185.24	\$162.19	\$92.62	\$81.10
Toddler	\$335.40	\$320.00	\$251.55	\$240.00	\$167.70	\$160.00	\$83.85	\$80.00
Pre-school	\$329.55	\$315.00	\$247.16	\$236.25	\$164.78	\$157.50	\$82.39	\$78.75
School age	\$325.00	\$305.00	\$243.75	\$228.75	\$162.50	\$152.50	\$81.25	\$76.25

Licensed family homes (capacity: 6 or less)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$365.20	\$320.00	\$273.90	\$240.00	\$182.60	\$160.00	\$91.30	\$80.00
Toddler	\$325.08	\$315.00	\$243.81	\$236.25	\$162.54	\$157.50	\$81.27	\$78.75
Pre-school	\$324.17	\$310.00	\$243.13	\$232.50	\$162.09	\$155.00	\$81.04	\$77.50
School age	\$319.28	\$300.00	\$239.46	\$225.00	\$159.64	\$150.00	\$79.82	\$75.00
Registered homes and in-home child care								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-school	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, **AIM HIGH status of the provider if applicable**, and in accordance with the rate established for metro or rural location of the provider. Providers located in the ~~three~~ metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties. All other providers receive the rural rate.

J. The department pays a differential rate to former gold and silver licensed providers and providers holding national accreditation status. Former gold and silver licensed providers receive an additional ~~[\$66.00]~~ **\$100.00** per month and \$33.00 per month, respectively, for full time care above the base reimbursement standard. In order to continue at these reimbursement rates a provider must meet and maintain former gold and silver licensing requirements. If a former gold or silver licensed provider fails to meet the former gold and silver licensing requirements this could result in the provider reimbursement reverting to a lower level of reimbursement. Providers holding national accreditation status receive an additional ~~[\$75.00]~~ **\$100.00** per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

K. AIM HIGH is a voluntary quality child care improvement ~~[pilot]~~ program that is open to all registered and licensed child care providers. The department pays a differential rate to providers achieving AIM HIGH levels as follows: **Level 2 at \$25.00 per month per child for full time care above the base reimbursement rate**; Level 3 at ~~[\$25.50]~~ **\$50.00** per month per child for full time care above the base reimbursement rate; Level 4 at ~~[\$42.00]~~ **\$75.00** per month per child for full time care above the base reimbursement rate, and Level 5 at ~~[\$75.00]~~ **\$100.00** per child per month for full time care above the base reimbursement rate. **In order to continue at these reimbursement rates, a provider must maintain and meet current AIM HIGH level requirements. If an AIM HIGH provider fails to meet the current level requirements, this will result in the provider reimbursement reverting to the level demonstrated.**

L. The department pays a differential rate equivalent to 10% of the applicable full-time rate to providers who provide full-time care during non-traditional hours. Providers who provide part-time care during non-traditional hours will be paid a differential rate subject to the proration schedule delineated in Subsection D of 8.15.2.17 NMAC.

M. If a significant change occurs in the client's circumstances, (for example, an increase or decrease in income or a change in work schedule) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp 8.15.2.17 NMAC, 11-01-02; A, 03-01-03; A, 07-16-03; A, 08-26-03, A, 01/07/04]

**NEW MEXICO
EDUCATIONAL
RETIREMENT BOARD**

This is an amendment to 2.82.8 NMAC, Sections 10 and 11. This rule is being renumbered and reformatted to comply with current NMAC requirements.

2.82.8.10 INVESTMENT PHILOSOPHY:

A. Recognizing the important and perpetual nature of the fund and the fiduciary responsibilities of the board, the primary goal in investing the assets shall be to provide significant real returns adjusted for inflation with acceptable risk (volatility). The "prudent man" standard, as defined in the state statutes, shall apply. At the same time, with the dramatic growth of the fund and changes and volatility in the securities markets, the investment division must explore new areas of investment for purposes of diversification.

B. The primary equity strategy shall be to build a high quality, diversified portfolio of stocks. ~~[The equity strategy shall give consideration of earnings momentum and earnings surprise]~~ Both growth and value styles shall be included in the equity structure. A mid-cap or small-cap equity portfolio can add diversification to the board's equity strategy. Exposure to international equity investing can further add diversification benefits to the equity strategy.

C. Fixed income securities shall be managed using a rate anticipation style. The duration of the portfolio will be lengthened or shortened based on the outlook for interest rates. In addition, sector analysis, spread analysis and swaps will be used to increase the return on the portfolio. Exposure to international fixed income investing can add diversification benefits to the fixed income strategy. [6-30-99; 2.82.8.10 NMAC - Rn & A, 2 NMAC 82.8.10, 1-30-2004]

2.82.8.11 POLICIES:

- A. Investment Guidelines:
 (1) Fixed Income Securities:
 (a) Eligible Fixed income investments include the following:
 (i) US treasury;
 (ii) federal agencies;
 (iii) US government sponsored enterprises (FNMA, FHLMC, etc.);
 (iv) US corporations;
 (v) repurchase agreements;
 (vi) prime bankers' acceptances;
 (vii) yankee bonds;

~~(viii) collateralized obligations held in trust that: are publicly traded and are registered with the United States securities and exchange commission; and have underlying collateral that is either an obligation of the United States government or else has a credit rating above or equal to BBB according to the Standard and Poor's rating system or Baa according to the Moody's investors rating system;~~

~~(viii) (ix) bills, bonds or notes of governments other than the United States or their political subdivisions, agencies or instrumentality's;~~

~~(ix) (x) bonds, notes or commercial paper of any corporation organized outside of the United States.~~

(b) Domestic fixed income securities, managed internally by the investment division, at the time of purchase, must have at least a ~~[Baa/Moody's]~~ Baa3/Moody's and BBB-/S & P rating; Yankee bonds, at the time of purchase, must have at least an A/Moody's and A/S & P rating; and international fixed income securities, at the time of purchase, must have a minimum rating equivalent to A/Moody's and A/S & P rating.

(c) At least 90 percent of domestic fixed income securities, managed externally by a paid investment manager, at the time of purchase, may have a minimum rating of at least a Caa3 Moody's and a CCC-S&P rating.

~~(d) (d) Not more than 2 percent of the fund (at market value) may be invested in a single corporate issuer.~~

~~(d) Corporations must have a minimum net worth of \$25 million.~~

(2) Equities:

(a) Eligible equity investments include the following:

(i) common stock or preferred stock of U. S. corporations. Stock must be listed on a national exchange or on the N.A.S.D. national market;

(ii) American depositary receipts of foreign corporations. Securities must be listed on a national stock exchange or on the N.A.S.D. national market;

(iii) common stock or preferred stock of corporations organized outside of the United States. Stock must be listed on a national or foreign stock exchange.

~~(b) [Corporations must have a minimum net worth of \$25 million.~~

~~(e) Not more than 10 percent of the voting stock of a corporation may be owned by the fund.~~

B. Broker Policy: Given the fiduciary responsibilities of the board and the investment officers' regard to the management of the assets of the retirement fund, the board adopts the following poli-

cies relating to the execution of the securities orders:

(1) Equities. The brokerage community provides important services necessary for the successful management of the retirement fund. Recognizing that the value of the services varies widely from firm to firm, the equity investment officer is directed to allocate commission business based on his/her judgement of the overall quality of service provided by each brokerage firm. The SEC, in release no. 34-23170 dated April 23, 1986, states that in judging the quality of service consideration should be given to "the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness to the money manager." When all factors are equal within the above guidelines, preference shall be given to brokerage firms with offices in New Mexico.

(2) Fixed income. Recognizing the difference in the nature of the equity and fixed income markets, i.e., no central market for fixed income securities, fixed income trades will be executed through firms, which originate ideas and are able to offer/bid securities on a continuing competitive basis. When, in the judgment of the fixed income investment officer market conditions permit, offerings and bids will be solicited on a competitive basis.

(3) Soft dollar policy. The investment officers with approval of the director, and concurrence by the legislature, are authorized to use "soft dollars" to pay for research services and equipment which assist in the investment decision - making process as related to the management of the assets of the ERB retirement fund. Section 28(e) of the SEC Act of 1934, SEC interpretive release no. 34 -23170 dated April 23, 1986 and any subsequent interpretative releases shall be used as guidelines in this procedure.

[6-30-99; 2.82.8.11 NMAC - Rn & A, 2 NMAC 82.8.11, 1-30-2004]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

This is an amendment to 20.7.3.5, 20.7.3.7, 20.7.3.201, 20.7.3.301 and 20.7.3.310 NMAC, effective 3/1/04. This action also renumbers 20.7.3 NMAC, Liquid Waste Disposal, from 20 NMAC 7.3, Liquid Waste Disposal to conform to the current NMAC requirements.

20.7.3.5 EFFECTIVE DATE:

October 15, 1997, except where a later effective date is indicated in the history note at the end of a section ~~[or Paragraph]~~. [10/15/97; 20.7.3.5 NMAC - Rn, 20 NMAC 7.3.1.105, 3/1/04 & A, 3/1/04]

20.7.3.7 DEFINITIONS: As used in 20.7.3 NMAC.

A. "Aerobic treatment system" means any treatment system which stabilizes liquid waste through the addition of supplemental air or dissolved oxygen by means of mechanical or diffused aeration. Dissolved oxygen content must be maintained at a minimum of 2.0 mg/L for a system to be considered an aerobic system.

B. "Advanced treatment" or "tertiary treatment" means any process of water renovation that upgrades liquid waste to meet specific reuse requirements. Advanced treatment may include general cleanup of wastewater or removal of specific types of wastes, such as nitrates or other nitrogen compounds, insufficiently removed by primary or secondary treatment processes. Advanced treatment may include physical or chemical treatments.

C. "Alternative system" means any on-site liquid waste system utilizing a method of liquid waste treatment and disposal that is not recognized and allowed by 20.7.3 NMAC or by the New Mexico design standards.

D. "Anaerobic treatment" means a biological process through which organic material is decomposed in an environment containing no dissolved oxygen.

E. "Approved" means materials, products, or procedures that meet the requirements of the New Mexico design standards.

F. "Arroyo" means a dry wash or draw which flows only occasionally, a watercourse (as a creek or stream) in an arid region, or a water carved gully or channel.

G. "Bedrock" means the more or less solid, undisturbed rock in place either at the surface or beneath surficial deposits of gravel, sand or soil, or a consolidated rock formation of impervious material which may exhibit jointed, fractured, or deteriorated characteristics.

H. "Bedroom" means any room or unfinished area within a dwelling that reasonably might be used pursuant to the New Mexico building code as a sleeping room.

I. "Biochemical oxygen demand" or "BOD" means the rate at which organisms use the oxygen in water or wastewater while stabilizing decomposable organic matter under aerobic conditions.

J. [~~"black water"~~] "Blackwater" means waste from a liquid flushing toilet, urinal [~~or garbage disposal~~], kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers.

K. "Body of water" means all constrained water including water situated wholly or partly within or bordering

upon New Mexico, whether surface or sub-surface, public or private.

L. "Building drain" means that part of the lowest piping of a drainage system which receives the collective liquid waste discharge from soil, waste and other drainage piping inside a building and conveys it to the building sewer which begins two (2.0) feet outside the building wall.

M. "Building sewer" means that part of the horizontal piping of a drainage system which extends from the end of the building drain located two (2.0) feet outside the building wall and which receives the liquid waste discharge from the building drain and conveys it to a liquid waste treatment unit or approved point of disposal.

N. "Canal" means a man-made ditch or channel that carries water for purposes other than domestic consumption.

O. "Cesspool" means an excavation or non-water tight unit which receives untreated water-carried liquid waste allowing direct discharge to the soil.

P. "Clearance" means the vertical thickness of suitable soil between the lowest point of a liquid waste disposal system and the seasonal high ground water table, bedrock, or other limiting layer.

Q. "Commercial unit" means a structure without bedrooms but with sinks, baths, showers, toilets, urinals, floor drains for receiving liquid waste.

R. "Degrade a body of water" means to reduce the physical, chemical or biological qualities of a body of water and includes, but is not limited to, the release of material which could result in the exceeding of standards established by 20.6.4 NMAC, Standards for Interstate and Intrastate Surface Waters, by 20.6.2 NMAC, Ground and Surface Water Protection, and by 20.7.10 NMAC, Drinking Water.

S. "Department" means the New Mexico environment department.

T. "Design flow" means the flow rate for which an on-site liquid waste system must be designed in order to assure acceptable system performance, assuming the use of conventional plumbing fixtures.

(1) For residential sources, the design flow shall be calculated assuming two (2) persons per bedroom for the first two (2) bedrooms and one (1) person per additional bedroom in a single family dwelling unit, and seventy-five (75) gallons per person per day. Multiple family dwelling unit source design flows shall be calculated as the sum of design flows for each single family unit included.

(2) Design flows for nonresidential sources shall be based on table 402.2 and generally accepted references (such as

the uniform plumbing code or the USEPA design manual: *on-site wastewater treatment and disposal systems*). Design flows for nonresidential sources also may be based on professional engineering or professional design calculations, if more restrictive, or measured flows. Design flows for nonresidential sources shall include a safety factor of 1.5 to account for peak flows.

U. "Disinfected" or "disinfection" means the use of any process designed to effectively kill most microorganisms contained in liquid waste effluent including essentially all pathogenic (disease causing) bacteria. These processes include but are not limited to, suitable oxidizing agents such as chlorine, ozone and ultraviolet light.

V. "Disposal system" means a generally recognized system for disposing of the discharge from a liquid waste treatment unit and includes, but is not limited to, seepage pits, drainfields, evapotranspiration systems, sand mounds, sand filters, and approved surface applications.

W. "Dwelling" or "dwelling unit" means a structure which contains bedrooms.

X. "Edge of a watercourse, canal or arroyo" means that point of maximum curvature at the upper edge of a definite bank or, if no definite bank exists, the highest point where signs of seasonal high water flow exist.

Y. "Effluent" means treated liquid waste.

Z. "Effluent disposal well" means a drilled, driven, or bored shaft or dug hole with depth greater than any surface dimension, used for subsurface emplacement of liquid waste, including, but not limited to, abandoned water supply wells, irrigation wells, and test holes, but excluding seepage pits used as disposal systems, which conform to the standards in 20.7.3 NMAC.

AA. "Enclosed system" means a watertight on-site liquid waste system which does not discharge to the soil, including, but not limited to, holding tanks and lined evapotranspiration systems.

AB. "Established on-site liquid waste system" means an on-site liquid waste system which has been in active and trouble free use at any time during the ten (10) years prior to submission of a permit application, but does not include cesspools.

AC. "Evapotranspiration system" means a disposal system designed to dispose of all the design flow from a liquid waste treatment unit through evaporation and plant uptake and transpiration.

AD. "Failed system" means, without limitation, an on-site liquid waste system that does not operate as permitted,

that does not provide a level of treatment at least as effective as that provided by on-site liquid waste systems that meet the requirements of 20.7.3 NMAC and the New Mexico design standards, or that poses a hazard to public health or degrades a body of water.

AE. "Fixture units" means a quantity of flow as defined in the UPC upon which plumbing systems are sized.

AF. [~~"greywater" means water carried waste from kitchen (excluding garbage disposal) and bathroom sinks, wet bar sinks, showers, bathtubs and washing machines. Greywater does not include water carried wastes from kitchen sinks equipped with a garbage disposal, utility sinks, any hazardous materials, or laundry water from the washing of material soiled with human excreta~~] "Graywater" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers.

AG. "Ground water" means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

AH. "Hazard to public health" means the indicated presence in water or soil of biological, chemical or other contaminants under such conditions that could adversely impact human health, including without limitation surfacing liquid waste, damage to a domestic water supply source, presence of an open cesspool or tank, or exposure of liquid waste or septage in a manner that allows transmission of disease.

AI. "Holding tank" means a watertight tank designed to receive and retain liquid waste for periodic pumping and disposal off-site.

AJ. "Imminent hazard to public health or safety" means any situation with the potential to immediately and adversely impact or threaten public health or safety.

AK. "Impervious formation" means any soil or rock formation with a percolation rate slower than 120 minutes per inch.

AL. "Interstitial water" means water in spaces between solid earth particles.

AM. "Limiting layer" means an impervious formation or soils with a percolation rate faster than 5 minutes per inch.

AN. "Liner" means a manufactured or naturally occurring substance

which restricts seepage to no more than 0.5 acre-foot per year per acre (0.01 gallons per day per square foot or 4.8 x 10⁻⁷ cm/sec.) over the design service life of the lined unit. Manufactured liners must have a minimum thickness of 20 mils.

AO. "Liquid waste" means [~~grey water~~] graywater or blackwater which may contain without limitation human excreta and water carried waste from typical residential plumbing fixtures and activities, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes, and dish-washing machines, and floor drains. Specifically excluded from the definition of liquid waste are commercial process wastewaters, roof drainage, mine or mill tailings or wastes, and wastes containing high concentrations of stabilizing or deodorizing agents.

