

**NEW
MEXICO
REGISTER**

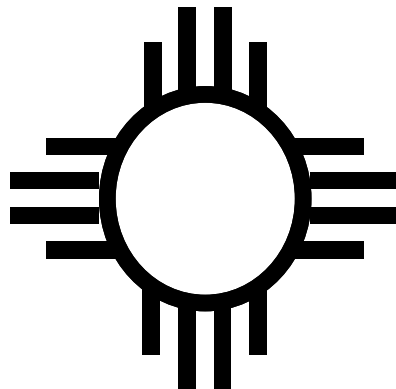


Volume XVIII
Issue Number 7
April 16, 2007

New Mexico Register

Volume XVIII, Issue Number 7

April 16, 2007



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

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Administrative Law Division
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2007

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New Mexico Register

Volume XVIII, Number 7

April 16, 2007

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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, May 3, 2007, beginning at 9:00 a.m., at the Northern New Mexico Community College, a/k/a Northern New Mexico College, 921 Paseo de Oñate (Española Campus - Rm.# AD101-102) Española, NM 87532, and the State Game Commission will meet in Public Session to consider action as appropriate on the following: Consideration of Revocations; Fiscal Year 2007, 3rd Quarter Depredation Report; Hunting, Fishing and Trapping Agreement for State Trust Lands; Briefing on Petroleum Leasing on BLM Lands Relative to Significant Wildlife Resources; Review of USDA Forest Service Travel Management Planning; Description of Federal Assistance Programs and Funding for Department of Game and Fish; Approval of Strategic Vision Statement for the Department's Television Programming; Update on Bighorn Sheep Trap and Transplant Activities Recently and Planned; Draft Recovery Plan for the Gray Vireo Listed as Endangered Under the Wildlife Conservation Act (Section 17-2-40.14, NMSA, 1978); General Public Comments (Comments Limited to 3 Minutes); Closed Executive Session pursuant to Section 10-15-1(H)(1), NMSA, 1978, to discuss litigation, acquisition or disposal of real property or water rights; Land Conservation Appropriation Update and Action as Needed; and Importation of Live Non-Domestic Animals, Birds and Fish (19.35.7, NMAC).

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

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 or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and

Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:30 a.m., on May 11, 2007, at the State Capitol, Room 311 (corner of Paseo de Peralta and Don Gaspar), Santa Fe, New Mexico. The subject of the hearing will be Medicaid Managed Care.

The Medical Assistance Division is proposing amendments to the Medicaid managed care rules to clarify language related to Medicaid managed care policy, effective July 1, 2007.

Interested persons may submit written comments no later than 5:00 p.m., May 11, 2007, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at <http://www.hsd.state.nm.us/mad/registers/> or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department"), hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on **May 21, 2007** from **10:00 am to 12:00 pm**. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.30.2 NMAC	STANDARDS FOR EXCELLENCE	Amend Section 13 (CONTENT STANDARDS - LANGUAGE ARTS)

The proposed amendment to Section 13 (CONTENT STANDARDS - LANGUAGE ARTS) of 6.30.2 NMAC (STANDARDS FOR EXCELLENCE) will include achievement in all of the five identifying methods that consistently relate to reading success according to the 2000 report by the National Reading Panel.

Interested individuals may testify at the public hearing or submit written comments to Liza Rael, Education Administrator, Early Literacy, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar Avenue - Room 202, Santa Fe, New Mexico 87501-2786 E-MAIL ADDRESS: liza.rael@state.nm.us (telephone: 827-6627; fax: 827-6184).

Written comments must be received no later than 5 p.m. on **May 21, 2007**. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Elizabeth Montano, Executive Assistant, Early Literacy, Public Education Department, Jerry Apodaca Education Building, 300 Don

Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6521. The proposed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Montano as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Public Hearing

The State Commission of Public Records will hold a public hearing at 2 pm on April 30, 2007 in the Commission Room at the State Records Center and Archives, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507. The purpose of the public hearing is to solicit comments on the following:

Amendment

1.13.7 NMAC New Mexico Office of the State Historian Scholars Program

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, please contact Amanda Alton at 505-476-9872 by April 25, 2007. Proposed rules can be viewed at <http://www.nmcprr.state.nm.us> and can also be provided in various accessible formats. For additional assistance please contact Amanda Alton at 505-476-9872 or by e-mail at amandal.alton@state.nm.us.

NEW MEXICO PUBLIC REGULATION COMMISSION

STATE OF NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

IN THE MATTER OF AMENDING
13.2.4 NMAC, USE OF COMMERCIAL
DEPOSITORIES FOR STATUTORY DEPOSITS

DOCKET NO. 07-00107-IN

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") proposes to amend 13.2.4 NMAC, Use Of Commercial Depositories For Statutory Deposits. The Superintendent, being fully advised, **FINDS** and **CONCLUDES**:

1. The Superintendent of Insurance of the New Mexico Public Regulation Commission Insurance Division ("Superintendent") is responsible for the management of the Insurance Division and the enforcement of the provisions of the New Mexico Insurance Code, which are administered by the Superintendent. Insurance companies are required under Sections 59A-5-18 through 59A-5-20 and 59A-10-1 through 59A-10-19 NMSA 1978 to deposit securities or other property with the New Mexico State Treasurer as required by the Insurance Code with or through the Superintendent. The New Mexico State Treasurer and the Superintendent have authority under the Insurance Code to designate depositories with respect to deposits made by Insurers under the Insurance Code. In addition, Service Contract Providers in New Mexico are required under the Service Contract Regulation Act, Section 59A-58-6 NMSA 1978 to maintain a deposit with the Superintendent. Providers may choose to deposit securities of the type eligible for deposit by Insurers with the Superintendent to fulfill this requirement.

2. The Superintendent is proposing amendments to 13.2.4 NMAC to: a) facilitate selection of commercial depositories who offer competitive custodial fee schedules; b) revise the rule to include other deposits required by the Insurance Code, including service contract provider deposits; and c) conform the rule to current NMAC format requirements.