AP. "Liquid waste treatment unit" means a watertight unit designed, constructed and installed to separate and retain solids and to stabilize liquid waste and includes, but is not limited to, aerobic liquid waste treatment units and septic tanks.

AQ. "Load" or "loading" means:

(1) in the context of the biological or chemical load received by an on-site liquid waste system, the amount of material applied to an on-site system liquid waste component per unit area or unit volume;

(2) in the context of the structural load applied to an on-site liquid waste structural component, the structural force applied to a liquid waste system component per surface area.

AR. "Lot" means a unified parcel where liquid waste will be generated or disposed, excluding roadways and roadway easements, legally recorded or validated by other means. "Lot" includes any contiguous parcel subject to a legally recorded perpetual easement which dedicates the servient parcel for the disposal of liquid waste generated on the dominant parcel.

AS. "Modify" means:

(1) to change the method of on-site liquid waste treatment or disposal;

(2) to expand the on-site liquid waste system;

(3) to alter the horizontal or vertical location of the on-site liquid waste system;

(4) to increase the amount of design flow or load received by the on-site liquid waste system above the original design flow or load;

(5) to remove or replace component materials in a disposal system; or

(6) to change the size or boundaries of a lot with an existing on-site liquid waste system so that the total design flow for the lot exceeds the total design flow limitation provided by the formula in

Subsection C of 20.7.3.302 NMAC.

AT. "New and innovative technology" means without limitation liquid waste treatment technology, processes, equipment or components which are not fully proven in the circumstances of their intended use, but, based upon documented research and demonstration, appear to offer benefits which outweigh the potential risks of failure. New and innovative technology must be significantly different from technology recognized and allowed by the New Mexico design standards and must offer potential benefits in terms of public health, the environment, or energy or resources conservation.

AU. "New Mexico design standards" means 20.7.3.401 - 410 NMAC, the uniform plumbing code, and those specifications and construction standards for on-site liquid waste systems promulgated by the environmental improvement board for general use. In the event of conflict between the requirements of the uniform plumbing code and other requirements contained in the New Mexico design standards, the more stringent requirements shall apply.

AV. "Nitrate nitrogen" or "NO₃" means the most highly oxidized form of nitrogen found in wastewater or effluent.

AW. "Off-site water" means that the domestic water supply for the lot is from:

(1) a private water supply source which is neither within the lot nor outside the lot within one hundred (100) feet of the property line of the lot; or

(2) a public water supply source which is not within the lot.

AX. "On-site" means located on or within a lot.

AY. "On-site liquid waste system" means a liquid waste system, or part thereof, serving a dwelling, establishment or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system. On-site liquid waste systems include enclosed systems and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes.

AZ. "On-site water" means that the domestic water supply for the lot is from:

(1) a private water supply source which is within the lot or within one hundred (100) feet of the property line of the lot; or

(2) a public water supply source which is within the boundaries of the lot.

BA. "Owner" means any person who owns an on-site liquid waste system or any component thereof, or any lot upon which any on-site liquid waste system

or any component thereof is located.

BB. "Percolation rate" means the rate of entry of water into soil as determined by a standard soil test at the depth and location of the proposed soil disposal system.

BC. "Permittee" means any owner of a permitted on-site liquid waste system.

BD. "Person" means any individual, partnership, firm, public or private corporation, association, trust, estate, the state or any political subdivision or agency, or any other legal entity or their legal representative, agents or assigns.

BE. "Primary treatment" means a liquid waste treatment process that takes place in a treatment unit and allows those substances in wastewater that readily settle or float to be separated from the water being treated.

BF. "Private water supply source" means a water supply source such as a well, spring, infiltration gallery, or surface water withdrawal point used to provide water to a water supply system, if such system does not have a least fifteen (15) service connections and does not serve an average of twenty-five (25) individuals at least sixty (60) days out of the year.

BG. "Privy" or "outhouse" means a receptacle for non-liquid-carried human excreta allowing direct discharge to the soil.

BH. "Public water supply source" means a water supply source such as a well, spring, infiltration gallery, or surface water intake structure used to provide water to a public water supply system for human consumption if the system served has at least fifteen (15) service connections or regularly services an average of twenty-five (25) individuals at least sixty (60) days out of the year.

BI. "Residential unit" means a dwelling.

BJ. "Replacement area" means an area within a lot designated to allow future construction of a replacement disposal area as required by Subsection C of 20.7.3.401 NMAC.

BK. "Roadway" means the surface area of land dedicated by easement or use to provide vehicular passage serving more than one lot or more than five residential or commercial units on a single property.

BL. "Seasonal high ground water table" means the highest level to which the upper surface of ground water may be expected to rise within twenty-four (24) consecutive months.

BM. "Seasonal high water flow" means the highest level which perennial or intermittent surface waters may be expected to rise within twenty-four (24)

consecutive months.

BN. "Secondary treatment" means a wastewater treatment process used to convert dissolved or suspended materials into a form more readily separated from the water being treated. The process is commonly a biological treatment process followed by settling and clarification. The minimum secondary treatment standards required by 20.7.3 NMAC for the 5-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) shall be:

(1) the 30-day average shall not exceed 30.0 mg/L;

(2) the 30-day average percent removal shall not be less than 85 percent.

BO. "Secretary" means the secretary of environment or a designated representative.

BP. "Septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank.

BQ. "Septic tank" means liquid waste treatment units designed to provide primary treatment and anaerobic treatment prior to disposal.

BR. "Setback distance" means the distance measured by a straight horizontal line between the on-site liquid waste system, its designated replacement area, or portion thereof and the object being considered.

BS. "Suitable soil" means a soil, whether naturally occurring or introduced, which will treat the effluent effectively and act as an effective filter and remove organisms and suspended solids prior to the effluent reaching ground water, bedrock or a limiting layer, and which will provide adequate transmission to prevent a failed system. Suitable soils are minimally characterized by percolation rates between five (5) and one hundred twenty (120) minutes per inch.

BT. "Surface application" means the application of disinfected effluent to the ground surface.

BU. "Test hole" means a hole dug in the proposed disposal field area a minimum of seven (7) feet deep and a minimum of two (2) feet wide. The test hole shall be sufficient to examine the soil visually for type, structure, mottling, impervious layers, and other soil characteristics, and to determine the seasonal high water table level. A soil boring may be used to determine the soil characteristics.

BV. "Total design flow" means the sum of design flows for all on-site liquid waste systems and other wastewater discharges on a lot.

BW. "Total nitrogen" or "NT" means the combined organic nitrogen, ammonia, nitrite and nitrate contained in the wastewater or effluent.

BX. "Uniform plumbing code" or "UPC" means the 1991 uniform plumbing code, 14 NMAC 11.3, the 1991 state of New Mexico plumbing code and mechanical code - uniform plumbing code, 14 NMAC 11.2, and the 1991 state of New Mexico plumbing code and mechanical code - uniform mechanical code, 14 NMAC 9.2, or the successor versions of each as adopted by the construction industries division of the New Mexico regulation and licensing department and promulgated in the New Mexico administrative code.

BY. "Wastewater" means blackwater and ~~greywater~~ graywater.

BZ. "Watercourse" means any surface river, creek, arroyo, draw, canal or wash, or any other channel having definite banks and beds with visible evidence of the flow of water.

[10/15/97; 20.7.3.7 NMAC - Rn, 20 NMAC 7.3.I.107, 3/1/04, & A, 3/1/04]

20.7.3.201 PROCEDURES; LIQUID WASTE SYSTEM PERMITS:

A. No person shall install or have installed a new on-site liquid waste system or modify or have modified an existing on-site liquid waste system, unless that person obtains a permit issued by the department prior to construction of such installation or modification.

(1) No person shall construct or modify a dwelling on, or transport a dwelling onto, a lot for which an on-site liquid waste system is required unless the department has issued an on-site liquid waste system permit prior to such construction, modification, or transportation.

(2) No person shall construct, install, repair or modify an on-site liquid waste system unless that person holds a valid contractors license issued by the New Mexico construction industries division, except that a single family residential property owner may construct, install, repair or modify permitted septic tanks and conventional trench or bed disposal fields on his or her own property after obtaining a permit without such a license.

(3) A permit is not required for graywater discharges or for systems designed for the discharge of graywater that meet the requirements of 20.7.3.310 NMAC.

B. Obtaining a permit from the department for installation or modification of an on-site liquid waste system does not relieve any person from the responsibility of obtaining any other approval, license or permit required by state, city or county regulations or ordinances or other requirements of state or federal laws.

C. Any person seeking a permit shall do so by submitting an applica-

tion to the field office of the department having jurisdiction for the area where the system is to be installed or modified. The application shall be:

(1) made on a form provided by the department;

(2) accompanied by such other relevant information as the department may reasonably require or that the applicant may consider appropriate; and

(3) signed by the applicant or their authorized representative.

D. The department may require any or all of the following information before a permit is issued for an on-site liquid waste system, or at any time during the construction thereof.

(1) A site plan, completely dimensioned, showing direction and approximate slope of surface, location of all present or proposed retaining walls, arroyos, canals, irrigation or drainage channels, water supply lines, wells or other water sources, other on-site liquid waste systems, paved areas, roadways, structures, plumbing fixtures in each structure, and location of the proposed liquid waste system and replacement area with relation to lot lines and structures, and to all sources of public water supply located within two-hundred (200) feet.

(2) Sufficient details of construction, materials, and components necessary to assure compliance with the requirements of 20.7.3 NMAC, including a full description of the complete installation, quality, kind and grade of all materials, equipment, construction, and methods of assembly and installation.

(3) A log of soil formations and ground water level as determined by soil borings or a test hole(s) dug in close proximity to any proposed seepage pit or disposal field, together with a statement of water absorption characteristics of the soil at the proposed site as determined by approved percolation tests.

E. Department responses.

(1) Except as otherwise provided in Paragraph (2) of Subsection E of 20.7.3.201 NMAC the department shall, within ten (10) working days after receipt of the completed application, grant the permit, grant the permit subject to conditions, or deny the permit and shall notify the applicant of the action taken.

(2) If the department's initial review of the application indicates that the imposition of more stringent requirements may be necessary pursuant to Subsection F of 20.7.3.201 NMAC or Subsection C of 20.7.3.301 NMAC, the department may extend the time for the review of the application until twenty (20) working days after receipt of the completed application provided that the department shall notify the applicant of such extension within ten (10) work-

ing days after receipt of the completed application.

(3) When the permit is granted subject to conditions or denied, the reason for the action shall refer to the appropriate regulation(s) and be given in writing.

F. If the department finds that specific requirements in addition to or more stringent than those provided in 20.7.3.301 - 309 NMAC and 20.7.3.401 - 410 NMAC of 20.7.3 NMAC are necessary to prevent a hazard to public health or the degradation of a body of water, the department may issue permit conditions with more stringent requirements or additional specific requirements. Such additional or more stringent requirements may apply to system design, siting, construction, inspection, operation and monitoring.

G. The department shall deny the permit if the proposed system will not meet the requirements of 20.7.3 NMAC or the New Mexico design standards.

H. The department shall maintain a file of all permits issued and denied. The file shall be open for public inspection.

I. The installation or modification of an on-site liquid waste system shall be in accordance with the permit. Any change from the permitted installation or modification, including a change of contractor, must receive written department approval prior to implementation.

J. No person shall operate or use an on-site liquid waste system until the department has granted final approval of the system after installation or modification of the system is completed. No person shall occupy a newly constructed or transported dwelling for which an on-site liquid waste system is required until the department has granted such final approval, and, if applicable, until the governmental body with authority to regulate construction has granted an occupancy permit. The department shall not grant final approval if the system as installed or modified does not meet the requirements of 20.7.3 NMAC and the New Mexico design standards.

K. The department may cancel a permit if the installation or modification of the on-site liquid waste system has not been completed within one (1) year after issuance, or if the department determines that material information in the application is false, incomplete, or inaccurate and that the correct information would have resulted in the department denying the original application. If a permit is canceled, the department shall notify the permittee of the decision in writing and the reason for cancellation and appropriate regulations cited.

[10/15/97; 20.7.3.201 NMAC - Rn, 20 NMAC 7.3.II.200, 201, 3/1/04 & A, 3/1/04]

20.7.3.301 STANDARDS; GENERAL REQUIREMENTS:

A. No person shall discharge untreated liquid waste except into a permitted enclosed system, a permitted liquid waste treatment unit, or a public sewer system, except for discharges of graywater pursuant to 20.7.3.310 NMAC. No person shall discharge liquid waste or effluent into a cesspool or effluent disposal well. A privy may be used for the disposal of human excreta and toilet paper, but not for the disposal of other liquid wastes.

B. No person shall discharge effluent from a liquid waste treatment unit except through a permitted liquid waste disposal system or to a public sewer system. No person shall discharge effluent from a liquid waste treatment unit to an effluent disposal well.

C. No person shall install, have installed, modify or have modified, own, operate, or use an on-site liquid waste system which, by itself or in combination with other on-site liquid waste systems, may cause a hazard to public health or degrade any body of water.

D. On-site liquid waste systems installed or most recently modified prior to October 15, 1997 shall meet the less stringent of either:

(1) the requirements of 20.7.3 NMAC, or

(2) the corresponding requirements of the regulations in effect at the time of the initial installation or most recent modification of the system, whichever is later in time.

E. On-site liquid waste systems modified after October 15, 1997, shall meet the requirements of 20.7.3 NMAC or its successor provisions. Replacement components for on-site liquid waste systems shall be of materials prescribed by the New Mexico design standards as of the time of replacement.

F. On-site liquid waste systems installed after October 15, 1997 shall meet the requirements of 20.7.3 NMAC.

[10/15/97; 20.7.3.301 NMAC - Rn, 20 NMAC 7.3.III.301, 3/1/04 & A, 3/1/04]

20.7.3.310 STANDARDS; GRAYWATER DISCHARGES: graywater discharge of less than 250 gallons per day of private residential graywater originating from a residence for the resident's household flower gardening, composting or landscaping irrigation shall be allowed if:

A. a constructed graywater distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

B. a graywater storage tank is covered to restrict access and to

eliminate habitat for mosquitos or other vectors;

C. a graywater system is sited outside of a floodway;

D. graywater is vertically separated at least five feet above the ground water table;

E. graywater pressure piping is clearly identified as a nonpotable water conduit;

F. graywater is used on the site where it is generated and does not run off the property lines;

G. graywater is discharged in a manner that minimizes the potential for contact with people or domestic pets;

H. ponding is prohibited, discharge of graywater is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

I. graywater is not sprayed;

J. graywater is not discharged to a watercourse;

K. graywater use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

L. graywater is not stored longer than 24 hours before being discharged;

M. graywater use for purposes other than irrigation or composting is prohibited, unless a permit for such use is issued by the department;

N. graywater is not used to irrigate food plants except for fruit and nut trees;

O. graywater is discharged to a mulched surface area or to an underground irrigation system;

P. graywater is not discharged closer than 100 feet to a watercourse or private domestic well, or closer than 200 feet to a public water supply well;

Q. graywater does not create a public nuisance;

R. for residential units using an on-site liquid waste system for blackwater treatment and disposal, the use of a graywater system does not change the design, capacity, or absorption area requirements for the on-site liquid waste system at the residential unit, and the on-site liquid waste system is designed and sized to handle the combined blackwater and graywater flow if the graywater system fails or is not fully used; and,

S. graywater does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from home photo labs or similar hobbyist or home occupational

activities.

[20.7.3.310 NMAC - N, 3/1/04]

~~[20.7.3.310]~~ **20.7.3.311 through 20.7.3.400**
[RESERVED]

NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

This is an amendment to Section 8 of 16.13.2 NMAC effective 02-15-2004.

16.13.2.8 FEES:

A. All fees are non-refundable.

B. Application and licensure fees for exam candidate:

(1) application fee: ~~[\$150.00]~~

\$200.00;

(2) licensure fee: ~~[\$175.00]~~

\$200.00.

C. Examination and computer based testing fees: These fees are determined by the current cost of the national licensing exam and the computer based testing center's fees for scheduling services and use of its facility and computer equipment. These fees are payable directly to NAB by ~~[money order, certified check or] electronic means such as credit card authorization; and are [accompanied by a completed NAB Fee Payment Transmittal Form]~~ aid when applying on-line to take the exam.

D. Reexamination fee: ~~[Includes (a) the current cost of the national licensing exam, (b) the testing center's fees payable to NAB, and (c) an administration processing fee to the Board of \$50.00.] Includes (a) the current cost of the national licensing exam and testing center's fees payable directly to NAB on-line, and (b) an administrative processing fee of \$50.00 payable directly to the board.~~

E. Renewal fee: ~~[\$175.00]~~
\$200.00.

F. Application and licensure fees for reciprocity candidate:

(1) application fee: ~~[\$150.00]~~

\$200.00;

(2) licensure fee: ~~[\$175.00]~~

\$200.00.

G. Late penalty fee: **\$100.00.**

H. Inactive status fee: **\$75.00.**

I. Reactivation from inactive status fee: ~~[\$175.00]~~ **\$200.00.**

J. Reactivation from expired status fee: ~~[\$275.00 (\$175.00 plus \$100.00 Penalty fee-)]~~ **\$300.00** (\$200.00 plus \$100.00 late penalty fee).

K. Duplicate renewal license fee: **\$25.00.**

L. Duplicate of initial wall license fee: **\$60.00.**

M. Written verification of licensure fee: **\$10.00.**

N. Administrative fee for application packet: **\$10.00.** Application packet is also downloadable from the board's internet website at www.rld.state.nm.us at no cost.

O. Administrative fee for copy of rules and regulations: **\$15.00.** Application packet is also downloadable from the board's internet website at www.rld.state.nm.us at no cost.

P. Temporary permit for reciprocity applicants: **\$125.00.**

NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

This is an amendment to Sections 1, 5, 7, 8, 9, 10, 11, and 13 of 16.13.3 NMAC; and adds a new Section, 14, to 16.13.3 NMAC effective 02-15-2004.

16.13.3.1 ISSUING AGENCY:
New Mexico Nursing Home Administrators Board ~~[2055 South Pacheco, Suite 400, Santa Fe, New Mexico 87505, (505) 476-7124].~~

16.13.3.5 EFFECTIVE DATE:
October 31, 1995, unless a later date is cited at the end of a section ~~[or Paragraph].~~

16.13.3.7 DEFINITIONS:

A. "Application for licensure form" means the application form approved by the board for the candidate to apply for licensure by the board."

B. "Authorization letter" means the letter from the examination service authorizing the eligible candidate to sit for the national examination.

C. "CBT" refers to computer based test or testing.

D. "CBT fee" refers to the computer based testing fee assessed by the CBT vendor.

E. "CBT vendor" means the contractor who provides scheduling services, testing center facility, and use of computer equipment to candidates eligible to take the national standard licensing exam in computer based format.

F. "Computer based test" means a type of test in computer-based format designed to be administered through the use of a computer as opposed to a written test.

G. "Computer based testing fee" means the fee charged to the candidate by the CBT vendor for scheduling services and for use of the vendor's facility

and computer equipment while taking the examination.

H. "Eligibility list" means the candidates listed by the service as eligible to take the examination.

I. "Eligibility period" means the sixty-day (60) period from the date specified on the authorization letter to the eligible candidate.

J. "Examination" means the national licensing examination for licensure as provided by the national association of boards of examiners for long term care administrators (NAB), or its successor.

K. "Examination application form" means NAB's application form for computerized testing, ~~[which can be computer scanned]~~ which must be completed on-line through NAB's website.

L. "Examination fee" means the fee for the examination payable to NAB.

M. "NAB" is the acronym for the national association of boards of examiners for long term care administrators.

N. "National examination agency" means the national association of boards of examiners for long term care administrators or its successor.

O. "Professional examination service" means NAB's contractor for facilitating the development and offering of the examination in computer-based format.

P. "Service" refers to the professional examination service.

Q. "Testing center" means the CBT vendor location(s) where the examination is administered.

16.13.3.8 PREREQUISITE REQUIREMENTS: All applicants for licensure by examination must:

A. be of good moral character;

B. have completed a degreed baccalaureate program at an accredited institution of higher learning in a course of study approved by the board as adequate preparation for nursing home administration; and

C. complete the application process as set forth by board regulation and policy ~~[and]~~.

D. REPEALED.

16.13.3.9 DOCUMENTATION AND OTHER REQUIREMENTS: Each applicant for licensure by examination must provide the following documents and fees to the board. *Applications for licensure are valid for one year from date of receipt, and will be purged from the board's records after that date.*

A. A completed board-

approved application for licensure form, signed in the presence of a notary public.

B. A recent (within the last year) passport-type photograph of the applicant ~~[which]~~ that the applicant has signed on the back in the presence of a notary public.

C. A copy of the applicant's birth certificate.

D. Complete official transcript(s) leading up to and showing that the applicant has been awarded a baccalaureate degree, and sent directly to the board by the institution(s).

E. A statement of any other professional licenses held by the applicant either in New Mexico or in other states, and copies of the license(s).

F. Completed verification of licensure form(s) sent directly to the board by the applicant's other state(s) of professional licensure.

G. Three letters of reference from persons unrelated to the applicant sent directly to the board by the references. ~~[and]~~

H. A completed, approved release form authorizing the board to conduct a criminal records check.

I. The application and licensure fee, payable to the board (See Subsection B of 16.13.2.8 NMAC, "Fees").

J. ~~[Completed examination application materials provided from the national examination agency, including the examination application form for computerized testing; and]~~ REPEALED

K. ~~[The examination fee and CBT fee required to register and take the examination, both payable to NAB.]~~ REPEALED

16.13.3.10 EXAM ELIGIBILITY DETERMINED: Upon receipt of the completed licensure ~~[and examination application forms]~~ application form, all other required documentation, and ~~[all fees]~~ application fee, the board or its designee will review the application materials, determine the applicant's eligibility to sit for the national licensing examination and notify the applicant in writing of eligibility or ineligibility.

A. Upon finding that the applicant is eligible to take the examination, the board shall ~~[submit the eligible candidate's examination application materials and his or her examination and CBT fees to NAB through the Professional Exam Service (Service)]~~ notify the eligible candidate, in writing, that his or her application has been approved, and provide the candidate with NAB's website address to apply on-line to take the NAB exam.

B. The service shall ~~[be responsible for scanning all examination application forms received from the Board, and for compiling a list(s) of the eligible candidates. The Service shall forward the "Eligibility List(s) to the CBT vendor] notify the board electronically that the candidate has applied to take the examination and the board shall electronically indicate to the service the candidate's eligibility to take the exam.~~

C. Candidates are encouraged to wait until they receive official written notice from the board that their licensure application has been approved before they apply on-line to take the NAB exam. If the candidate pre-pays the NAB fee(s) and subsequently does not meet the board's licensure requirements and the board does not approve the candidate to take the exam, the fee(s) pre-paid to NAB are non-refundable.

16.13.3.11 EXAM SCHEDULE NOTIFICATION: Each eligible candidate will receive from the service, by e-mail, an authorization letter authorizing him or her to sit for an examination. The authorization letter shall contain a list of CBT testing centers, their toll-free telephone numbers, and instructions on the scheduling process for the candidate to use in scheduling an examination. Candidates will also be provided with a direct link through the NAB website that will allow them to schedule their examination on-line with an authorized testing center.

A. Candidates can schedule to sit for an examination at any of the CBT testing centers listed in their authorization letter.

B. Candidates must schedule, and sit for, an examination within sixty (60) days of the date ~~(the "eligibility period")~~ specified in their authorization letter. If a candidate fails to schedule and sit for an examination within the sixty (60) day eligibility period, he or she will be automatically removed from the eligibility list.

C. Any candidate declared ineligible to take an examination because of his or her failure to schedule and sit for an examination before the end of his or her sixty (60) day eligibility period shall be required to resubmit **a new examination application [to the Board.] to NAB, including the required examination fee and CBT fee.**

D. Up to two (2) working days prior to his or her scheduled examination date, a candidate may reschedule to take the examination by calling the CBT vendor's toll-free telephone number. The candidate will be assessed a \$10.00 fee by

the CBT vendor for rescheduling the examination.

E. Candidates who (a) fail to give at least a two (2) working days notice to the CBT vendor of their intention to reschedule their examinations within their sixty (60) day eligibility period, shall forfeit their CBT fees.

F. Candidates may withdraw their NAB examinations applications up to one-day prior to their scheduled examination date. Withdrawals must be requested using the withdrawal option through the NAB on-line system.

16.13.3.13 FAILURE TO APPEAR AT SCHEDULED EXAM:

A. Scheduled exam candidates who fail to appear at the exam for which they were scheduled without any prior notification to the CBT vendor (see Subsections D and E of 16.13.3.11, this rule) shall automatically be removed from the eligibility list and shall forfeit their examination and CBT fees.

B. Any candidate declared ineligible to take an examination because of his or her failure to schedule, or to properly cancel, or to sit for an examination before the end of his or her sixty (60) day Eligibility Period shall be required to resubmit a **new examination application [to the Board,] to NAB, including the required examination fee and CBT fee.**

16.13.3.14 AMERICANS WITH DISABILITIES ACT OF 1990: As the national examination agency, NAB reserves sole responsibility for approving candidate requests for special accommodations under the Americans With Disabilities Act of 1990 (Public Law 101-336) (the "ADA"), provided the candidate provides timely notice and request of specific reasonable accommodations.

A. Requests for special accommodations should be indicated at the time of candidate application to NAB.

B. The board will make eligibility determination for NAB approved accommodations as specified in the NAB exam application under "special accommodations".

C. NAB must approve all other requests.

D. Professional documentation to support the specific request for reasonable accommodations falling under item 16.13.3.14.B NMAC is required and must be submitted to the board by the candidate no less than seven (7) weeks prior to the candidate's anticipated test date. The completed "candidate request for special examination accommodations" form, downloadable from the NAB exam application site, must accompany this documentation. The

professional documentation in support of the specific request for reasonable accommodations specified in 16.13.3.14.B NMAC must be approved and submitted by the board to NAB no less than four (4) weeks prior to the candidate's anticipated test date.

NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

This is an amendment to Section 9, 11, and 12 of 16.13.4 NMAC effective 02-15-2004.

16.13.4.9 SCORE REQUIRED: The minimum **scale** score of one hundred thirteen (113) accepted nationally since June 1990 for successful completion of the national licensing exam shall be accepted for licensure in New Mexico.

16.13.4.11 TEST RESULTS: Candidates' *pass/fail status* ~~[may]~~ will be available to candidates from the CBT vendor. The CBT vendor will only release *score reports* to the examination service, which will then forward the results to the board. Within a reasonable time after the board receives the test results from the examination service, the board will inform each examination candidate, in writing, of individual test results. Exam results will not be given over the phone.

A. A candidate may request that the service transfer his or her examination score to multiple jurisdictions.

B. The candidate shall pay the service a score transfer fee as set forth by the service for each score transfer requested.

16.13.4.12 REEXAMINATION POLICY: Candidates failing or not completing an examination for reasons other than those set forth in Section 10 of Part 4 (this rule), may retake the same examination up to four (4) times in any twelve (12) month period.

A. However, candidates who wish to retake the examination will be required to reapply to the board for the examination in writing ~~[and resubmit the Examination and Computer Based Testing fees payable to NAB (see 16.13.2.8. C and D NMAC); the reexamination processing fee payable to the Board for each examination they retake (see 16.13.2.8.D NMAC); and whatever exam application forms are required by NAB at the time.]~~ and to submit the applicable reexamination-processing fee payable to the board for each exam retake (see 16.13.2.8.D NMAC). The same procedures outlined in 16.13.3.10 NMAC

through 16.13.3.14 NMAC will pertain.

B. The entire examination must be completed on all subsequent attempts.

NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

This is an amendment to Sections 8 and 11 of 16.13.5 NMAC effective 02-15-2004.

16.13.5.8 LICENSE REQUIRED TO PRACTICE: The applicant may not engage in the practice of nursing home administration in New Mexico until approval for licensure by reciprocity has been given and ~~[an initial license has been issued by the Board]~~ the board has issued an initial license. An applicant may, however, practice nursing home administration in New Mexico if he or she has been issued a temporary permit by the board pursuant to the provisions in 16.13.5.11 NMAC (this rule).

16.13.5.11 TEMPORARY PERMIT PROVISION: Applicants for licensure by reciprocity may be issued a temporary permit to practice nursing home administration in New Mexico while the application process is being completed.

A. The permit may be issued after the board has received a completed board-approved application form; proof of being currently licensed as a nursing home administrator in another licensing jurisdiction, such as a copy of the state license; and reciprocity application fee as set forth in Subsection F (1) of 16.13.2 NMAC.

B. If the reciprocity applicant desires a temporary permit, he or she must request it in writing, specifying the desired date of issuance, and providing the necessary temporary permit fee as set forth in Subsection P of 16.13.2 NMAC.

C. ~~[The permit shall be issued for a maximum period of one hundred twenty (120) days from the receipt of the items set forth in Subsections A and B of 16.13.5.11 NMAC]~~ Upon receipt of the items set forth in Subsections A and B of 16.13.5.11 NMAC, the temporary permit shall be issued for a maximum period of one-hundred-twenty (120) days from the requested date of issuance.

D. The temporary permit is not renewable.

NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

This is an amendment to Section 13 of 16.13.7 NMAC effective 02-15-2004.

16.13.7.13 NOTICE TO OTHER STATE AGENCIES: ~~The Board will, on a monthly basis, send the Department of Health's Bureau of Licensing and Certification for Health Care Facilities lists of current, expired, and inactive status licensees.] The board has a "licensee search" link available on its website at www.rld.state.nm.us/b&c/nhab for interested parties to verify whether or not a person is currently licensed by the board. The website licensee information is updated daily as new licenses are issued and license status changes occur. Hard-copy lists are available to other state agencies upon request and at no cost; and to other parties for a minimal administrative fee, however, the information on hardcopy lists can rapidly become outdated.~~

NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

This is an amendment to Sections 3, 5, 7, 8, 9, and 10 of 16.13.17 NMAC; and adds a new Section, 13, to 16.13.17 NMAC effective 02-15-2004

16.13.17.3 STATUTORY AUTHORITY: Part 17 of Chapter 13 is promulgated pursuant to the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-6, 61-13-13, 61-13-14, and 61-13-15 (1993 Repl. Pam.) and the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 to 61-1-33 (1993 Repl. Pam.); and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pam.).

16.13.17.5 EFFECTIVE DATE: October 31, 1995, unless a later date is cited at the end of a section ~~for paragraph~~.

16.13.17.7 DEFINITIONS:

A. "Complaint" means a complaint filed with the board against an applicant for licensure or against a licensee.

B. "Complainant" means the party who files a complaint against a licensee or against an applicant for licensure.

C. "Respondent" means the licensure applicant or the licensee who is the subject of the complaint filed with the board.

D. "Hearing" means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in disciplinary action against the respondent's application for licensure or his or her license to practice nursing home administration.

E. "Violation" means a violation of the New Mexico Nursing Home Administrators Act or the rules and regulations duly adopted by the board.

F. "Notice of contemplated action or NCA" means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board's intent to take action based upon the violations of practice charged in the subject complaint, and whereby the respondent is afforded the opportunity for a hearing before the board.

G. "License revocation" means to prohibit the conduct authorized by the license.

H. "License suspension" means to prohibit, for a stated period of time, the conduct authorized by the license.

I. "License restricted subject to conditions" means to allow the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.

J. "Pre-NCA agreement" means an agreement reached between the board and the respondent as an option to the formal NCA and hearing administrative hearing process.

K. "Mediation agreement" means an agreement reached through mediation between the board and the respondent as an option to the formal NCA and formal administrative hearing process.

16.13.17.8 COMPLAINTS: The disciplinary process against a board-licensure may be instituted by sworn complaint on a board-approved form by any person, including board members and board staff. Any hearing held pursuant to the complaint shall conform to the provisions of the Uniform Licensing Act.

16.13.17.9 INVESTIGATION: Upon receipt of the sworn complaint against a board-licensure, the board will cause an investigation to be made into the subject complaint by the board's standards of practice committee.

16.13.17.10 STANDARDS OF PRACTICE COMMITTEE: The standards of practice committee is formed for the purpose of investigating disciplinary

matters referred to it by the board. The board chairperson shall appoint a member or members of the board as a standards of practice committee.

A. The standards of practice committee shall review all documentation provided to it in reference to the subject complaint.

B. The standards of practice committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

C. The foregoing notwithstanding, the standards of practice committee will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.

D. The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

E. The standards of practice committee will have independent authority to direct the board administrator to contract for the services of such persons without prior approval of the board after the board administrator has determined budgetary availability for such services.

F. Upon completion of its investigation, the standards of practice committee ~~shall submit to the Board its proposed recommendations concerning the proper disposition of the subject complaint.~~ with the assistance of board counsel may draw up pre-NCA settlement or mediation agreement proposal with the respondent as a means of resolving the complaint. The proposed agreement or any other recommendations by the standards of practice committee concerning proper disposition of the subject complaint shall be reported and presented by the committee to the board for further action.

G. Upon review and consideration, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee's recommendations.

H. Standards of practice committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or licensees who are the subject of the complaint.

I. If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board

may vote to dismiss or close the complaint.

J. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

K. The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

16.13.17.13 COMPLAINTS RELATED TO UNLICENSED PRACTICE: In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pam.), a person who is not licensed to engage in the practice of nursing home administration by the board is subject to disciplinary action and proceedings by the board if it is determined that he or she has been practicing nursing home administration in New Mexico without a valid New Mexico license.

A. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of nursing home administration.

B. In addition, the board may assess the person engaging in the unlicensed practice of nursing home administration and/or the company, firm, or entity that employed the unlicensed person to act in the capacity of nursing home administrator, the administrative costs, including investigative costs and the costs of conducting a hearing.

C. Reports of unlicensed practice of nursing home administration may be reported for investigation to the board by phone, fax, mail, or e-mail.

NEW MEXICO NURSING HOME ADMINISTRATORS BOARD

This is an amendment to Section 1, 3, 6, and 8 of 16.13.18 NMAC effective 02-15-2004.

16.13.18.1 ISSUING AGENCY: New Mexico Nursing Home Administrators Board. [~~Board 725 St. Michael's Drive Santa Fe, New Mexico 87504 (505) 827-7170.~~]

16.13.18.3 STATUTORY AUTHORITY: Part 18 of Chapter 13 is promulgated pursuant to the Nursing Home

Administrators Act, NMSA 1978 Sections 61-13-6, 61-13-13, 61-13-14, and 61-13-15 (1993 Repl. Pam.) and the Uniform Licensing Act, NMSA 1978 Section ?61-1-1 through ? 61-1-33 (1993 Repl. Pam.); and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pam).

16.13.18.6 OBJECTIVE: The objective of Part 18 of Chapter 13 is to set forth the grounds for disciplinary action ~~which~~ that subject the licensee and non-licensee to disciplinary action by the board.

16.13.18.8 DISCIPLINARY GUIDELINES: In accordance with the provisions contained within the Uniform Licensing Act, the board may take disciplinary action if the board determines the applicant or licensee has violated the Nursing Home Administrators Act or the board's regulations. The following shall subject the licensee to disciplinary action by the board.

A. Fraud or deceit in procuring or attempting to procure a license to practice as a nursing home administrator.

B. Knowingly practicing nursing home administration or using any designation with his/her name tending to imply, without a valid license, that he/she is a nursing home administrator; or ~~Knowingly~~ knowingly aiding, assisting, procuring, advising, or encouraging any unlicensed person to practice nursing home administration or use any designation with his/her name tending to imply that he/she is a nursing home administrator without a valid license.

C. Conviction of a felony by a court of competent jurisdiction.

(1) This includes a conviction of an offense which, if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.

(2) The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

D. Having been declared mentally incompetent by a regularly constituted authority within or outside this state.

(1) Any such adjudication shall be grounds for suspension of the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect unless the board, upon a finding that the licensee is mentally competent, orders otherwise.

(2) Any applicant who has been so adjudged to be mentally incompetent

shall not receive a license unless the board, upon a finding that the applicant is mentally competent, orders otherwise.

E. Having become unable to practice nursing home administration with reasonable skill and safety to residents by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a physical condition.

(1) License suspension shall only be in effect during the period of alcohol or drug dependency or physical incapacitation.

(2) In enforcing the provisions in Subsections D and E of 16.13.18.8 NMAC, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a licensed professional designated by the board.

(3) The cost of such evaluation shall be borne by the licensee or applicant. The results shall be admissible in the hearing before the board, notwithstanding any claim of privilege under a contrary rule or law or statute.

(4) If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, a show cause order may be issued from the board directing the licensee or applicant to show cause why he/she should not submit to the examination.

(5) The board may enter a final order upon proper notice, hearing, and proof of such refusal.

(6) Any licensee or applicant who is prohibited from practicing nursing home administration under Subsections D and E of 16.13.18.8 NMAC will, at reasonable intervals, be afforded an opportunity to demonstrate to the board that he/she can resume the practice of nursing home administration with reasonable skill and safety to residents.

(7) Applicants for licensure and renewal who have a history of alcohol or drug dependency shall be required to demonstrate to the satisfaction of the board that they have met all the following requirements:

(a) completed a treatment program for alcohol or chemical dependency;

(b) remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least two (2) years; and

(c) maintained active and uninterrupted participation in a program of after-care which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and/or alcohol screening of urine or blood.

F. Violation of any provi-

sion of the Nursing Home Administrators Act or any rules and regulations duly adopted by the board.

G. Gross incompetence.

H. Performance and conduct that substantially departs from, or fails to conform to, the minimal reasonable standards of acceptable and prevailing practice of nursing home administration, including but not limited to the following:

(1) conviction of a misdemeanor substantially relating to the practice of nursing home administration;

(2) found to be directly responsible for the neglect or abuse of nursing home resident(s) or the misappropriation of resident funds or property by a court of law, the board, an agency responsible for the certification and licensure of nursing homes, a state medicaid fraud and abuse unit, or any other duly recognized state agency;

(3) found to have falsified records related to residents or employees of a nursing home on the basis of race, religion, color, national origin, sex, age, or handicap in violation of federal or state laws;

(4) knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of nursing home administration, in the operation of a nursing home facility, or in any document connected therewith;

(5) revocation, suspension, or denial of a license by another state licensing board for any of the reasons which are also a violation of the Nursing Home Administrators Act, NMSA 1978 Sections 61-13-1 through 61-13-17;

(6) commission of a crime or act substantially related to the qualifications, functions, or duties of a nursing home administrator and which evidences unfitness to perform as a nursing home administrator in a manner consistent with protecting the public health, safety, and welfare; such crimes or acts shall include but not be limited to those involving the following: engaging in any unprofessional, immoral, unethical, deceptive or destructive conduct or practice harmful to the public, which materially affects the fitness of the licensee or applicant to practice nursing home administration;

(7) commission of a crime involving moral corruption, without regard to conviction; the conviction of a crime involving moral corruption shall be evidence of the commission of such crime; as used in this paragraph, the term "conviction" shall have the meanings prescribed in Subsection C, Paragraph (2) of 16.13.18.8 NMAC; examples may include sexual harassment, resident abuse, breach of fiduciary duty, bribery, etc.

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC Section 16, effective February 1, 2004.

16.19.4.16 RESPONSIBILITIES OF PHARMACIST AND PHARMACIST INTERN:

A. The following responsibilities require the use of professional judgement and shall therefore only be performed by a pharmacist or pharmacist intern:

(1) receipt of all new verbal prescription orders and reduction to writing;

(2) initial identification, evaluation and interpretation of the prescription order and any necessary clarification prior to dispensing;

(3) professional consultation with a patient or his agent regarding a prescription;

(4) evaluation of available clinical data in patient medication record system;

(5) oral communication to the patient or patient's agent of information, as defined in this section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;

(6) professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized agent regarding a patient and any medical information pertaining to the prescription; and

(7) preparation of prescription drug orders for ~~[total parenteral nutrition or]~~ cancer chemotherapy solutions.

B. ONLY A PHARMACIST SHALL PERFORM THE FOLLOWING DUTIES:

(1) Final check on all aspects of the completed prescription, ~~[verification of all electronic entries]~~ and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container.

(2) Evaluation of pharmaceuticals for formulary selection within the facility.

(3) Supervision of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications.

(4) Ensure that supportive personnel have been properly trained for the duties they may perform.

(5) Any other duty required of a pharmacist by any federal or state law.

C. PATIENT RECORDS:

(1) A reasonable effort must be made to obtain, record and maintain at least

the following information:

(a) name, address, telephone number, date of birth (or age) and gender of the patient;

(b) individual medical history, if significant, including disease state or states, known allergies and drug reactions and a comprehensive list of medications and relevant devices; and

(c) pharmacists comments relevant to the individuals drug therapy.

(2) Such information contained in the patient record should be considered by the pharmacist or pharmacist intern in the exercise of their professional judgement concerning both the offer to counsel and the content of counseling.

D. PROSPECTIVE DRUG REVIEW:

(1) A pharmacist or pharmacist intern shall review the patient record for:

(a) clinical abuse/misuse;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage;

(f) incorrect duration of drug treatment;

(g) drug-allergy interactions;

(h) appropriate medication indication.

(2) Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

E. COUNSELING:

(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist or pharmacist intern shall personally offer to counsel on matters which will enhance or optimize drug therapy with each patient or the patient's agent. Upon receipt of a refill prescription drug order a pharmacy technician may query the patient or patient's agent regarding counseling by the pharmacist or pharmacist intern concerning drug therapy. Such counseling shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling which may include, in their professional judgement, one or more of the following:

(a) the name and description of the drug;

(b) the dosage form, dosage, route of administration, and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or

adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescriptions refill information;

(i) action to be taken in the event of a missed dose;

(j) the need to check with the pharmacist or practitioner before taking other medication; and

(k) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) [REPEALED]

(3) Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information leaflets, pictogram labels and video programs.

(4) Patient counseling, as described above and defined in this regulation shall not be required for in-patients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(5) A pharmacist shall in no way attempt to circumvent or willfully discourage a patient or patient's agent from receiving counseling. However, a pharmacist shall not be required to counsel a patient or patients's agent when the patient or patients's agent refuses such consultation.

(6) When the patient or agent is not present when the prescription is dispensed, including but not limited to a prescription that was shipped by the mail, the pharmacist shall ensure that the patient receives written notice of available counseling. Such notice shall include days and hours of availability, and: (1) of his or her right to request counseling; and (2) a toll-free telephone number in which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record. For pharmacies delivering more than 50% of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than 6 days per week. The facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

(7) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice concerning available counseling.

F. [REPEALED]

G. REGULATORY ASSESSMENT: Profiles, either electronic

or hard copy, shall be available for inspection, and shall provide the capability of storing the described historical information. The profiles must demonstrate that an effort is being made to fulfill the requirements by the completion of the detail required. A patient record shall be maintained for a period of not less than three (3) years from the date of the last entry in the profile record. [08-27-90; 16.19.4.16 NMAC - Rn, 16 NMAC 19.4.16, 03-30-02; 16.19.4.16 NMAC - Rn, 16.19.4.17 NMAC, 12-15-02; A, 02-01-04]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.1 NMAC, General Provisions, new section 14, effective 02-15-04.

16.20.1.14 CODE OF ETHICS: The New Mexico physical therapy board adopts the American physical therapy association code of ethics adopted in June 1991 as per Section 61-12D-13L NMSA 1978. [16.20.1.14 NMAC - N, 02-15-04]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.3.8, 16.20.3.9, and 16.20.3.10 NMAC, effective 02-15-04.

16.20.3.8 ISSUANCE OF LICENSES: [~~Permanent licenses~~] Full licensure may be issued by the board upon satisfaction of the following application requirements:

- A. all items on the application form have been answered;
- B. the application form is notarized;
- C. a photograph taken within one (1) year prior to filing of an application has been furnished; and
- D. the application fee has been paid in full; and
- E. the board has documentation of graduation from an accredited educational program, evidenced by:
 - (1) official transcripts from colleges and/or universities; or
 - (2) notarized copy of a physical therapy certificate of diploma from a program approved by the commission on accreditation in physical therapy education (CAPTE); or
 - (3) a certificate of proficiency or a statement of official transcript that the curriculum has been completed as required in the Act, Section 61-12-10, signed by the director of the program or the registrar of

the school, in lieu of certificate of diploma.

(a) For applicants that graduated after December 31, 2002, the requirement is documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE.

(b) For applicants that graduated prior to December 31, 2002, the requirement is a minimum of documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE.

F. For foreign-educated applicants, the board has documentation [~~which~~] that fulfills all application requirements provided in [~~Part 9~~], 16.20.9 NMAC, education criteria for foreign-educated applicants.

G. Successful completion of the national physical therapy licensure examination (NPTE) and the jurisprudence exam (as specified in 16.20.2.8 NMAC). If the applicant has previously taken the NPTE, the resulting scores shall be sent directly to the New Mexico physical therapy licensing board from the testing contractor. Scores will not be accepted from individuals, other state boards, or organizations.

H. Any questions of felony convictions or professional misconduct have been resolved satisfactorily.

I. A licensee requesting a name change must submit proof of name change, the original license, and a duplicate license fee. [03-29-83; 02-19-88; 08-01-89; 05-08-91; 06-03-94; 07-28-95; 09-18-95; 05-15-96; Rn & A, 16 NMAC 20.4, 10-15-97; 16.20.3.8 NMAC - Rn & A, 16 NMAC 20.3.8, 08-31-00; A, 7-28-01; A, 02-15-04]

16.20.3.9 REINSTATEMENT OF LICENSURE:

A. Reinstatement of a [~~lapsed~~] license following a renewal deadline requires the following:

- (1) payment of the reinstatement fee;
- (2) payment of the current year renewal fee; [~~and~~]
- (3) proof of twenty (20) continuous education hours for each year of the lapsed New Mexico license; and
- (4) verification of all current, valid unrestricted licenses from other U.S. jurisdictions. Verifications may be received by the board via regular mail, electronic mail, or facsimile. Verifications must be signed and dated by an official of the agency licensing the applicant and include the following data:

- (a) name and address of the applicant;
- (b) license number and date of

issuance:

- (c) current status of the license;
- (d) expiration date of the license;
- (e) a statement of whether the applicant was denied a license by the agency; and

(f) a statement of whether any disciplinary action is pending or has been taken against the applicant.

B. Reinstatement of a physical therapist or physical therapist assistant license that has lapsed for more than three (3) years, without evidence of continued practice in another state with an unrestricted license requires the following:

- (1) application as per this 16.3.8 NMAC;
- (2) payment of the reinstatement fee;
- (3) 120 hours of mentorship; and
- (4) 20 hours of continuing education per year of lapsed license.

[Rn, 16 NMAC 20.4, 10-15-97; 16.20.3.9 NMAC - Rn & A, 16 NMAC 20.3.9, 08-31-00; A, 02-15-04]

16.20.3.10 LICENSURE BY ENDORSEMENT:

A. A license may be issued to a physical therapist or physical therapist assistant who provides verification of [~~a current, valid unrestricted license from another U.S. jurisdiction and verification of licensure from the U.S. jurisdiction in which the applicant was originally licensed~~] all licenses from other U.S. jurisdictions in lieu of original test scores, provided that the applicant meets all of the qualifications in 16.20.3.8 NMAC. Verifications may be received by the Board via regular mail, electronic mail, or facsimile. [~~If the current license is from the jurisdiction in which the applicant was originally licensed, no other verification is required.~~] Verifications must be signed and dated by an official of the agency licensing the applicant and include the following data:

- (1) name and address of the applicant;
- (2) license number and date of issuance;
- (3) current status of the license;
- (4) expiration date of the license;
- (5) notarized copy of the national examination scores as they were received by the reporting jurisdiction;
- (6) a statement of whether the applicant was denied a license by the agency; and
- (7) a statement of whether any disciplinary action is pending or has been taken against the applicant.

B. A license may be issued to a foreign-educated physical therapist who has a valid unrestricted license from another U.S. jurisdiction providing the

applicant meets all of the qualifications in 16.20.3.8 NMAC and 16.20.9 NMAC.

[05-08-91; 07-28-95; 09-18-95; 05-15-96; Rn & A, 16 NMAC 20.4, 10-15-97; 10-15-97; 16.20.3.10 NMAC - Rn & A, 16 NMAC 20.3.10, 08-31-00; A, 7-28-01; A, 02-15-04]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.8.8 and 16.20.8.9 NMAC, effective 02-15-04.

16.20.8.8 CONTINUING EDUCATION AND RENEWAL REQUIREMENTS:

A. Every licensed physical therapist and physical therapist assistant shall earn twenty (20) continuing education contact hours per year during each year of licensure. The first year during which 20 (twenty) contact hours must be earned is the year beginning on June 1 following license issuance and ending on the following May 31. Continuing education contact hours shall be prorated during the first year of licensure according to the month licensed as follows:

- (1) July: 18 contact hours
- (2) August: 17 contact hours
- (3) September: 15 contact hours
- (4) October: 13 contact hours
- (5) November: 12 contact hours
- (6) December: 10 contact hours
- (7) January: 8 contact hours
- (8) February: 6 contact hours
- (9) March: 5 contact hours
- (10) April: 3 contact hours

B. Anyone licensed during the month of May will be issued a license through June 1 of the following year.

C. No license will be renewed in the absence of satisfactory evidence that the required continuing education contact hours as required by this section have been earned. Continuing education contact hours are required to be submitted with the renewal each year. The continuing education course completion certificates should **not** be sent to the board unless an audit notice as provided in this section is received.

D. The board office will mail a renewal application to each licensee at least 30 days prior to the expiration date of the license.

E. Each licensee is responsible for submitting the required renewal fee and continuing education by the expiration date whether or not a renewal application is received by the licensee.

F. All license renewals postmarked after June 1st will be subject to a late fee. (Refer to Part 6, Schedule of Fees.)

G. The board shall audit a

percentage of renewal applications each year to verify the continuing education requirement. The licensee should maintain a file that includes the continuing education course documentation up to three (3) years.

(1) If a *notice of audit* letter is received with the annual renewal form, evidence of continuing education hours earned during the renewal year must be submitted to the board as requested and as required in the Physical Therapy Act and by this rule.