3. Copies of the proposal are available as follows:

a. by downloading from the Public Regulation Commission's website, www.nmprc.state.nm.us, under Proposed Rules, 13.2.4 NMAC, Use Of Commercial Depositories For Statutory Deposits;

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying; or

c. for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

4. The Superintendent requests written and oral comments from all interested persons and entities on the proposal. All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the docket file, and provided that the fact of the Superintendent's reliance on such information is noted in the order the Superintendent ultimately issues.

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on **Wednesday, May 9, 2007** at 10:00 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposal. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposal on or before **Monday, May 7, 2007**. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, Room 406, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on

each submittal. If possible, please also e-mail a copy of written comments in Microsoft Word format to roseanne.archuleta@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*.

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Section 2-11-1 *et seq.*, NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability, who are 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, may contact Bettie Cordova at (505) 827-4526. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Cordova.

DONE, this 26th day of March 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

MORRIS J. CHAVEZ, Superintendent of Insurance

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that a rulemaking and public hearing will be held in the Bosque Room, Holiday Inn Express, 2110 Camino del Llano, Belen, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Thursday, April 19, 2007. The public session will begin at 9:30 o'clock a.m. on Thursday, April 19, 2007. The Commission will consider adoption of the proposed amended rules for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.6.9 NMAC (regarding Forosemide); 15.2.5.12 NMAC; 15.2.6.11 NMAC; and 16.47.1.10 NMAC (regarding Equine Infectious Anemia)

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

Julian Luna
Agency Director

Dated: March 28, 2007

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO OFFICE OF THE STATE AUDITOR

NOTICE:

The Office of the State Auditor is repealing 2.2.2 NMAC, *Requirements for Contracting and Conducting Audits of Agencies* effective April 16, 2007. It will be replaced with 2.2.2 NMAC, *Requirements for Contracting and Conducting Audit of Agencies*, which will become effective April 16, 2007.

NEW MEXICO OFFICE OF THE STATE AUDITOR

TITLE 2 PUBLIC FINANCE CHAPTER 2 AUDITS OF GOV- ERNMENTAL ENTITIES PART 2 REQUIREMENTS FOR CONTRACTING AND CON- DUCTING AUDITS OF AGENCIES

2.2.2.1 ISSUING AGENCY:
Office of the State Auditor, 2113 Warner
Circle, Santa Fe, NM 87505-5499
[2.2.2.1 NMAC - Rp, 2.2.2.1 NMAC, 4-16-
07]

2.2.2.2 SCOPE: Agencies as
defined by the Audit Act and independent
public accountants (IPAs) interested in con-
ducting financial and compliance audits of
agencies of the state of New Mexico.
[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 4-16-
07]

**2.2.2.3 STATUTORY
AUTHORITY:** The Audit Act Section 12-
6-12, NMSA 1978, requires the state auditor
to promulgate reasonable regulations neces-
sary to carry out the duties of his office,
including regulations required for conduct-
ing audits in accordance with auditing stan-
dards generally accepted in the United
States of America. The regulations become
effective upon filing in accordance with the
State Rules Act (Chapter 14, Article 4,
NMSA 1978). The Audit Act (12-6-1
through 12-6-14, NMSA 1978) provides the
state auditor with authority to conduct
financial and compliance audits in accor-
dance with governmental auditing, account-
ing and financial reporting standards, local,
state and federal laws, rules, and regula-
tions. The Audit Act also gives the state
auditor the authority to perform special
audits of the financial affairs and transac-
tions of an agency, in whole or in part, in
situations deemed necessary.
[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 4-16-
07]

2.2.2.4 DURATION:
Permanent
[2.2.2.4 NMAC - Rp, 2.2.2.4 NMAC, 4-16-
07]

2.2.2.5 EFFECTIVE DATE:
April 16, 2007, unless a later date is cited at
the end of a section.
[2.2.2.5 NMAC - Rp, 2.2.2.5 NMAC, 4-16-
07]

2.2.2.6 OBJECTIVE: The
objective is to establish procedures and
requirements for the contracting and con-
ducting of state governmental audits in the
state of New Mexico.
[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 4-16-
07]

2.2.2.7 DEFINITIONS:
A. "Agency" means any
department, institution, board, bureau,
court, commission, district or committee of
the government of the state, including dis-
trict courts, magistrate or metropolitan
courts, district attorneys and charitable
institutions for which appropriations are
made by the legislature; any political subdi-
vision of the state, created under either gen-
eral or special act, that receives or expends
public money from whatever source
derived, including counties, county insti-
tutions, boards, bureaus or commissions;
municipalities; drainage, conservancy, irri-
gation or other special districts; and school
districts; any entity or instrumentality of the
state specifically provided for by law,
including the New Mexico finance authori-
ty, the New Mexico mortgage finance
authority, the New Mexico lottery authority
and every office or officer of any entity list-
ed in Subsections A through C of Section
12-6-2, NMSA 1978.

B. "Auditor" means state
auditor or independent public accountant.

C. "AICPA" means
American institute of certified public
accountants.

D. "CFR" means code of
federal regulations.

E. "CPE" means continu-
ing professional education.

F. "COSO" means com-
mittee on sponsoring organizations of tread-
way commission.

G. "DFA" means depart-
ment of finance and administration.

H. "FCD" means financial
control division of the department of
finance and administration.

I. "FDIC" means federal
deposit insurance corporation.

J. "FDS" means financial
data schedule.

K. "GAAP" means
accounting principles generally accepted in
the United States of America.

L. "GAGAS" means gen-
erally accepted governmental auditing stan-
dards.

M. "GASB" means gov-
ernmental accounting standards board.

N. "GAAS" means audit-
ing standards generally accepted in the
United States of America.

O. "GSD" means general
services department.

P. "HED" means higher
education department.

Q. "HUD" means U.S.
department of housing and urban develop-
ment.

R. "IPA" means independ-
ent public accountant.

S. "IRC" means internal
revenue code.

T. "NCUSIF" means
national credit union shares insurance fund.

U. "NMAC" means New
Mexico administrative code.

V. "NMSA" means New
Mexico statutes annotated.

W. "Office" means office
of the state auditor.

X. "OMB" means office of
management and budget.

Y. "PED" means public
education department.

Z. "PHA" means public
housing authority.

AA. "REAC" means real
estate assessment center.

BB. "REC" means regional
education cooperative.

CC. "RSI" means required
supplemental information.

DD. "State auditor" means
the elected state auditor of the state of New
Mexico, personnel of his office designated
by him or independent auditors designated
by him.

EE. "SAS" means statement
on auditing standards.

FF. "UFRS" means uni-
form financial reporting standards.

GG. "U.S. GAO" means
United States government accountability
office.

[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 4-16-
07]

2.2.2.8 THE AUDIT CON- TRACT:

A. Section 12-6-3, NMSA
1978, (Annual and Special Audits) man-
dates that: (1) the financial affairs of every
agency be thoroughly examined and audited
each year by the state auditor, personnel of

his office designated by him, or by independent auditors approved by him; (2) the comprehensive annual financial report for the state be thoroughly examined and audited each year by the state auditor, personnel of his office designated by him or by independent auditors approved by him; (3) the audits be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. Section 12-6-14, NMSA 1978, (Contract Audits) states that "the state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however that an agency subject to oversight by the state department of public education or the commission on higher education shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section." Section 61-28B-13, the 1999 Public Accountancy Act states, "A firm must hold a permit issued pursuant to the provisions of the 1999 Public Accountancy Act [61-28B-1 to 61-28B-29 NMSA 1978] in order to provide attest services." Only firms that are registered and in good standing with the board shall audit financial statements. IPAs shall submit a firm profile to the state auditor. Firms are required to notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts only with IPAs who have **submitted a complete and correct** firm profile and who have complied with all the requirements of this rule including:

(1) Section 2.2.2.14 NMAC, continuing education and quality control requirements;

(2) Subsection H of 2.2.2.8 NMAC, independence requirements; and

(3) For an IPA who has previously audited agencies under this rule, they must have previously complied in the past with:

(a) Section 2.2.2.9 NMAC, report due dates; and

(b) Section 2.2.2.13 NMAC, review of audit reports and working papers, of this rule.

B. If the audit is to be conducted by an IPA, the agency shall comply with the following procedures to obtain audit services:

(1) It is unnecessary for the agency to include a copy of the audit rule 2007 when mailing requests for proposals to IPAs because it is posted on the state auditor's website at www.saonm.org. The agency shall identify all elements or services to be solicited upon receipt of notification, and request quotations or proposals for each of the following identifiable elements:

(a) financial statement audit;

(b) federal single audit;

(c) financial statement preparation;

(d) other nonaudit services like depreciation schedule dates; and

(e) other (i.e., housing authority, charter school, foundations and other component units).

(2) Audit services costing **no more than \$30,000 excluding gross receipts tax** should be considered small purchases. The agency is encouraged to obtain no fewer than three written or oral quotations to be recorded and placed in the procurement file. Chapter 81 (Laws of 2006) requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency on the date the contractor signs the contract. A multi-year proposal (not to exceed three years) exceeding \$30,000 for all three years is not considered a small purchase.

(3) For audit services costing **over \$30,000 excluding gross receipts tax**, should be considered small purchases. The agency is encouraged to seek competitive sealed proposals and contract for audit services in accordance with the Procurement Code (13-1-1 to 13-1-199 NMSA 1978); New Mexico general services department (GSD) Rule 1.4.1 NMAC, **Procurement Code Regulations**, if applicable; and New Mexico department of finance and administration (DFA) Rule 2.40.2 NMAC, **Governing the Approval of Contracts for the Purchase of Professional Services**. Chapter 81 (Laws of 2006) requires prospective contractors to complete a standard campaign contribution disclosure form and submit it to the agency as part of the competitive sealed proposal. In addition, if the agency intends to allocate a portion of the audit cost to federal funds as direct or indirect charges, the agency should comply with procurement requirements stated in the federal office of management and budget's, **Grants and Cooperative Agreements with State and Local Governments, (OMB A-102 Common Rule)**. Institutions of higher education and state and local hospitals should comply with procurement standards stated in OMB Circular A-110, **Uniform Administrative Requirements for Grants**

and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

(4) In accordance with Section 13-1-150, NMSA 1978, (Multi-term Contracts), the agency may, and is strongly encouraged to request a multi-year proposal to provide services, not to exceed a term of **three** years including all extensions and renewals. The term of the contract shall be one-year with the option to extend for two successive one-year terms at the **same price, terms and conditions as stated on the original proposal**. Exercising the option to extend must be by mutual agreement of the parties to the contract and with the approval of the state auditor. In the event that either of the parties to the contract elects not to extend or the state auditor disapproves the recommendation for renewal, the agency shall use the procedures described above in Paragraphs (2) and (3) of Subsection B of 2.2.2.8 NMAC to solicit services.

(5) The agency shall evaluate all competitive sealed proposals or quotations received pursuant to Paragraphs (2) and (3) of Subsection B of 2.2.2.8 NMAC using a two-step evaluation process, preferably executed by a selection committee. Members of component units such as charter schools, housing authorities, etc., should be included in the IPA selection process. Each IPA shall initially be assigned evaluation points on the basis of experience and qualifications. Then each IPA shall be assigned evaluation points on the basis of cost. The IPA firm receiving the most total evaluation points should be selected as the agency IPA. The agency shall use the evaluation form attached to this rule as Appendix B to document this process.

(6) After completing the evaluations for each IPA, and making the IPA selection, each agency shall submit the information listed below to the state auditor on or before May 31, together with its IPA recommendation. (Agencies with a fiscal year end other than June 30 must use a due date 30 days before the end of the fiscal year).

(a) A cover letter indicating the name of the firm being recommended, the fiscal year end being audited, the oversight agency approval signature, and an indication of whether the proposal is "annual" or "multi-year".

(b) The fully completed and signed evaluation form for the IPA being recommended. If you are in year 2 or 3 of a multi-year proposal, submit a copy of part II of the evaluation form from the previous year.

(c) A list of professional services contracts the agency had with any IPA on the state auditor's approved list during the previous calendar year up until the date of

submission, the contract date, contract amount, including a description of the services provided.