(2) If the licensee is *not audited*, all documentation of attendance and agendas should be retained by the licensee for a minimum of three (3) years immediately preceding the current renewal.

(3) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

H. The board will allow a maximum of twenty (20) continuing education contact hours to be carried over into the next licensing year.

I. Credit will be given for programs attended between the renewal due date (May 15th) and the license expiration date (June 1st) providing that the program was not submitted for credit for the prior year.

J. Licensees serving in the armed forces reserve or national guard.

(1) The license of a physical therapist or physical therapist assistant who do not earn the required continuing education contact hours as provided in this section due to his or her call to active duty in the armed forces reserves or the New Mexico national guard, will not lapse for failure to earn continuing education hours.

(2) A physical therapist or physical therapist assistant who was or is called to active duty in the armed forces reserves or New Mexico national guard are required to provide official documentation that the licensee is a member of the armed forces reserves or the national guard and was or is being called to active duty.

(3) Upon the physical therapist or physical therapist assistant's return to civilian status, the licensee shall pay the license renewal fee and resume earning continuing education contact hours prorated according to the licensee's months of service as required to maintain his or her licensure as a physical therapist or physical therapist assistant.

[10-15-97; 16.20.8.8 NMAC - Rn & A, 16 NMAC 20.8.8, 08-31-00; A, 02-15-04]

16.20.8.9 APPROVAL OF CONTINUING EDUCATION CONTACT HOURS:

A. Programs must follow the criteria and guidelines established by the

board as follows to receive continuing education credit on courses that have not received prior approval from the board:

(1) each program adheres to the board's American physical therapy association (APTA) definition for continuing professional education;

(2) each program addresses needs (problems and issues) faced by physical therapists and physical therapist assistants;

(3) each program has specific written learning outcomes (objectives) based on identified needs;

(4) each program is planned and conducted by qualified individuals;

(5) program content and instructional methods for each program are based on learning objectives; and

(6) participants demonstrate their attainment of the learning outcomes, (i.e., various methods can be used such as: questions, discussions, written oral exercises, problems, case studies, etc.).

B. Prior approval of continuing education is not required; however, prior approval may be obtained upon request by the licensee.

(1) An "application for continuing education approval" form must be completed and submitted to the board.

(2) The fee required for each program approved by the board is a nonrefundable fee of \$25.00. (Once the fee has been paid for a program, any number of physical therapists and physical therapists assistants may attend the program without paying additional fees.)

(3) The same program may be provided more than one time and at different locations within the calendar year in which the fee was paid without the payment of additional fees.

(4) Any \$25.00 fee is valid for the calendar year in which it is paid.

(5) It may be possible to obtain twenty (20) contact hours without having to pay the \$25.00 fee. A roster of approved courses is kept at the board office. Licensees are encouraged to contact the board before taking a course to see if it has already been approved for a particular calendar year. If the course was approved, the licensee need only attend the course and then submit the course completion documents with the renewal. If the course has not been approved, a \$25.00 fee must be submitted with the application for continuing education approval form for pre-approval.

(6) Contact the board office to obtain an application for continuing education approval. Please provide all information requested because if an application form is incomplete, the approval process will be delayed. The board requires seven to ten days from receipt of the application

until notification of approval is returned.

C. Programs approved by the APTA will be automatically accepted by the board. Prior approval is not required.

D. Credit screening procedures as follows:

(1) the board or its designee, must approve each request for continuing education credit;

(2) the party requesting approval will be informed of the board's determination within sixty (60) calendar days of receipt of the request; and

(3) an individual whose request has been denied may appear at the next board meeting following notice of denial to ask the board to reconsider its determination.

E. Final determination of values of continuing education will remain at the discretion of the board.

F. Programs considered appropriate for continuing education, include, but are not limited to those listed below.

(1) In the case of **university or college courses** taken for credit, provide the board with:

- (a) name of course;
- (b) number of course credit hours;
- (c) inclusive dates of attendance;
- (d) name of instructor and instructor's credentials;

(e) published course description from college or university;

(f) completed transcript or grade report with a passing grade of "C" or better;

(g) name of institution; and

(h) brief course summary demonstrating the course's relationship to physical therapy. (Maximum twenty (20) contact hours are awarded for each 3 credit course.)

(2) **Physician in-service programs** or regular physical therapy staff in-service programs, provide the board with:

- (a) name of program;
- (b) number of hours spent in program;

(c) inclusive dates of attendance;

(d) name of instructor or supervisor of program; documentation of instructor background and expertise;

(e) name of institution;

(f) brief course summary demonstrating the course's relationship to physical therapy. (Maximum allowed per year is four (4) contact hours.)

(3) **Management courses:** (Maximum allowed per year is ten (10) contact hours.)

(4) **Published works**, includes abstracting for professional journal, awarded on an individual basis, provide the board the following:

(a) provide a copy of the publication written which will be returned to the

licensee upon request; and

(b) publication must be published in the year for which the contact hours are requested. (Maximum allowed per year is twenty (20) contact hours.)

(5) **Preparation and/or presentation of a workshop/in-service**, awarded [~~only one time and~~] on a case by case basis for any one [~~give~~] given presentation, [~~provide~~] by providing the board the following:

(a) proof of preparation may be an outline, copy of handouts, copy of overheads or transparencies, and

(b) a copy of the agenda showing name of licensee as presenter; (maximum allowed per year is ten (10) contact hours);

(c) contact hours for the presenter will be calculated at three (3) times the number of hours of audience participation (e.g., a two hour workshop equals 6 hours for the presenter).

(6) **Certificate courses for an advanced specialty**, provide the board a certificate of completion signed by the program sponsor. (Maximum allowed per year is twenty (20) contact hours.)

(7) **Video tapes, cassettes, or satellite programs**, provide the board the following:

- (a) name of video;
- (b) name of instructor;
- (c) instructor's credentials;
- (d) number of minutes;

~~(e)~~ (e) summary (subject of video, what was learned, and how it related to the physical therapy scope of practice or the licensee's position; and

~~(f)~~ (f) signature (the licensee's and a supervisor's); (maximum allowed per year is ten (10) contact hours).

(8) **Reading a book**, provide the board the following:

- (a) name of book;
- (b) author and author's credentials';

(c) number of pages;

(d) summary (subject of book, what was learned, and how it relates to the physical therapy scope of practice or the licensee's position; and

(e) signature (the licensee's and a supervisor's); (maximum allowed per book is two (2) contact hours;) (maximum allowed per year is four (4) contact hours).

(9) **Conducting physical therapy research**, provide the board the following:

(a) title and description of research project, including brief timeline;

(b) names of other persons involved in project (i.e., co-investigators or supervisors);

(c) a brief statement indicating how participation in the project is related to the licensee's present or future position in the field of physical therapy;

(d) a brief statement indicating how participation in the project is benefiting the applicant's therapy skills or research skills; and

(e) provide a copy of the research report (if project has been completed); (if report is incomplete), credit will be allowed by providing the listed information or by receipt of the college transcript. (The board will determine the number of contact hours allowed.)

(10) **Home study courses**, provide the board a copy of the certificate of completion provided by the program provider.

(11) **Internet courses**, provide the board a copy of the certificate of completion provided by the program provider.

(12) **Alternative medicine seminars**, provide the board a letter from the licensee explaining how the course relates to the physical therapy scope of practice. The board will approve these courses on a case by case basis.

(13) **Courses where certificates of attendance are not issued**, provide the board the following:

(a) a canceled check for the course registration fee (submit copy of front and back of check);

(b) proof of transportation (i.e., copy of plane ticket and hotel receipt); and

(c) list of courses attended and hours attended (i.e., copy descriptions of courses and hours from program agenda).

(14) **Credit for supervising a student in clinical education**, provide the board with a copy of the cover and signature page (with student's name blacked out to maintain confidentiality) of the student evaluation completed by the licensee-supervisor. One (1) continuing education contact hour may be approved for each forty (40) contact hours of supervision in clinical education. The maximum number of continuing education contact hours approved for supervision in clinical education is ten (10) contact hours per year. A licensee may receive credit for clinical supervision under this provision only one time throughout the licensee's practice as a physical therapist or physical therapist assistant in the state of New Mexico.

G. Ineligible activities include, but are not limited to:

(1) orientation and in-service programs dealing with organizational structures, processes, or procedures;

(2) meetings for purposes of policy making;

(3) annual association, chapter, district, or organizational, and non-educational meetings;

(4) entertainment or recreational meetings or activities;

(5) committee meetings, holding

of offices, serving as an organizational delegate;

(6) visiting exhibits;

(7) individual self-directed studies unless approved by APTA; and

(8) CPR education.

[10-15-97; 16.20.8.9 NMAC - Rn & A, 16 NMAC 20.8.9, 08-31-00; A, 02-15-04]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.9.8 and 16.20.9.9 NMAC, effective 02-15-04.

16.20.9.8 EQUIVALENT: The foreign-educated applicant must have graduated from a physical therapist education program that prepares the applicant to practice without restriction in the United States. This includes coursework in those elements of practice that are necessary for autonomous practice such as determining a patient's diagnosis for physical therapy and managing a patient's care within healthcare systems found in the United States. The coursework content should be substantially equivalent to coursework completed by graduates of accredited programs in the United States. Substantial equivalency in coursework content as well as required semester credits is determined by a board-sanctioned credentials review. The minimum number of semester hour credits required for a foreign-educated applicant is 120. Of this 120 semester hour credits, the applicant must submit evidence of no less than forty-two (42) semester hour credits in college-level general education and no less than sixty-nine (69) semester hour credits in professional education using [a] the course work evaluation tool, fourth edition, as approved by the board.

[03-29-83; 02-19-88; 01-28-93; 06-30-94; Rn, 16 NMAC 20.10, 12-15-97; 16.20.9.8 NMAC - Rn & A, 16 NMAC 20.9.8, 08-31-00; A, 02-15-04]

16.20.9.9 CREDENTIAL EVALUATION: Foreign-educated applicants must submit a credential evaluation from an educational credentialing evaluation service ~~[which]~~ that uses a course work evaluation tool approved by the board.

A. The minimum educational credentials of a foreign-educated physical therapist should be a ~~[bachelor's]~~ degree in physical therapy with all credits being earned at an institution of higher learning.

(1) For applicants that graduated after December 31, 2002, the requirement is documentation of graduation with a post-baccalaureate degree in physical therapy.

(2) For applicants that graduated prior to December 31, 2002, the require-

ment is a minimum of documentation of graduation with a baccalaureate degree in physical therapy.

~~[A-]~~ **B.** The board will accept final credential reports only from the credentialing service and only if the credential evaluation has been prepared within one year prior to the application date.

~~[B-]~~ **C.** The credentialing agency must identify and list those courses which would not transfer to the U.S. as a "C" or above or "pass" or "credit" in accordance with the most current version of the *national association for foreign student affairs handbook on the placement of foreign graduate students*. The agency must omit any of these courses that are required physical therapy courses when evaluating the equivalency of the credentials to a U.S. degree in physical therapy.

~~[C-]~~ **D.** Should the foreign-educated applicant's credential evaluation fail to demonstrate equivalency according to standards of accredited physical therapy programs in the United States, upon a request by the applicant for reconsideration, the board will reconsider whether the applicant has substantially met the requirements of Subsection A, 16.20.9.8 NMAC.

[03-29-83; 08-01-89; 05-08-91; 09-30-95; Rn & A, 16 NMAC 20.10.11, 12-15-97; 16.20.9.9 NMAC - Rn, 16 NMAC 20.9.9, 08-31-00; A, 02-15-04]

NEW MEXICO PHYSICAL THERAPY BOARD

This is an amendment to 16.20.10.7 NMAC, effective 02-15-04.

16.20.10.7 DEFINITIONS: ~~["Primary health care provider" means a health care professional acting within the scope of his or her license who provides the first level of basic or general healthcare for individuals health needs including diagnostic and treatment services and includes: Physician (M.D., D.O., D.P.M.), Doctor of Veterinary Medicine (D.V.M.), Doctor of Chiropractic (D.C.), Doctor of Dental Surgery (D.D.S.), Doctor of Oriental Medicine (D.O.M.); Certified Nurse Practitioner (C.N.P.); and physician's assistants practicing under the auspices of one of the providers listed herein.] "Primary health care provider" means a health care professional who is licensed in the U.S. and provides the first level of basic or general health care for individual's health needs, including diagnostic and treatment services, and includes a physician (M.D., D.O., D.P.M.), doctor of veterinary medicine (D.V.M.), doctor of chiropractic (D.C.), doctor of dental surgery (D.D.S.), doctor of oriental medicine (D.O.M.), certified nurse practitioner (C.N.P.), and physician assis-~~

tant (P.A.) practicing under the auspices of one of the providers listed herein.

[12-15-97; 16.20.10.7 NMAC - Rn, 16 NMAC 20.10.7, 08-31-00; A, 02-15-04]

NEW MEXICO PUBLIC REGULATION COMMISSION

TRANSPORTATION DIVISION

Effective January 30, 2004, the Public Regulation Commission repeals SCC Rule 77-4, New Mexico Ambulance Tariff No. 3-B, filed June 6, 1977.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

MOTOR TRANSPORTATION DIVISION

This is an amendment to 18.2.3 NMAC, Sections 9, 10, 11 and 14, effective January 30, 2004.

18.2.3.9 REFERENCES TO CODE OF FEDERAL REGULATIONS:

For the purposes of 18.2.3 NMAC, the term "Code of Federal Regulations" means the Code of Federal Regulations published by the office of the federal register, national archives and records administration in effect on ~~[October 1, 2001]~~ October 1, 2003.

A. Appendix A: Code of Federal Regulations, Title 49, Parts 1 to 99, Revised as of ~~[October 1, 2002]~~ October 1, 2003, published by the office of the federal register.

B. Appendix B: Code of Federal Regulations, Title 49, Parts 100 to 185, Revised as of ~~[October 1, 2002]~~ October 1, 2003, published by the office of the federal register.

C. Appendix D: Code of Federal Regulations, Title 49, Parts 200 to 399, Revised as of ~~[October 1, 2002]~~ October 1, 2003, published by the office of the federal register.

[11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.9 NMAC - Rp 18 NMAC 2.3.9, 6-29-00; A, 7/31/02; A, 3/31/03; A, 1/30/04]

18.2.3.10 **GENERAL:** The department of public safety hereby adopts Parts 385, 387 and 390 of Title 49 of the Code of Federal Regulations (49 CFR Parts 385, 387 and 390 - Federal Motor Carrier Safety Regulations), with the following amendments:

A. Where the regulations refer to the United States department of transportation, and the transportation is

intrastate, substitute the New Mexico department of public safety.

B. Where the regulations refer to the secretary of the United States department of transportation, and the transportation is intrastate, substitute the New Mexico secretary of the department of public safety.

C. Where the regulations refer to a special agent of the federal highway administration, substitute all personnel safety certified and approved by the director of the motor transportation division of the department of public safety.

D. Any part of 49 CFR not specifically adopted by these regulations is hereby deemed to be omitted and should not be considered to be part of these regulations.

~~[E. Part 390.3 (b) and (c) are deleted.]~~

E. Part 385.307 is amended to add: "Beginning July 1, 2004 after a new intrastate entrant satisfies all applicable state pre-operational requirements, it will be subject to the new entrant safety monitoring procedures for a period of 18 months. During this 18-month period:

(1) the new intrastate entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively; an accident rate or driver or vehicle violation rate that is higher than the industry average for similar motor carrier operations may cause the department of public safety, motor transportation division to conduct an expedited safety audit or compliance review at any time;

(2) a safety audit will be conducted on the new intrastate entrant, once it has been in operation for enough time to have sufficient records to allow the department of public safety, motor transportation division to evaluate the adequacy of its basic safety management controls; this period will generally be at least 3 months;

(3) all records and documents required for the safety audit shall be made available for inspection upon request by an individual certified under federal motor carrier safety administration regulations to perform safety audits.

F. Part 390.5, Definitions, is amended to read:

(1) "*Commercial motor vehicle*" means any self propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when:

(a) the vehicle is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or

more whichever is greater; or the vehicle is operated only in intrastate commerce and has a gross vehicle weight rating, or gross combination weight rating or gross vehicle weight or gross combination weight of 26,001 or more pounds whichever is greater; or

(b) is designed or used to transport more than 8 passengers (including the driver); for compensation; or

(c) is designed or used to transport more than 15 passengers, (including the driver) and is not used to transport passengers for compensation; or

(d) is used in transporting material found by the secretary of transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 CFR, subtitle B, Chapter I, subchapter C;

(2) "*Special mobile equipment*" means a motor vehicle constructed from the ground up as machinery and not designed or used for the transportation of persons or property. Such equipment is operated on the highway only incidental to its use off road. The mounting of off road equipment on a standard truck or other chassis does not qualify a vehicle for an exemption as special mobile equipment."