(d) Agencies that are subject to oversight by the state public education department (PED) or the higher education department (HED) have the additional requirement of submitting their IPA recommendation to PED or HED for approval prior to submitting the recommendation to the state auditor (Section 12-6-14, NMSA 1978). An agency may use the sample cover letter in Appendix A to document the required oversight agency approval.

(7) The state auditor will notify the appropriate oversight agency when an agency has failed to submit a timely auditor recommendation.

(8) If the agency fails to make a recommendation by the deadline, the state auditor may conduct the audit.

(9) Per Section 12-6-14, NMSA 1978, "The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit."

(10) The agency shall retain all procurement documentation, including completed evaluation forms, for **five** years.

(11) In the event the agency's recommendation is not approved by the state auditor, the state auditor will promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a different recommendation. This process will continue until the state auditor approves a recommendation. During this process, whenever a recommendation is not approved, the agency may petition the state auditor, within 15 days or prior to June 1, (whichever comes first) for reconsideration, wherein the petitioner presents evidence in support of its recommendation. The state auditor will set the time and place for an informal administrative hearing in a timely manner with consideration given the petitioner's circumstances.

C. The state auditor will use **discretion** and may not approve:

(1) an audit contract recommendation that does not serve the best interest of the public or the agency because of one or more of the following reasons:

(a) lack of experience of the IPA;

(b) the IPA has conducted the audit of the same agency for six consecutive years; the IPA shall not conduct the agency audit for a two-year period after conducting the agency audit for a period of six consecutive years;

(i) the IPA shall not conduct the agency audit for a two-year

period after conducting the agency audit for a period of six consecutive years;

(ii) an IPA firm that has undergone a merger or acquisition will be determined (on an individual basis) to be a **new firm** for the purposes of the rotation requirement based on, but not limited to, the following criteria: (a) the firm is a newly registered business entity; and (b) at least 67% of the firm's ownership changed;

(iii) if the firm resulting from a merger or acquisition is determined to be a same firm, as before, and it is in the middle of multiple year award, there will be a mandatory rotation of the audit manager;

(iv) if the firm resulting from a merger or acquisition is determined to be a new firm, the new firm must compete for audit services in accordance with the Procurement Code and this rule; and

(v) any other consideration(s) that may be in the best interest of the public.

(c) lack of competence or staff availability;

(d) circumstances that may cause untimely delivery of the audit report;

(e) unreasonably high or low cost to the agency;

(f) terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g) lack of compliance with the Procurement Code or this rule; or

(h) any other reason determined by the state auditor to be in the best interest of the state of New Mexico;

(2) audit contract recommendations of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed nonaudit services for an agency without prior approval of the state auditor;

(e) performed nonaudit services under a separate contract for services that may be disallowed by GAGAS independence standards. (See Subsection H of 2.2.2.8 of NMAC);

(f) failed to respond, in a timely and acceptable manner, to an audit report or working paper review;

(g) indicated a lack of independence in fact or appearance;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) has not adhered to external quality control review standards as defined by GAGAS and Subsections A and B of 2.2.2.14 NMAC; or

(j) otherwise, in the opinion of the

state auditor, shown himself or herself to be unfit to be awarded a contract;

(3) any audit which the state auditor decides to perform himself or with contracted IPAs [consistent with the October 6, 1993 stipulated order Vigil v. King No. SF 92-1487(C)], and pursuant to Section 12-6-3, NMSA 1978 (Annual and Special Audits), even if the agency was previously designated for audit by an IPA.

D. The state auditor shall provide audit contract forms which must be used by the agency. **Only** forms provided by the **state auditor** will be accepted and shall:

(1) be completed and returned with the number of required copies **within fifteen (15) calendar days** as stated in the approval letter of IPA selection;

(2) bear original signatures;

(3) have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) for all state agencies whose contracts are approved through DFA's contracts office, prior to submission to the state auditor; and

(4) include the amount for each portion of the audit which covers the elements or services as well as the portion of the audit which covers federal funds.

E. The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with risk assumed. The IPA must provide to the state auditor, prior to expiration, updated insurance information.

F. A breach of any terms of the contract shall be grounds for immediate termination of the contract. **The injured party may seek damages for such breach from the offending party.** Any IPA who knowingly makes false statements, assurances, or disclosures will be disqualified from conducting audits of agencies in New Mexico.

G. The IPA shall notify the agency and the state auditor, **in writing**, of any changes in staff assigned to perform the audit. The IPA must update the firm profile to reflect the staffing changes. The IPA shall not subcontract any portion of the services to be performed under the audit contract without the **prior written approval** of the state auditor. The IPA may subcontract only with IPAs who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC. The audit contract shall specify subcontractor responsibility, who will sign the report(s), and how the subcontractor will be paid. See appendix F for the applicable form.

H. The *Government Auditing Standard 2003 Revision* general standard related to independence is: "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, should be **free both in fact and appearance from personal, external, and organizational impairments to independence.**" (GAGAS 3.03) The standard describes two overarching principles an audit organization must consider before agreeing to perform nonaudit services in order to avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the auditor is not independent in conducting audits. Audit organizations should not provide nonaudit services that involve performing management functions or making management decisions and they should not audit their own work or provide nonaudit services in situations where the nonaudit services are significant/material to the subject matter of the audit. (GAGAS 3.13)

(1) The *Government Auditing Standards January 2007 Revision* was issued by the GAO on February 1, 2007. It is effective for financial audits for periods beginning on or after January 1, 2008 (FY09). Early implementation is permissible and encouraged. This updated Yellow Book changes the above "should" references to "must" in Paragraphs 3.02 and 3.22.

(2) This standard places responsibility on each auditor and the audit organization to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The following is substantially an excerpt from the AICPA fact sheet that summarized the key provision of the GAGAS standards.

(a) The state auditor **will not** approve any contract for nonaudit services to be provided by the same IPA who performs the agency's annual financial audit for the following services: maintaining or preparing the audited agency's basic accounting records; taking responsibility for basic financial or other records that the audit organization will audit; posting transactions (whether coded or not coded) to the agency's financial records or to other records that subsequently provide data to the agency's financial records; recommending a single individual for a specific position; conducting an executive search or a recruiting program for the audited agency; and operating or supervising the operation of the agency's information technology system.

(b) Consideration and performance of nonaudit services that do not violate the two overarching principles shall be doc-

umented by the audit firm in accordance with the requirements of GAGAS 3.17. The paragraph that describes the safeguards in the 2007 revision is Paragraph 3.30. See also the GAO, *Government Auditing Standards Answers to Independence Standard Questions*, Question 46, which **requires documentation of the safeguards** when an audit firm prepares the trial balance, financial statements and/or notes and then also performs the audit.

(c) The state auditor **may** approve a contract for the following "nonroutine" nonaudit services to be provided by the same IPA who performs the agency's annual financial audit in circumstances where the **two overarching principles (above) are not violated and the seven required safeguards are met.** Safeguard (1) requires the IPA to document its consideration of the nonaudit services, and document its rationale that providing the nonaudit services does not violate the two overarching principles. Safeguard (2) requires the IPA to establish and document an understanding with the audited agency regarding the objectives, scope of work, and product or deliverables of the nonaudit services, before performing the nonaudit services. The IPA should also document an understanding with management that management is responsible for the substantive outcomes of the work. Safeguard (3) requires the IPA to preclude personnel who provided the nonaudit services from planning, conducting, or reviewing audit work related to the nonaudit services. (There is an exemption from this safeguard when the nonaudit services are the preparation of a trial balance, draft financial statements, and notes from appropriate books and records that balance, per Question 46 of the GAO, *Government Auditing Standards Answers to Independence Standard Questions*). Safeguard (4) precludes the IPA from reducing the scope and extent of the audit work beyond the level that would be appropriate if the nonaudit work was performed by another unrelated party. Safeguard (5) requires the IPA's quality control system for compliance with independence requirements to include policies and procedures to assure consideration of the effect on the ongoing, planned, and future audits when deciding whether to provide nonaudit services and a requirement to have the understanding with management of the audited agency documented. The understanding should be communicated to management in writing and can be included in the engagement letter. Documentation must specify management's responsibility for the nonaudit services, management's qualifications to conduct the required oversight, and that management's responsibilities were performed. Safeguard (6) requires that in cases where nonaudit services by their nature

impair the audit organization's ability to meet either or both of the overarching principles for certain types of audit work, the audit organization should communicate to management of the audited agency, before performing the nonaudit services, that the audit organization would not be able to perform subsequent audit work related to the subject matter of the nonaudit services. Safeguard (7) requires that for audits selected in the peer review, all related nonaudit services should be identified to the audit organization's peer reviewer and the related safeguard documentation made available for peer review. See GAGAS (2007) Paragraph 3.30 for the updated version of these safeguards.

(i) Basic accounting services that **may** be allowed: (a) preparing draft financial statements based on management's chart of accounts and trial balance and any adjusting, correcting, and closing entries that have been approved by management; preparing draft notes to the financial statements based on information determined and approved by management; (b) preparing a trial balance based on management's chart of accounts; (c) Converting cash-based financial statements to accrual-based financial statements, as long as management is in the position to make informed judgments to review, approve, and take responsibility for the appropriateness of the conversion; (d) maintaining depreciation schedules for which management has determined the method of depreciation, rate of depreciation, and salvage value of the asset; and/or (e) proposing adjusting and correcting entries that are identified during the audit so long as management makes the decision on accepting the entries.

(ii) Payroll services that **may** be allowed are: (a) computing pay amounts for the agency's employees based on agency maintained and approved time records, salaries or pay rates, and deductions from pay; (b) generating unsigned payroll checks; and (c) transmitting client approved payroll to a financial institution provided management has approved the transmission and limited the financial institution to make payments only to previously approved individuals.

(iii) Preparing routine tax filings in accordance with federal tax laws and rules and regulations **may** be allowed.

(iv) Human resource services that **may** be allowed to assist management in its evaluation of potential candidates are limited to activities such as: (a) serving on an evaluation panel to review applications; and (b) interviewing candidates to provide input to management in arriving at a list of best qualified applicants to be provided to management.

(v) Providing informa-

tion technology services **may** be allowed if limited to services such as advising on system design, system installation, and system security, if management acknowledges responsibility for the design, installation, and internal control over the agency's system and does not rely on the auditor's work as the primary basis for determining: (a) whether to implement a new system; (b) the adequacy of the new system design; (c) the adequacy of major design changes to an existing system; or (d) the adequacy of the system to comply with regulatory or other requirements.

(vi) Providing appraisal or valuation services **may** be allowed if limited to services such as: (a) reviewing the work of the agency or a specialist employed by the agency where the agency or specialist provides the primary support for the balances recorded in financial statements or other information that will be audited; or (b) valuing an agency's pension, other post-employment benefits, or similar liabilities provided management has determined and taken responsibility for all significant assumptions and data.

(vii) Contracts for gathering and reporting unverified external or third-party data to aid legislative and administrative decision-making **may** be allowed.

(viii) Services advising an agency regarding its performance of internal control self-assessments **may** be allowed.

(ix) Services assisting a legislative body by developing questions for use at a hearing **may** be allowed.

(ix) Preparing an entity's indirect cost proposal or cost allocation plan provided that the amounts are not material to the financial statements and management assumes responsibility for all significant assumptions and data. See Paragraph 3.28 of the 2007 Revision for the corresponding list of nonaudit services that would not impair independence if the safeguards are implemented.

(3) In accordance with Section 12-6-12, NMSA 1978, the agency and IPA shall not enter into any financial, special audit or any other nonaudit service contract without the **prior written approval** of the state auditor. The contract fee, start and completion date and scope of services to be performed should be included when submitting nonaudit service contracts to the state auditor for approval. The agency and IPA must provide the state auditor with a copy of any report generated.

I. The state auditor will approve progress and final payments as follows:

(1) Section 12-6-14, NMSA 1978 (Contract Audits) also provides that "no

payment of public funds may be made to an independent auditor unless a contract is entered into and approved."