(3) 390.19 is amended to add: "Intrastate carriers operating commercial motor vehicles are required to apply for a New Mexico safety identification number from the motor vehicle division, New Mexico taxation and revenue department beginning July 1, 2002. Intrastate vehicles designed or used to transport 9 to 15 passengers (including the driver) and school buses, provided that school buses shall be subject to the applicable school bus safety provision established by the state transportation director of the New Mexico department of education, are exempted from the application requirement for the New Mexico safety identification number."

(4) 390.21 is amended to add: "Intrastate carriers operating commercial motor vehicles are required to mark their vehicles with the assigned New Mexico safety identification number, preceded by the letters USDOT and followed by the suffix NM no later than January 1, 2003."

[2-3-93; 11-17-93; 2-14-95; 11-17-95; 4-30-97; 18.2.3.10 NMAC - Rp 18 NMAC 2.3.10, 6-29-00; A, 7/31/02; A, 1/30/04]

18.2.3.11 **QUALIFICATION**

OF DRIVERS: The department of public safety hereby adopts Part 40 and Appendix A to Part 40 of Title 49 of the Code of Federal Regulations (49 CFR 40 - Procedures for Transportation Workplace Drug Testing Programs), Part 391 of Title 49 of the Code of Federal Regulations (49

CFR 391 - Qualification of Drivers), Part 382 of Title 49 of the Code of Federal Regulations (49 CFR 382 -Controlled Substances and Alcohol Use and Testing) and Appendices C (Written Examination for Drivers), D (Table of Disqualifying Drugs and Other Substances, Schedule I) and E (Table of Disqualifying Drugs and Other Substances, Schedules II through V) of Subchapter B of Chapter III of Title 49 of the Code of Federal Regulations, with the following amendments:

A. Part 391.2(c) is amended to read: "*Certain farm vehicle drivers.* The rules in this part do not apply to a farm vehicle driver other than a farm vehicle driver who drives an articulated (combination) motor vehicle interstate that has a gross weight, including its load, of more than 10,000 pounds or drives an articulated motor vehicle intrastate that has a gross weight, including its load, of 26,001 pounds or more."

B. Part 391.11(b)(1) is amended to read: "Is at least 21 years old; ~~[or is 18 years old and drives only intrastate motor vehicles not required to be placarded for hazardous materials;]~~ or is 18 years old and drives only in intrastate commerce operating commercial vehicles that are not required to be placarded for hazardous materials;"

C. Part 391.49, Waiver of Certain Physical Defects, is amended to add: "(m) A person who is not physically qualified to drive under 391.41(b)(1) or (2) and who is not eligible for a waiver under the provisions of 391.49 (a) through 391.49(l) and who drives only intrastate, may apply for a waiver from the Director, Motor Vehicle Division, New Mexico Taxation and Revenue Department, P.O. Box 1028, Santa Fe, New Mexico, 87504-1028 under 18.19.5.33 NMAC.

D. Part 391.51(g) is amended to read: "Upon written request to, and with the approval of, the director, regional motor carrier safety office, for the region in which a motor carrier has its principal place of business, an interstate carrier may retain one or more of its drivers' qualification files at a regional or terminal office. The addresses and jurisdictions of the directors of regional motor carrier safety offices are shown in Section 390.27 of this subchapter."
[2-3-93; 11-17-93; 4-30-97; 18.2.3.11 NMAC - Rp 18 NMAC 2.3.11, 6-29-00; A, 1/30/04]

18.2.3.14 **HOURS OF SERVICE OF DRIVERS:** The department of public safety hereby adopts Part 395 of Title 49 of the Code of Federal Regulations (49 CFR 395 - Hours of Service of Drivers), with the following amendments:

A. Part 395.1(e) is amended to read: "*100/150 air-mile radius driver.* A driver is exempt from the requirements of Section 395.8 if:

(1) the driver operates in interstate commerce within a 100 air-mile radius of the normal work reporting location or operates in intrastate commerce within a 150 air-mile radius of the normal work reporting location;

(2) the driver, except a driver salesperson, returns to the work reporting location and is released from work within 12 consecutive hours;

~~[(3) At least 8 consecutive hours off duty separate each 12 hours on duty;~~

~~[(4) The driver does not exceed 10 hours maximum driving time following consecutive hours off duty;]~~

(3) a property-carrying commercial motor vehicle driver has at least 10 consecutive hours off duty separating each 12 hours on duty; a passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;

(4) a property-carrying commercial motor vehicle driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; or a passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and

(5) the motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(a) the time the driver reports for duty each day;

(b) the total number of hours the driver is on duty each day;

(c) the time the driver is released from duty each day; and

(d) the total time for the preceding 7 days in accordance with Section 395.8(j)(2) of this section for drivers used for the first time or intermittently."

B. Part 395.1(g) is amended to read: "*Retention of driver's record of duty status.* Upon written request to, and with the approval of, the regional director of motor carriers for the region in which the motor carrier has its principal place of business, an interstate motor carrier may forward and maintain such records at a regional or terminal office. The addresses and jurisdictions of the regional director of motor carriers offices are shown in Section 390.27 of this subchapter."

[2-3-93; 11-17-93; 11-17-95; 4-30-97; 18.2.3.14 NMAC - Rp 18 NMAC 2.3.14, 6-29-00; A, 1/30/04]

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY
MOTOR TRANSPORTATION
DIVISION**

This is an amendment to 18.19.8 NMAC, Sections 1, 9, 32, 33, 34, and 41, effective January 30, 2004. The issuing agency for heights and weights of loads is the Department of Public Safety. The Motor Transportation Division was transferred to DPS in 1998.

18.19.8.1 **ISSUING AGENCY:**
~~[Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630]~~ Department of Public Safety, P.O. Box 1628, Santa Fe NM 87504-1628
[9/15/98; 18.19.8.1 NMAC - Rn, 18 NMAC 19.8.1, 9/14/00; A, 1/30/2004]

18.19.8.9 **MOVEMENT ON
FEDERALLY DESIGNATED HIGH-
WAYS**

A. **FEDERALLY DES-
IGNATED HIGHWAYS:**

(1) Pursuant to Subsection D of Section 66-7-404 NMSA 1978, vehicles operating a truck tractor semitrailer combination or a truck tractor semitrailer-trailer combination may exceed an overall length of sixty-five feet when motoring in New Mexico on the following federally designated highways:

[Please see chart on page 36]

ROUTES	FROM	TO
NM 18	US 62, Hobbs	US 82, Lovington
NM 206	US 82, Lovington	US 70, Portales
US 56**	I-25, Springer	Oklahoma State Line
US 54**	Texas State Line	Texas State Line
NM 371	I-40, Thoreau	US 64, Farmington
US 62	US 285, Carlsbad East	Texas State Line
US 64	I-25, Raton	Oklahoma State Line
US 70	I-10, Las Cruces	US 54, Alamogordo
US 70	US 285, Roswell	Texas State Line
US 84**	I-40, Santa Rosa	Texas State Line
US 87	US 56, Clayton	Texas State Line
US 180	I-10, Deming	Silver City
US 285	Texas State Line	Colorado State Line
US 380	US 285, Roswell	Texas State Line
US 550	US 64, Farmington	Colorado State Line
US 666	I-40, Gallup	Colorado State Line
US 60	Arizona State Line	I-25, Socorro
US 84	I-40	Colorado State Line
US 70	Arizona State Line	I-10, Lordsburg
US 80	Arizona State Line	I-10
US 64	Arizona State Line	NM 44, Bloomfield
US 160	Arizona State Line	Colorado State Line
I-40	Arizona State Line	Texas State Line
I-10	Arizona State Line	Texas State Line
I-25	I-10, Las Cruces	Colorado State Line

US 491	<u>Colorado line to Gallup (southbound only)</u>
US 491	<u>northbound, Gallup-Colorado state line</u>
US 550	<u>Colorado line to Aztec</u>
US 64	<u>Shiprock-Arizona state line</u>
US 64	<u>Farmington to Shiprock</u>
US 84	<u>Colorado line to Espanola and Villanueva to Santa Rosa</u>
US 84	<u>Las Vegas to I-25</u>
NM 17	<u>Colorado to Chama</u>
US 84/285	<u>Espanola to Santa Fe</u>
US 285	<u>Colorado line to Espanola and Lamy to Texas line</u>
US 285	<u>junction I-25- Lamy</u>
US 64-87	<u>Raton to Clayton</u>
I-25	<u>Colorado line to Texas line</u>
I-40	<u>Arizona line to Texas line</u>
US 54	<u>Santa Rosa to Texas line</u>
US 60	<u>Arizona line to Socorro and Encino to Fort Sumner</u>
US 60/84	<u>Fort Sumner to Texas line</u>
US 70	<u>Arizona line to Lordsburg and Roswell to Clovis</u>
I-10	<u>Arizona line to Texas line</u>
US 70/82	<u>Las Cruces to Alamogordo</u>
US 62/180	<u>Texas line to Hobbs</u>
US 180	<u>Silver City to Deming</u>
US 80	<u>Road Forks to Rodeo</u>
US 87	<u>Clayton to Texas line</u>
NM 371	<u>Farmington to Crownpoint</u>
NM 18	<u>Portales to Jal</u>
NM 516	<u>Aztec-Farmington</u>
US 56	<u>Springer-Oklahoma state line</u>
US 62	<u>Carlsbad-Hobbs</u>

** No over height movements allowed without prior approval.

(2) A truck tractor semi-trailer combination or a truck tractor semi-trailer-trailer combination which exceeds an overall length of sixty-five feet pursuant to the provisions of Subsection D of Section 66-7-404 NMSA 1978 shall be allowed to travel:

(a) a distance not to exceed five miles from the designated highway for access to facilities offering food, fuel, repairs and rest;

(b) a distance not to exceed twenty miles from the designated highway for access to terminals for the purpose of loading and unloading;

(c) a distance not to exceed twenty miles from the designated highway for the purpose of delivering the load or partial load; or

(d) on any other access route approved by the secretary under the provisions of Subsection B of 18.19.8.9 NMAC.

B. REVIEW COMMITTEE:

(1) The secretary shall appoint a review committee with a minimum of one member each from the taxation and revenue department, the department of public safety, the New Mexico highway and transportation department and the general public. The review committee shall meet on a quarterly basis to review access to and from federally designated highways allowed under the provisions of Subsection A of 18.19.8.9 NMAC and recommend changes to the secretary. The review by the committee shall include an analysis of existing and proposed access routes utilizing observations of, and other information obtained from, the operation of test vehicles over the routes or information provided by the application of vehicle templates to plans of the routes. The secretary will approve or disapprove all designated access routes considering the recommendation of the review committee.

(2) The committee shall establish procedures for processing individual requests for access routes including a provision providing for automatic approval of a request if not acted on by the department within 120 days of receipt. Access to terminals and services shall be made only on the basis of safety and engineering analysis of the route which indicate that the use of the route would not endanger other motorists or would not cause untimely deterioration of the roadway or other structures on the route.

C. APPEAL OF DENIAL OF ACCESS ROUTE:

Any person whose request for an access route has been denied may appeal in writing to the secretary the denial of the request. Any appeal of a denial of access route shall be considered by the review committee within 120 days of receipt of the appeal. The committee, in reviewing the appeal, shall consider an appeal in the same manner as a request for access route and shall, within 150 days from receipt of the appeal, recommend approval or denial of the route to the secretary.

[10/14/92, 9/15/98; 18.19.8.9 NMAC - Rn & A, 18 NMAC 19.8.9, 9/14/00; A, 1/30/2004]

18.19.8.32 CONTINUOUS MOVEMENT:

A. The department, after conducting an evaluation of road conditions, economic impact, overall motor vehicle safety and other considerations, may authorize the issuance of a special permit which allows continuous movement for dimensions or weights that exceed the legal limits. Specific permission for continuous

movement shall be stated on the special permit. If continuous movement is granted, specific restrictions may be imposed to maximize the safety of the motoring public as, for example, a requirement that the extreme dimensions of the oversize load be marked with clearance lights. ~~[Unless otherwise allowed within the special permit, movement is prohibited on Sundays or those legal holidays determined by the provisions of 18.19.8.35 NMAC and during inclement weather.]~~ Continuous movement is prohibited during conditions stated in 18.19.8.35 NMAC and during inclement weather. All lighting requirements are in accordance with Federal Motor Carrier Safety Regulations 393.11. Additional restrictions applicable to specific roads and highways may also apply and will be listed on the special permit.

B. A special permit for a continuous move will not be issued for any vehicle, combination or load which exceeds:

(1) a width of twelve feet (12') measured at the widest point;

(2) a height of fourteen feet and six inches (14'6") measured at the highest point;

(3) a length of ninety feet (90') measured from the foremost point to the rearmost point; or

(4) a weight of one hundred and twenty thousand pounds (120,000 lbs.).

C. For purposes of 18.19.8.32 NMAC, the term "special permit" includes ~~[either]~~ a single trip special permit ~~[or a multiple trip special permit].~~

D. If continuous movement of an overwidth or overlength vehicle, combination or load is authorized by the department, a rear escort must be utilized for movement during non-daylight hours. ~~[In addition, a front escort is required during non-daylight hours for continuous movement on undivided roads and highways.]~~ Continuous movement is allowed only on interstates and four lane divided highways.

[10/14/92, 9/15/98; 18.19.8.32 NMAC - Rn & A, 18 NMAC 19.8.10.23, 9/14/00; A, 1/30/2004]

18.19.8.33 CONTINUOUS MOVEMENT OF OVERSIZED MANUFACTURED HOMES:

A permittee may request continuous movement for manufactured homes having a width of more than 8'6" but not exceeding 12' or an overall length, including towing unit of more than 65' but not exceeding ~~[80']~~ 90', provided that during non-daylight hours, a rear escort is required ~~[on highways with four or more traffic lanes and a front and rear escort is required on roads and highways with fewer than four traffic lanes. Movement shall be~~

~~prohibited during inclement weather or during legal holidays].~~ Continuous movement is prohibited during conditions stated in 18.19.8.35 NMAC and inclement weather.

Continuous movement is allowed only by a special permit issued by the department and is not allowed under a special permit self-issued by a dealer or transporter of manufactured homes under the provisions of Subsection J of Section 66-7-413 NMSA 1978 and 18.19.8.220 NMAC. Continuous movement is allowed only on interstates and four lane divided highways. Lighting requirements for non-daylight hours shall be in accordance with Federal Motor Carrier Safety Regulations 393.11.

[10/14/92, 9/15/98; 18.19.8.33 NMAC - Rn & A, 18 NMAC 19.8.10.24, 9/14/00; A, 1/30/2004]

18.19.8.34 MOVEMENT RESTRICTED DURING NON-DAYLIGHT HOURS, WEEKENDS AND HOLIDAYS:

~~[Unless specifically stated on the special permit,]~~ Movement after sunset or before sunrise on weekdays and Saturdays, or movement at any time on Sundays or on legal holidays shall not be permitted, unless all guidelines in accordance with 18.19.8.32 NMAC are being met. When considering whether a move can be permitted during non-daylight hours, or on Sundays or legal holidays, the department will consider the following:

A. the size and/or weight of the vehicle or load to be permitted;

B. the route to be traveled;

C. the safety to the overall motoring public;

D. advice of the state highway and transportation department officials or law enforcement officials concerning various aspects of the move; and

E. any other consequence of allowing or not allowing the move during such times.

[10/14/92, 9/15/98; 18.19.8.34 NMAC - Rn, 18 NMAC 19.8.10.25, 9/14/00; A, 1/30/2004]

18.19.8.41 FLAGS REQUIRED:

A permitted vehicle or load must be properly flagged at all times. "Properly flagged" means that flags are colored red, florescent red or florescent orange and which are no less than twelve inches (12") by twelve inches (12") square on any side and are affixed to the vehicle ~~[or]~~ and load in accordance with the Motor Carrier Safety Act and 18.2.3 NMAC.