(2) Section 12-6-14, NMSA 1978 (Contract Audits) provides that the state auditor may approve progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to 79% **do not** require state auditor approval, providing the agency certifies receipt of services. **The agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed** prior to making the 79% payment. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Progress payments from 80% to 90% **do** require state auditor approval after being approved by the agency.

(4) The state auditor may allow only the first 50% of progress payments to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC.

(5) Section 12-6-14, NMSA 1978 (Contract Audits), provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has stated, in writing, that the audit has been conducted in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be stated in the letter accompanying the release of the report to the agency. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 B, NMSA 1978, and this rule and will be reported as an audit finding of the agency. Violation of this statute may subject the auditor to removal from the list of approved auditors.

J. Financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts **rounded to the nearest dollar**.

(2) **The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records**, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the deadline imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA must provide the adjusting

entries to the agency reconciling the report to the books.

(4) If the IPA prepared the financial statements, in conformance with Subsection H 2.2.2.8 of NMAC for management's review and approval, including documenting the safeguards as required by GAGAS 3.17 [or GAGAS (2007) 3.30], the fact that the auditor prepared the financial statements must be disclosed in the concluding paragraphs of the audit findings and recommendations section of the audit report. The auditor must determine whether a related finding is required. The SAS 112 appendix lists circumstances that may be a control deficiency, significant deficiency, or a material weakness. Employees or management who lack the qualifications and training to apply generally accepted accounting principles in recording the entity's financial transactions or preparing its financial statements is one set of circumstances in the SAS 112 appendix list that should be considered in this determination. SAS Paragraph 18 lists insufficient expertise in selecting and applying accounting principles as "at least a significant deficiency in internal control."

K. Working papers (SAS 103 must be implemented in FY 07):

(1) The working papers are to be retained for a minimum of five years (per SAS 103 Paragraph 32) from the date shown on the opinion letter of the audit report, or longer if requested by the federal oversight or cognizant agency or the state auditor. The state auditor shall have access to the working papers at the discretion of the state auditor.

(2) When requested by the state auditor, all working papers or clear legible copies shall be delivered to the state auditor.

(3) The working papers of a predecessor IPA are to be made available to a successor IPA in accordance with SAS No. 84. Any costs incurred will be borne by the requestor. If the successor IPA finds that the predecessor IPA's working papers do not comply with applicable auditing standards and this rule, or do not support financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or

limit the issuance of future audit contracts; and/or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountancy board for possible licensure action.

L. Auditor communication:

(1) The *Government Auditing Standards 2003 Revision* Sections 4.6 through 4.13 provide guidance regarding auditor communication requirements in financial audits performed in accordance with GAGAS (see Sections 4.05 to 4.08 of the 2007 revision for the related discussion). GAGAS broadens the parties with whom auditors must communicate during the planning stages of the audit. Section 4.6 states "Auditors should communicate information regarding the nature, timing, and extend of planned testing and reporting and the level of assurance provided to **officials of the audited entity and to the individuals contracting for or requesting the audit.**" Auditors should specifically communicate this information during the planning stages of a financial audit:

(a) any potential restriction of the auditors' reports;

(b) the nature of any additional testing of compliance and internal control required by laws and regulations or otherwise requested like:

(i) planned testing of compliance with applicable state and federal laws and regulations shown in Subsections H and I of 2.2.2.10 NMAC;

(ii) planned tests of compliance with laws, regulations, and internal control related to single audit requirements that exceed the minimum GAGAS requirements (GAGAS 4.12); or

(iii) any agreed upon procedures for example the HUD requirement for a SAS 29 opinion on the FDS schedule required in Subparagraph (a) of Paragraph (5) of Subsection B of 2.2.2.12 NMAC.

(c) The communication should explain whether the auditors are planning on providing opinions on compliance with laws and regulations and internal control over financial reporting. Such tests are not usually sufficient in scope to opine on compliance or internal control over financial reporting, but contribute to the evidence supporting the auditors' opinion on the financial statements.

(d) To fulfill these communication requirements, IPAs shall prepare a **written and dated engagement letter** during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a photocopy of the signed letter as part of the audit documentation (GAGAS 4.07). The appropriate officials of the agency may include:

(i) the head of the audited entity;

(ii) the audit committee or board of directors or equivalent oversight body;

(iii) the individual who possesses a sufficient level of authority and responsibility for the financial reporting process, such as the chief financial officer. (GAGAS 4.08)

(e) In situations where auditors are performing the audit under a contract with a party other than the officials of the audited entity, or pursuant to a third party request, auditors should also communicate with the individuals contracting for or requesting the audit, such as contracting officials or members or staff of legislative committees. (GAGAS 4.09)

(f) The 2007 Revision of the Yellow Book, Paragraph 4.07, acknowledges the new AICPA standards as well as GAGAS standards concerning tests of internal control over financial reporting and compliance, and the resulting reporting. SAS 112 is effective for periods ending on or after December 15, 2006, (FY07), with earlier application permitted. It provides guidance on evaluating the severity of control deficiencies identified in an audit and defines the terms "significant deficiency" and "material weakness." **SAS 112 requires the auditor to communicate, in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit.** In addition, Section 2.2.2.10.I.(8) below requires the auditor to include in his report any deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse per Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007), that do not rise to the level of significant deficiencies or material weaknesses under SAS 112.

(2) Within 10 days of the entrance conference, the IPA shall submit to the state auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates, which will facilitate meeting the audit due date in Subsection A of 2.2.2.9 NMAC. A separate engagement letter and list of client prepared documents is required for each fiscal year audited.

(3) All communication with management and the agency oversight officials regarding any instances of noncompliance and/or internal control weaknesses must be communicated in writing. The auditor should obtain **responses in writing** to facilitate effective communication. Any instances of noncompliance and/or internal control weaknesses must be included as an audit finding per Section 12-6-5, NMSA 1978. Separate management letter comments shall **not** be issued as a substitute for

such findings.

(4) The Financial control division of the department of finance and administration mandates that each state agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems. The financial control division of the department of finance administration must be sent a photocopy of the letter.

(5) SAS 114, *Auditor's Communication With Those Charged With Governance*, is effective for periods beginning on or after December 15, 2006 (FY08), and supersedes SAS 61, *Communication With Audit Committees*, as amended.

M. Amendment of any of the contract provisions will be made upon forms used in the normal course of business by the agency. **Audit report due dates are not subject to amendment.** Work performed beyond the original proposed work, such as preparation of: financial statements, for management's review and approval; supporting schedules; or special procedures, shall be allowed only in compliance with the auditor independence requirements of Subsection H of 2.2.2.8 NMAC and will be negotiated and compensated only upon amendment of the original contract if they were not specifically included in the original contract. **All contract amendments must be approved by the state auditor.** The audit engagement letter shall not be interpreted as amending the contract. No fee contingencies will be included in the engagement letter. The original contract and the contract amendments approved by the state auditor constitute the entire agreement. Any amendments to the contract must be in compliance with the New Mexico Procurement Code, Sections 13-1-1 to 13-1-199, NMSA 1978.

N. The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by him [con-

sistent with the October 6, 1993, stipulated order *Vigil v. King* No. SF 92-1487(C)]. The notice of termination of the contract will be in writing.
[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 4-16-07]

2.2.2.9 REPORT DUE DATES:

A. The auditor shall deliver the annual financial audit report to the state auditor on or before the date specified in the audit contract.

(1) The audit report due dates are as follows:

(a) regional education cooperatives, cooperative educational services and independent housing authorities **September 30**;

(b) hospitals and special hospital districts **October 15**;

(c) school districts, counties, and higher education **November 15**;

(d) municipalities, special districts, and local workforce investment boards **December 1**;

(e) councils of governments **December 15**;

(f) state agency reports are due no later than 60 days after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit; the financial control division mandates that each agency, with the help of its independent auditor, identify a schedule of audit deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time; the sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline **cannot extend beyond December 15**; (Section 12-6-3 C, NMSA 1978);

(g) agencies with a fiscal year-end other than June 30 must submit the audit report no more than **5 months after the fiscal year-end**; and

(h) separate audit reports (if applicable) for component units (e.g., housing authorities, charter schools, hospitals, foundations, etc.) are due the **same date the primary government's audit report is due**.

(2) Audit reports for agencies that have submitted auditor recommendations after the due dates specified above, will be due 30 days after the auditor recommendation has been approved by the state auditor.

(3) If an audit report is not delivered on time to the state auditor, the auditor must include this instance of noncompliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. The

finding should be reported as an instance of significant deficiency in the operation of internal control in the agency's internal controls over financial reporting per the SAS 112 Appendix.

(4) The report should be submitted with the following: a copy of the dated signed engagement letter if not previously submitted; a copy of the signed management representation letter; a list of the passed adjustments, clearly labeled "passed adjustments" (or memo stating there are none); and a copy of the completed state auditor preliminary review guide (available at www.saonm.org). The checklist should reference applicable page numbers in the audit report and be signed by the person completing the review guide. A report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed engagement letter (if not previously submitted), a copy of the signed management representation letter, the passed adjustments, and the completed preliminary review guide are also submitted to the office. If a due date falls on a weekend or holiday, the audit report is due the following workday. If the report is mailed to the state auditor, it should be post marked no later than the due date to be considered filed timely. The state auditor will grant no extensions of time to deliver the audit reports.

(5) SAS No. 103 Paragraph 23 states that "the auditor's report should not be dated earlier than the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion. Among other things, sufficient appropriate audit evidence includes evidence that the audit documentation has been reviewed and that the entity's financial statements, including disclosures, have been prepared and that management has asserted that it has taken responsibility for them." SAS No. 113 Paragraph 14 requires the management representation letter to be dated the same date as the independent auditor's report.

(6) **As soon as the auditor becomes aware** that an agency's financial records are incomplete or require adjustment that will make the audit report late, the auditor shall notify the state auditor of the situation in writing. The office will then notify the appropriate oversight agency in writing. At the time the audit report is due, if the agency's financial records are still incomplete or require significant adjustment, the IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due

date, to assure an unqualified opinion.

B. As in any contract, both parties can and are encouraged to negotiate a delivery date prior to the regulated due date specified in Subsection A of 2.2.2.9 NMAC. No delivery date, however, may exceed the "no later than" due date specified in Subsection A of 2.2.2.9 NMAC.

C. Delivery and release of the audit report:

(1) All audit reports must be paginated. The IPA shall deliver to the state auditor one of the following **finalized** versions of the report: a hard copy; an e-mail copy; or the required number of copies indicated in the audit contract on or before the delivery due date. Unfinished reports or excessively deficient reports will not satisfy this requirement. Such reports will be returned and notice will be given to the New Mexico public accountancy board for possible licensure action. The IPA should review the report using the preliminary review guide available on the website prior to submitting the report to the office. All questions on the guide should be answered, and the reviewer should sign the guide.

(2) Along with the audit report the IPA shall submit to the state auditor a copy of the signed management representation letter; the passed audit adjustments (or memo stating there are none); and the signed and completed preliminary review guide referencing appropriate report page numbers. The preliminary review guide form is available at www.saonm.org. Once all deficiency comments have been corrected by the IPA and the state auditor indicates it is O.K. to print the report, the required number of hardcopies specified in the audit contract must be provided to the state auditor.

(3) SAS No. 103 Paragraph 23 requires the independent auditor's report to be dated no earlier than when the auditor has obtained sufficient appropriate audit evidence to support the opinion, including evidence that the audit documentation has been reviewed and that the entity's financial statements, including disclosures, have been prepared and that management has asserted that it has taken responsibility for them. SAS No. 113 Paragraph 14 requires the management representation letter to be dated the same date as the independent auditor's report.

(4) The IPA shall deliver to the agency, the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter." Release of the audit report to the agency prior to it being officially released by the state auditor will result in an audit finding. Every member of the agency's governing authority shall receive a copy of the audit

report.

D. The agency and IPA may agree to a contract provision that unjustified failure to meet delivery requirements by either party to the contract may result in liability for a specified amount of liquidated damages from the offending party.

E. IPAs are encouraged to deliver completed audit reports before the due date to facilitate the review process performed by the state auditor.