[10/14/92, 9/15/98; 18.19.8.41 NMAC - Rn & A, 18 NMAC 19.8.10.32, 9/14/00; A, 1/30/2004]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

**TITLE 12 TRADE, COM-
MERCE AND BANKING
CHAPTER 15 FINANCIAL INSTI-
TUTIONS - GENERAL
PART 4 HOME LOAN PRO-
TECTION ACT - HIGH COST LOANS:
REPAYMENT ABILITY, FINANCIAL
RATIOS AND GUIDELINES**

12.15.4.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department. [12.15.4.1 NMAC - N, 01/30/2004]

12.15.4.2 SCOPE: All creditors subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003) ("Act"). [12.15.4.2 NMAC - N, 01/30/2004]

12.15.4.3 STATUTORY AUTHORITY: Section 58-21A-13 NMSA 1978. [12.15.4.3 NMAC - N, 01/30/2004]

12.15.4.4 DURATION: Permanent. [12.15.4.4 NMAC - N, 01/30/2004]

12.15.4.5 EFFECTIVE DATE: January 30, 2004, unless a later date is cited at the end of a section. [12.15.4.5 NMAC - N, 01/30/2004]

12.15.4.6 OBJECTIVE: The objective of this part is to establish the debt-to-income ratios and residual income guidelines required by Section 58-21A-5(H) NMSA 1978. [12.15.4.6 NMAC - N, 01/30/2004]

12.15.4.7 DEFINITIONS: For purposes of this rule, the definitions set forth in the Act and regulations adopted pursuant to the Act shall apply unless otherwise noted. "Relevant financial records" means such reasonably available documents as a borrower's credit application, financial statement, credit report, tax returns, bank account statements, payroll receipts, other third-party income verification or any other similar reports. [12.15.4.7 NMAC - N, 01/30/2004]

12.15.4.8 DEBT-TO-INCOME RATIOS: Pursuant to Subsection H of Section 58-21A-5 NMSA 1978, there shall be a rebuttable presumption that a creditor made a loan with due regard for repayment

ability based on debt-to-income ratios if, at the time the loan was consummated, the creditor determined, based on a review of relevant financial records, that the borrower's total monthly debts, including amounts owed under the loan, did not exceed fifty percent (50%) of the borrower's monthly gross income. [12.15.4.8 NMAC - N, 01/30/2004]

12.15.4.9 RESIDUAL INCOME GUIDELINES: Pursuant to Subsection H of Section 58-21A-5 NMSA 1978, there shall be a rebuttable presumption that a creditor made a loan with due regard for repayment ability based on residual income guidelines if, at the time the loan was consummated, the creditor determined, based on a review of relevant financial records, that the borrower's net residual income after total monthly debts, including amounts owed under the loan, was at least seven hundred and fifty dollars (\$750) or two hundred dollars (\$200) per family household member, whichever is greater. [12.15.4.9 NMAC - N, 01/30/2004]

HISTORY OF 12.15.4 NMAC: [RESERVED]

**NEW MEXICO WORKERS'
COMPENSATION
ADMINISTRATION**

Explanatory paragraph: This is an emergency amendment to 11.4.7 NMAC Sections 2, 3, 7, 8, 9, 10, 11, 13, 14, 16, and 17. This rules promulgation amends the existing rules governing payments for health care services. The amendments are technical in nature eliminating New Mexico specific service codes, and correcting grammatical errors. The parties potentially affected are employers, insurers and workers covered by the Workers' Compensation Act and healthcare providers who provide services to workers under the Workers' Compensation Act. The full text of the rule can be found at www.state.nm.us/wca and the effective date of the amendment is January 14, 2004.

11.4.7.2 SCOPE: This rule applies to all workers' compensation health care services providers, caregivers, pharmacies, and suppliers and all [payers] payers for such services and supplies.

11.4.7.3 STATUTORY AUTHORITY: NMSA 1978, Sections 52-1-1, 52-3-1, 52-4-1, 52-4-2, 52-4-3, 52-4-5, 52-5-4, and 52-10-1 [NMSA 1978 (Repl. Pamp. 1996)].

11.4.7.7 DEFINITIONS: For

the purposes of these rules, the following definitions apply to the provision of all services:

E. "Bill review" means the review of medical bills and/or associated medical records by a workers' compensation [payor] payer or its representative on behalf of the [payor] payer.

G. "Business day" means any day on which the WCA is open for business.

H. "Caregiver" means any provider of health care services not defined and specified in NMSA 1978, Section 52-4-1 [(Repl. Pamp. 1996)].

J. "Complaint" means a written request for workers' compensation benefits or any relief under the Act, filed on a mandatory form with the clerk of the WCA by a worker, employer, insurance carrier [or the Subsequent Injury Fund].

M. "[Depositions] Deposition" means any deposition ordered by a judge under the Act.

Q. "Descriptor" means the definition of a service [which] that is represented in the schedule of maximum allowable payments.

T. "Forms" means a bill for services that is rendered by a health care provider, caregiver, or supplier submitted on one of the following forms as mandated in these rules:

(1) [HCFA 1500 (1-84)] CMS-1500 (12-90)

(2) [HCFA 1500 (12-90)]

(3) [Form UB 92 HCFA] Form UB-92 CMS-1450

V. "Health care provider (HCP)" means any person, entity, or facility authorized to furnish health care to an injured or disabled worker pursuant to NMSA 1978, Section 52-4-1 [(Repl. Pamp. 1994)], including any provider designated pursuant to NMSA 1978, Section 52-1-49 [(Repl. Pamp. 1994)], and may include a provider licensed in another state if approved by the director, as required by the Act.

W. "Hospital" means any place currently licensed as a hospital by the department of health pursuant to NMSA 1978, Section 52-4-1(A) [(Repl. Pamp. 1996)], where services are rendered within a permanent structure erected upon the same contiguous geographic location as are all other facilities billed under the same name.

X. "Independent medical examination (IME)" means a specifically requested evaluation of an injured or disabled worker's medical condition performed by an HCP, other than the treating provider, as provided by NMSA 1978, Section 52-1-51 [NMSA 1978 (Repl. Pamp. 1996)].

Y. "International

Classification of Diseases (ICD-9-CM)" means a set of numerical diagnostic codes, 9th revision, [Fourth Edition which] that is commonly referred to as ICD-9.

BB. "Maximum amount of reimbursement due" means the maximum payment for any service [which] that is the lesser of the contract amount or the amount appropriately calculated by one of the following official methods:

(4) the contract amount which [means] is a contractually negotiated fee between the practitioner and the [payor] payer that does not exceed the MAP or the assigned ratio for the service.

CC. "Medical records" means:

(1) all records, reports, letters, and bills produced or prepared by an HCP or caregiver relating to the care and treatment rendered to the worker;

(2) all other documents generally kept by the HCP or caregiver in the normal course of business relating to the worker, including, but not limited to, clinical, nurses' and intake notes, notes evidencing the patient's history of injury, subjective and objective complaints, diagnosis, prognosis and/or restrictions, reports of diagnostic testing, hospital records, logs and bills, physical therapy records, and bills for services rendered, but does not include any documents that would otherwise be inadmissible pursuant to NMSA 1978, Section 52-1-51(C) [NMSA 1978, (Repl. Pam. 1996)].

II. "Peer review opinion" means referral by the [contractor] WCA, or its contractor, if any, upon approval and agreement to pay by the [payor] payer, for peer review services to answer specific questions concerning issues arising in the course of the contractor's services.

NN. "Ratio report worksheet definitions":

(6) "New hospital" means a hospital, as defined in NMSA 1978, Section 52-4-1 [(Repl. Pam. 1996) that], which has not completed its first full fiscal year.

(7) "Other allowances" means gross patient charges at the hospital's established usual and customary rates minus the amounts received or to be received under contractual agreements with non-governmental third party [payers] payers or courtesy discounts.

UU. "Unbundling" means coding and billing separately for procedures that do not warrant separate identification because they are an integral part of a service for which a corresponding CPT code [or alphanumeric code] exists.

WW. "Usual and customary fee" means the monetary fee that a practitioner normally charges for any given health care service. It shall be presumed that the charge billed by the practitioner is that prac-

itioner's usual and customary charge for that service unless it exceeds the practitioner's charges to self-paying patients or non-governmental third party [payers] payers for the same services and procedures.

11.4.7.8 GENERAL PROVISIONS

C. Nothing in these rules shall preclude the separate negotiation of fees between a practitioner and a [payor] payer within the MAP for any health care service as set forth in these rules.

D. These rules and the director's annual order adopting the schedule of maximum allowable payments utilize the edition of the Physicians' Current Procedural Terminology referenced in the director's annual order, issued pursuant to Paragraph (1)(c) of Subsection B, 11.4.7.9 NMAC. All references to specific CPT code provisions in these rules shall be modified to the extent required for consistency with the director's annual order.

J. Diagnostic coding shall be consistent with the International Classification of Diseases, 9th Edition, [Fourth Revision,] Clinical Modification (ICD-9-CM) or Diagnostic and Statistical Manual of Mental Disorders guidelines as appropriate.

11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. Assigned ratio discount method for hospitals and FASCs

(3) Filing requirements

(f) All filings must be submitted to the director [at] of the WCA.

(5) Calculation of a workers' compensation ratio

(a) Based on information filed pursuant to Paragraph (3) of Subsection A of 11.4.7.9 NMAC, above, the administration will calculate and assign a specific workers' compensation ratio for each hospital or FASC seeking reimbursement for compensable hospital services and items. The hospital or FASC shall be notified by mail of the assigned ratio [which] that shall be effective upon the date assigned by the administration. The workers' compensation ratio is calculated as follows:

ADJUSTED RATIO = $\frac{\text{ADJUSTED OPERATING EXPENSES}}{\text{ADJUSTED NET REVENUE}}$

(b) The assigned ratio shall not be less than .80 and shall not be greater than 1.00.

(c) Any previously assigned ratio shall remain in full force and effect until a new ratio and effective date are assigned by the administration pursuant to these rules.

(d) All hospitals and FASCs are

responsible for notifying [payers] payers of any changes in their workers' compensation ratio. All bills must have the assigned ratio on them.

B. Maximum allowable payment method

(1) Basic provisions

(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the director shall issue an order not less than once per annum setting the schedule of maximum allowable payments for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule shall be released to the public not less than 30 days prior to the date upon which it is adopted and public comments will be accepted during the 30 days immediately following release. After consideration of the public comments the director shall issue a final order adopting a fee schedule, which shall state the date upon which it is effective. The final fee schedule order shall be available at the WCA clerk's office not less than ten days prior to its effective date.

(3) Independent medical examinations

(a) All IMEs and their fees must be authorized by the claims [payor] payer prior to the IME scheduling and service, regardless of which party initiates the request for an IME. In the event of an IME ordered by a judge, the judge will set the fee.

(4) Physical impairment ratings

(d) In the event that a PIR with a specific HCP is ordered by a judge and the HCP and claims [payor] payer are unable to agree on a fee for the PIR, the judge may set the fee or take other action to resolve the fee dispute.

(5) Special physical medicine (SPM) services

(a) All special physical medicine services must be authorized by the claims [payor] payer prior to their scheduling and performance.

(b) The appropriate [alphanumeric code and descriptor in these rules] CPT code must be used for billing by practitioners.

(c) Services provided by caregivers (e.g., technicians, exercise physiologists) must be pre-authorized and paid pursuant to Paragraph (13) of Subsection B of 11.4.7.9 NMAC.

(d) In the event a worker fails to provide 48 hours notice of cancellation of an FCE appointment, the practitioner may be reimbursed up to 60% of the MAP for a four-hour appointment.

~~(e) There are two unique codes which apply in New Mexico:~~

~~(i) SPM 99-50 for the Functional Capacity Evaluation (FCE) which tests, quantifies, and compares a Worker's capacities against established standards.~~

~~(ii) SPM 99-60 for all Work Hardening/Conditioning treatments at one hour increments.]~~

(6) Materials supplied under CPT code 99070

(c) A copy of the invoice shall be provided either at the time of billing or upon the ~~[payer's]~~ payer's request.

(10) Performance of BR services.

(a) The fee for the performance of any BR service is negotiated between the practitioner and the ~~[payer]~~ payer prior to delivery of the service. ~~[Payers]~~ Payers should ensure that a CPT code with an established MAP is not available.

(b) Performance of any BR service requires that the practitioner submit a written report with the billing to the ~~[payer]~~ payer.

(v) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the practitioner shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the ~~[payer]~~ payer to show why the proposed fee is not reasonable.

(12) The use of global fees is encouraged, however global fee shall not be used unless ~~[payer]~~ payer and provider agree. Agreement for use of a global fee may be sought and obtained before, during or after provision of services. All services not covered by the global fee shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(13) Caregiver services are subject to the ~~[payer's]~~ payer's pre-authorization prior to the scheduling and performance of any service. All services provided by caregivers are paid BR.

(14) Durable medical equipment (DME) shall be pre-authorized by the ~~[payer]~~ payer. However, reasonable and necessary prosthetic/orthotics training and/or adjusting is excluded from the cost of the DME and may be billed separately.

(a) Rental of DME shall not exceed 90 days unless it is determined by the ~~[payer]~~ payer to be more cost efficient to do so.

(b) Rental fees shall not exceed the cost of purchase established in the Subparagraph, below. Rental fees paid for the first 30 days of rent may be applied against the purchase price. Subsequent rental fees may not be applied against the purchase price. The decision to purchase

should be made within the first 30 days of rental.

(c) Purchases of DME are paid at the practitioner's invoice cost plus 25% plus taxes, shipping and handling charges.

(d) A copy of the invoice shall be provided either at the time of billing or upon the ~~[payer's]~~ payer's request.

(16) Referrals

(a) If a referral is made within the initial sixty (60) day care period as identified by NMSA 1978, Section 52-1-49(B) [~~Repl. Pam. 1996~~], the period is not enlarged by the referral.

(17) Physical therapy

~~(a) [Initial physical therapy evaluations shall be billed using alpha numeric Code PT-EV-1.] New Mexico specific codes are no longer in use. Please consult the fee schedule currently in use for specific codes. Evaluation and management codes are not appropriate for this purpose.~~

~~(b) Physical therapy reevaluations shall be billed using alpha numeric Code PT-EV-2. Evaluation and Management codes are not appropriate for this purpose.]~~

~~(e) (b) Physical therapy bills may include all codes which are reasonable and necessary for the evaluation and treatment of a worker in a single day.~~

~~(d) (c) An initial failed appointment, without providing 48 hours' notice to the physical therapist, may be billed at 60% of the MAP [for alpha numeric Code Pt-EV-1.]~~

~~(e) PT-EV-3 should be used when physical therapy evaluations are greater than thirty (3) minutes].~~

C. Pharmacy maximum allowable payment (Pharm MAP) is based upon the maximum payment that a pharmacy or authorized HCP is allowed to receive for any prescription drug, not including NMGRT.

(2) Average wholesale price (AWP)

(b) Use of a prorated calculation of AWP will often be necessary in the formulas. For each drug dispensed, the prorated AWP shall be based on the AWP for the "100s ea" quantity of the specific strength of the drug, as listed in a nationally recognized publication, with the following exceptions:

(i) If an AWP listed in the publication is based on the exact quantity of the drug dispensed, e.g., #15, #60, 15 ml, 3.5 gm, etc., the AWP for the exact quantity shall be used with no ~~[proration]~~ prorating calculation made.

11.4.7.10 BILLING PROVISIONS AND PROCEDURES

A. Basic provisions

(5) If a service has been pre-

authorized or is provided pursuant to a treatment plan that has been pre-authorized by an agent of the payer, it shall be rebuttably presumed that the service provided was reasonable and necessary. The presumption may be overcome by competent evidence that the ~~[payer]~~ payer, in the exercise of due diligence, did not know that the compensability of the claim was in doubt at the time that the authorization was given.

B. Billing forms have been adopted from the US department of health and human services' health care financing administration.

(1) Billing for services calculated according to the ratio discount method must be on a UB-92 [~~HCFA 1450~~] CMS-1450. This includes inpatient services, emergency room services, and FASC visits.

(2) Billing for services calculated according to the MAP and provided by hospitals and FASCs may be on Form UB-92, [~~HCFA 1450, Form HCFA 1500(1/84) or Form HCFA 1500(U2)(12/90)~~] CMS-1450 or Form CMS-1500.

(3) Billings for services calculated according to the MAP must be on ~~either Form HCFA 1500 (1-84) or Form HCFA 1500 (12-90)~~ Form CMS-1500.

(4) Pharmacies and authorized HCPs must include patient identification and appropriate information. Billings for pharmaceuticals requires no specific form.

(5) Completion of forms

(a) "WORKERS' COMPENSATION" or "WORK COMP" shall be clearly printed or stamped at the top of the billing form. Any subsequent billing for the same service(s) must be clearly labeled "TRACER" or "TRACER BILL" at the top of the billing form and may be a copy of the original bill.

(b) Entry of the applicable CPT code and a descriptor are mandatory for each procedure billed, regardless of which form or itemized statement is utilized.

(c) [~~FORM HCFA 1500 (1-84) information required for completion is self-explanatory with the following exceptions:~~

~~(i) Section 3. Enter employer's name.~~

~~(ii) Section 6. Enter patient's social security number.~~

~~(iii) Section 7. Not applicable.~~

~~(iv) Section 8. Enter name of insurance carrier or self insured employer.~~

~~(v) Section 9. Not applicable~~

~~(vi) Section 11. Address of insurance carrier or self insured employer or third party administrator~~

~~(vii) Section 13. Not applicable~~

~~(viii) Section 24. Entry~~

~~of a specific CPT code, any applicable modifier code and descriptor are mandatory for each service billed.~~

~~(ix) Section 27. Multiple page bills should show the cumulative total in Section 27 of each consecutively numbered page, with the combined total for all pages on the last page.~~

~~(x) Section 28. This section may be used to indicate any agreed upon discount amount or rate. Otherwise, leave it blank.~~

~~(xi) Section 29. This section may be used to indicate the amount due after applying any discounts. Otherwise, leave it blank.~~

~~(xii) Anesthesiologists and laboratories may omit Sections 14, 15, 16, 17, and 18.~~

~~(d) FORM HCFA 1500 (12-90) [FORM CMS-1500 (12/90)] information required for completion is self-explanatory with the following exceptions:~~

~~(i) Sections 6, 9, 11a-d, 12, 13, 17a, 19, 22, 23, 24h-k, and 27 are not applicable.~~

~~(ii) Section 1. Check "Other".~~

~~(iii) Section 1a. Enter patient's social security number.~~

~~(iv) Section 4. Enter employer's name.~~

~~(v) Section 7. Enter employer's address and telephone number.~~

~~(vi) Section 11. Name of workers' compensation insurance carrier or self-insured employer or third party administrator~~

~~(vii) Section 21. Enter ICD-9-CM or DSM code and descriptor for each diagnosis.~~

~~(viii) Section 24d. Entry of a specific CPT code, any applicable modifier and the descriptor is mandatory for each procedure/service billed.~~

~~(ix) Section 26. Optional~~

~~(x) Section 28. Multiple page bills should show the cumulative total in Section 28 of each consecutively numbered page, with the combined total for all pages on the last page.~~

~~(xi) Section 29. This Section may be used to indicate any agreed upon discount amount or rate.~~

~~(xii) Section 30. This Section may be used to indicate the amount due after applying any discounts. Otherwise, leave it blank.~~

~~(xiii) Anesthesiologists and laboratories may omit Sections 14, 15, and 16.~~

~~(e) (d) FORM [UB92-HCFA-1450] CMS-1450 (UB-92) is self-explanatory with the following exceptions:~~

~~(i) Locators 7, 8, 9, 10,~~

~~11, 31, 33, 34, 35, 36, 37, 38, 44, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 79, and 84 are not applicable.~~

~~(ii) Locator 1. Practitioner name, address, and telephone number~~

~~(iii) Locator 2. Site of service -- name and address~~

~~(iv) Locator 3. Account number or invoice number~~

~~(v) Locator 4. Enter code 111 for inpatient; 131 for outpatient and for emergency room; or 831 for FASC. (Note: if Locator 42 contains an entry beginning with "45" then the service was emergency room, not outpatient.)~~

~~(vi) Locators 24 - 30. Use condition code 02 for employment related injury.~~

~~(vii) Locator 32. Use occurrence code 04 for accident/employment related injury.~~

~~(viii) Locator 43. List and describe each compensable service and item being billed.~~

~~(ix) Locator 50. Insurance carrier or self-insured employer or third party administrator~~

~~(x) Locator 78. The practitioner's current workers' compensation ratio~~

11.4.7.11 PAYMENT PROVISIONS AND PROCEDURES

A. Payment due

(1) Full payment is due within 30 days of receipt of a bill for services unless payment is pending in accordance with the criteria for contesting bills set out below and an appropriate explanation of benefits has been given by the ~~[payer]~~ payer.

C. ~~[Payer's]~~ Payer's explanation of benefits (EOB) for contested bills

(1) Whenever a ~~[payer]~~ payer contests a bill or the payment for services is denied, delayed, reduced or otherwise differs from the amount billed, the ~~[payer]~~ payer shall provide the practitioner with a written EOB.

(4) Standard EOBs: The following EOBs are grouped in accordance with the criteria for contesting health care services bills.

(a) EOB-01 Claim not compensable. The compensability of this workers' compensation claim has been denied by the employer or ~~[payer]~~ payer.

(e) Reduction specifically authorized by this rule:

(i) EOB-11 This procedure/service was not provided by an authorized HCP as specified in NMSA 1978, Section 52-4-1.~~[NMSA 1978 Repl. Pamp. 4996].~~

11.4.7.13

BILLING AND PAY-

MENT DISPUTE RESOLUTION

A. Demand for notice of contested billing

(1) If the ~~[payer]~~ payer does not send payment postmarked within 30 calendar days of their receipt of the billing, the practitioner may serve the employer and ~~[payer]~~ payer or third party administrator (as appropriate) with copies of the demand for notice of contested billing (demand). (See Appendix F). Submission of a demand prior to the 33rd day after billing is prohibited.

(2) The ~~[payer]~~ payer shall forward a response postmarked within 15 calendar days from the documented receipt date of the demand.

(a) If the ~~[payer]~~ payer denies the compensability of the claim, the practitioner may bill the worker directly, notwithstanding any other provision in this rule.

(b) If the ~~[payer]~~ payer fails to respond within the 15 calendar days, it shall be deemed a general denial of the compensability of the claim, and the practitioner may bill the worker directly, notwithstanding any other provision in this rule.

(c) If the ~~[payer]~~ payer contests the bill to any extent and for any reason, it may be resubmitted to the ~~[payer]~~ payer with a request for reconsideration. Any dispute existing subsequent to the request for reconsideration shall be governed by the provisions set forth in Subsection C of 11.4.7.13 NMAC.

(d) Nothing in this rule limits a worker's right to file a complaint with the WCA.

B. Request for reconsideration (request)

(1) If (after examination of the ~~[payer's]~~ payer's EOB), a practitioner is dissatisfied with a ~~[payer's]~~ payer's disposition regarding the payment of a bill, reconsideration of the bill by the ~~[payer]~~ payer may be requested.

(2) A request shall be made in writing within 30 calendar days of the documented receipt date of the ~~[payer's]~~ payer's disposition. The request shall be accompanied by a copy of the bill(s) in question, a copy of the ~~[payer's]~~ payer's explanation, and all supporting documentation necessary to substantiate the performance of the service(s) and the accuracy of the associated charges.

(3) The ~~[payer]~~ payer shall, in good faith, review the request and notify the practitioner in writing within 30 calendar days of the documented receipt date of the request of the results of their reconsideration. A request by the ~~[payer]~~ payer for additional information within the 30 calendar days specified shall not affect the practitioner's right to request a director's determination in accordance with this rule.

(4) In the event that a dispute still exists after reconsideration by the ~~payer~~ payer, the dispute shall be submitted as part of any complaint pending before the administration.

(5) In the event that a dispute still exists after reconsideration by the ~~payer~~ payer or there has been no response to a demand for notice of contested billing or there is no complaint pending before the administration, the dispute may be submitted by either party to the director through the medical cost containment bureau ~~Chief~~ for a director's determination.

C. Director's determination

(1) A worker or employer involved in a health care services billing and payment dispute may, at any time prior to the issuance of the director's determination, raise the issue in a complaint.

(a) The worker or employer who raises the issue in a complaint shall notify the medical cost containment bureau ~~Chief~~ within five (5) business days of their action, at which time the director's determination process will be discontinued.

(3) A request for director's determination shall consist of an explanation of the disputed billing and payment issue(s) submitted in writing within 15 calendar days after the documented receipt date of the response to the request or between 31 and 45 calendar days from the date of the request without a response from the ~~payer~~ payer.

D. Reasonable and necessary disputes

(2) If there is no complaint pending, the director shall forward the dispute to a judge or the director's designee, sitting as a hearing officer and authorized to hold hearings and report findings and conclusions to the director.

11.4.7.14 UTILIZATION REVIEW / CASE MANAGEMENT/PEER REVIEW

A. Basic provisions

(1) All workers and their legal representatives are required to cooperate with the WCA or its contractor, if any, with respect to all reasonable requests for information necessary for any provision of service. The WCA or its contractor, if any, shall report any refusal to cooperate to the director. Failure to provide requested information shall be rebuttably presumed to be a refusal to cooperate.

(4) The WCA or its contractor, if any, shall provide to the worker's employer, legal representative, insurer, or third party administrator a copy of written reports upon written request.

(5) All employers, insurers, and third party administrators are required to

communicate and provide information to the contractor for the purpose of facilitating the provision of services. The employer, insurer and/or third party administrator shall be required to cooperate and provide information, without charge, to the WCA or its contractor, if any.

(6) If the director finds that any HCP has imposed excessive charges or rendered inappropriate services, the director shall notify the employer, insurer and/or third party administrator, and the HCP with a notice of proposed action.

(a) The notice of proposed action shall specify a penalty as set forth in NMSA 1978, Section 52-4-2(F) ~~(Repl. Pamph. 1996)~~, and shall provide for an opportunity to respond in writing.

(7) Payment for contractor services

(c) Any worker, employer, insurer, third party administrator, or their legal representative may specifically request from, and negotiate with, ~~the~~ a contractor for the provision of utilization review, case management, peer review, second medical opinions, or other medical cost containment services that do not fall within scope of the contract with the WCA.

(8) Private rooms

(a) Private (single) rooms shall be pre-authorized by the ~~Administration's~~ WCA or its utilization review/case management/peer review contractor, if any.

B. Inpatient admissions

(1) Reporting requirements for planned/elective hospital admissions: Any practitioner, excluding hospitals, ordering the admission of a worker for evaluation or treatment of their injury or occupational disease disablement shall call the WCA or its contractor, if any, at least forty-eight (48) hours prior to the admission. All of the information in Subsection C of 11.4.7.14 NMAC must be reported.

(2) Inter-facility or intra-facility transfers: Any practitioner or hospital discharge planner ordering or arranging a transfer of a worker to another facility shall report to the WCA or its contractor, if any, at least twenty four (24) hours prior to any transfer.

(a) All of the information in Subsection C of 11.4.7.14 NMAC must be reported.

(b) The hospital discharge planner has primary responsibility for this.

(3) Review for emergency hospital admissions

(a) Every hospital, as defined in NMSA 1978, 52-4-1(A) ~~(Repl. Pamph. 1996), as amended,~~ shall provide to the WCA or its contractor, if any, before the close of business the next business day following any emergency overnight admission of a worker, all the information required by

these rules.

(b) The WCA or its contractor, if any, shall provide a verbal certification or denial concerning the medical necessity and appropriateness of the emergency admission service and the assigned length of stay to the hospital, practitioner, and the ~~payer~~ payer.

(c) The WCA or its contractor, if any, shall confirm its verbal certification or denial, in writing, within twenty-four (24) hours.

(4) Concurrent review: Throughout the period of time in which inpatient services are being provided, the WCA or its contractor, if any, shall monitor the worker's treatment regime, including treatments, procedures, and length of stay.

C. Required information to be provided by the hospital to the WCA or its contractor, if any

(1) ~~Claimant's~~ worker's/patient's name;

(2) ~~Claimant's~~ worker's/patient's social security number;

(3) ~~Claimant's~~ worker's/patient's employer;

(4) employer's insurance carrier or third party administrator;

(5) date of injury/onset of symptoms;

(6) admitting diagnosis, including primary, secondary, and tertiary, if any;

(7) planned treatment(s) and procedures;

(8) planned date of admission;

(9) proposed length of stay;

(10) other related medical information, as required by the WCA or its contractor, if any, to make its determination.

D. Notification of the WCA or its contractor's, if any, decision

(1) Upon receipt of the information, the WCA or its contractor, if any, shall determine if it has been provided with all the necessary information, as cited in Subsection C of 11.4.7.14 NMAC, to render its decision concerning the necessity, appropriateness, and length of stay of the proposed service.

(2) If adequate information has been provided, the WCA or its contractor, if any, shall:

(a) render a decision concerning the necessity, appropriateness, and length of stay of the proposed admission based upon medically accepted standards and an objective evaluation of the circumstances of the proposed admission;

(b) verbally notify the hospital, ~~payer~~ payer, and practitioner ordering the admission of its decision prior to the commencement of the proposed admission;

(c) transmit written notification to the hospital, ~~payer~~ payer, and practitioner within twenty-four (24) hours of its deci-

sion; and,

(d) advise the hospital, practitioner, employer, insurer, and third party administrator that, in the case of a compensable injury or disability, the employer or its insurer retains all financial responsibility for all services that are provided pursuant to the Act.

E. Appeals process

(1) Step one

(a) Any party may request, in writing, that the WCA or its contractor, if any, review its decision.

(b) The WCA or its contractor, if any, shall obtain a second medical opinion from its peer review consultant.

(c) The WCA or its contractor, if any, shall review its decision and give a prompt, written response to the worker, employer, insurer, practitioner, and/or third party administrator, if any, concerning the results of its review.

(2) Step Two

(a) Any party not satisfied with the review results of the WCA or its contractor, if any, after receipt of the written response, may request, in writing, review of the WCA or its contractor's, if any, decision by the WCA director or his designee.

(b) The WCA may utilize the information gathered by the contractor or may require a second opinion or peer review to be performed.

(c) The WCA shall ~~also~~ provide a prompt written response. This determination is final.

F. Performance of services pending appeal

(1) While an appeal is in process, the contested health care services shall not be provided unless the patient/worker signs a statement of financial responsibility prior to the performance of the services for the total cost of the services.

(2) Subject to the appeals process, the decision of the contractor may be considered in any other proceeding before the WCA.

G. Outpatient services

(1) Case management

(a) The ~~[contractor shall recommend cases to the WA for case management.]~~ WCA will assign cases to its contractor for case management, as provided by the contract in effect.

(b) Upon assignment of a case by the WCA, the contractor shall notify the worker, his/her legal representative, employer, insurer, and/or third party administrator of the selection.

(c) The contractor shall have the right to contact the worker, insurer, third party administrator, legal representative, and all practitioners involved in the case.

(d) The contractor shall give reasonable notice and an opportunity to the

worker or his or her representative to be present during all contacts with the insurer, third party administrator, legal representative(s), and practitioners.

(e) An employer, insurer, or third party administrator may refer a case to the WCA or its contractor, if any, for case management.

(i) If that case would have been selected for case management by the WCA (absent the referral) pursuant to the contract then in effect, the WCA shall pay for the case management services pursuant to the contract.

(ii) If the case would not have been selected by the WCA (absent the referral) for case management pursuant to the contract, the employer, insurer, or third party administrator shall be financially responsible for the case.

(2) Peer review

(a) The WCA shall pay for peer review services provided in accordance with the current contract.

(b) The contractor may make a non-binding recommendation to the [payer] payer for a second medical opinion to be provided at the [payer's] payer's expense.

(c) Referrals from the parties for peer review services or second medical opinions may be accepted by the contractor if such services fall outside the scope of the contract then in effect with the WCA.

(i) The party requesting such services shall negotiate and pay for such services.

(ii) No privately funded services shall be rendered, or charges for such services incurred, without the specific written authorization of the requesting party.

(3) Utilization review

(a) Specific services shall be selected for utilization review by the WCA ~~[pursuant to the contract currently in effect].~~

(b) The WCA or its contractor, if any, is specifically authorized to communicate with the worker, the practitioner(s), and all parties to a claim for the purpose of implementing its utilization review program.

(c) The WCA or its contractor, if any, conducts reviews of selected services for medical necessity only. Payments for services provided by an HCP are entirely the responsibility of the injured worker's employer/insurer. The ~~[contractor's decisions]~~ decisions of the WCA or its contractor, if any, issued pursuant to the utilization review system shall be binding on the affected health care providers, workers, employers, insurers and their representatives. NMSA 1978, Section 52-4-2 (A)[NMSA 1978, (Repl. Pamph. 1996)].

(d) No utilization review shall be requested by an HCP unless the HCP has on

staff a licensed, legally authorized HCP or caregiver to perform the requested service.

11.4.7.16 ENFORCEMENT:

Any complaint of a violation of these rules shall be made, in writing, to the WCA deputy director for ~~[Compliance]~~ operations.

11.4.7.17 DATA ACQUISITION:

Every ~~[payer] payer~~ shall report to the WCA, in a format to be determined by the director, the following medical information for each worker for whom they provide benefits:

- A. date of service;
- B. diagnosis;
- C. code for each service;
- D. billed amount;
- E. paid amount;
- F. type of practitioner;
- G. bill identification number;
- H. NDC number (for pharmaceutical).

End of Adopted Rules Section

This page intentionally left blank.

Other Material Related to Administrative Law

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for
Architects

PO Box 509
Santa Fe, NM
505-827-6375

Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 6, 2004. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO COMMISSION OF PUBLIC RECORDS HISTORICAL RECORDS ADVISORY BOARD

The New Mexico Historical Records Advisory Board will meet on Friday, February 27, at 9:00 A.M. The meeting will be held at the Convention Center in Socorro, New Mexico. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Darlene Torres at the New Mexico State Records Center and Archives by February 20, 2004. Public documents, the agenda, and minutes can be provided in various accessible formats. Please contact Darlene Torres at the State Records Center and Archives, 476-7956, if a summary or other type of accessible format is needed. A copy of the proposed agenda may be obtained at the State Records Center and Archives' website at

<http://www.nmcpr.state.nm.us/>, or onsite at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES**2004**

Volume XV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. 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. For further subscription information, call 505-476-7907.