[2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 4-16-07]

2.2.2.10 GENERAL CRITERIA:

A. Audit scope:

(1) The audit shall cover the whole reporting agency, the primary government and any component units of the primary government.

(a) Entities must be included as component units within the financial statements of the primary government, if the primary government is financially accountable for the entity (GASB 14 Paragraph 10) or if the nature and significance of the entity to the primary government warrants inclusion (GASB 39 Paragraphs 5 and 6). The primary government and/or its auditors must determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government, as defined by GASB Statements No. 14 and No. 39. The flowchart at GASB 14 Paragraph 132 is helpful. All agencies that meet the criteria of GASB 14 or GASB 39 to be a component unit of the primary government **must be included with the audited financial statements of the primary government by discrete presentation unless otherwise approved by the state auditor**. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government (GASB 14 Paragraphs 44 through 50). Exceptions may occur when an agency requires presentation other than discrete. An exemption must be requested by the agency, in writing, from the state auditor in order to present a component unit as other than a discrete component unit. The request for exemption must include evidence supporting the request. The approval of the state auditor for the exemption is required prior to issuing the report. **This exemption must be requested annually.**

(b) If a primary government has no component units, that fact should be disclosed in the summary of significant accounting policies description of the reporting entity. If the primary government has component units that are not included in the financial statement due to materiality that fact must be disclosed. However, if the

primary government is a school, college, or university, Section 6-5A-1 NMSA 1978, requires all 501(c)3 component unit organizations with a gross annual income in excess of \$100,000, to receive an audit. Such component units cannot be excluded from the audit based on the "materiality" criterion.

(c) **The state auditor requires the component unit(s) to be audited by the same auditor who audits the primary government.** Requests for exemption from this requirement must be submitted **by the agency** to the state auditor in writing. **This exemption must be requested annually.** If the request to use a different auditor for the component unit is approved, the following requirements must be met:

(i) the primary auditor must agree to use the information from the work of the component unit auditor;

(ii) the component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants;

(iii) the bid and auditor selection processes must comply with the requirements of this rule;

(iv) the office of the state auditor standard contract form must be used;

(v) all component unit findings must be disclosed in the primary government's audit report; and

(vi) any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(d) The level of planning materiality required by the state auditor **for component units** is at the **individual fund level**. College and university component units have a different materiality level. See Paragraph (3) of Subsection E of 2.2.2.12 NMAC.

(e) Supplemental information (SI) pertaining to component units included in the scope of the audit and therefore the auditor opinion (as allowed by SAS 98) are:

(i) component unit fund financial statements and related combining statements if separately issued financial statements of the component units are not available (AAG-SLV 3.20); and

(ii) individual fund budgetary comparison schedules if separately issued financial statements are not available, when a legally adopted budget exists for a fund; the office interprets a "legally adopted budget" to exist any time the agency prepares a budget in every case where an entity receives federal funds, state funds, or any other "appropriated" funds.

(2) Audits of state and local governmental agencies shall be comprised of a financial and compliance audit of the financial statements and schedules shown below.

(a) The level of planning materiality required by the state auditor is at the **individual fund level**. The state auditor requires that the budgetary comparison statements be audited and be included as part of the basic financial statements whenever possible and consistent with GASB 34 footnote 53 and AAG-SLV 11.13. The scope of the audit includes the following statements and schedules which the auditor is required to audit and give an opinion on:

(b) The basic financial statements consisting of:

(i) the government-wide financial statements;

(ii) fund financial statements;

(iii) budgetary comparison statements (for **only** the general fund and major special revenue funds when the budget information is available on the same fund structure basis as the GAAP fund structure); and

(iv) notes to the financial statements.

(c) The auditor must audit the following required supplemental information, if applicable, and include it in the auditor's opinion (AAG-SLV 14.53). RSI budgetary comparison schedules for the general fund and major special revenue fund data presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds (**GASB Statement No. 41, Budgetary Comparison Schedules-Perspective Differences an amendment of GASB Statement No. 34**).

(d) The auditor must audit the following supplemental information, if applicable, and include it in the auditor's opinion:

(i) component unit fund financial statements and related combining statements (if there are no separately issued financial statements on the component unit per AAG-SLV 3.20);

(ii) combining financial statements; and

(iii) individual fund budgetary comparison statements for remaining funds that have a legally adopted budget (**including major funds other than general fund and special revenue funds, nonmajor governmental funds, and proprietary funds**) that did not appear as basic financial statement budgetary comparisons for the general fund or major special revenue funds, or as required supplemental information (RSI) as described above.

(e) The auditor should apply certain limited procedures to the following RSI (if applicable) and report deficiencies in, or the omission of, required information in accordance with the requirements of SAS AU 558.06:

(i) the management dis-

cussion and analysis (MD&A);

(ii) RSI data required by GASB Statements 25 and 27 regarding pension plans and administered by defined benefit pension plans;

(iii) RSI schedules required by GASB 43 regarding postemployment benefit plans other than pension plans; and

(iv) schedules derived from asset management systems (GASB 34 Paragraphs 132 and 133).

B. Legislation regarding budget adjustment requests (BARs) prevents or restricts many budget transfers or increases. The IPA shall satisfy himself that these restrictions are not being violated by direct payment or other unauthorized transfers.

C. Legislation can designate a fund as reverting or non-reverting. The IPA must review the law which appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation must be reverted, and to whom. The law will also indicate the deadline for the required reversion. Appropriate audit procedures must be performed to determine compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes should fully disclose the reverting versus non-reverting nature of an appropriation. The financial statements must disclose the specific legislation that makes a fund or appropriation non-reverting. If non-reverting funds are commingled with reverting appropriations, the notes to the financial statements must disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions see Subsection A of 2.2.2.12 NMAC and the DFA white paper "calculating reversions to the state general fund," and "basis of accounting-modified accrual and the budgetary basis."

D. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) Generally Accepted **Government Auditing Standards** (GAGAS) issued by the U.S. general accounting office, latest effective edition and amendments;

(2) **Codification of Statements on Auditing Standards** (SAS) issued by the AICPA, latest edition (see Appendix D);

(3) **OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations (June 2003 revision) which raised the threshold for Single Audit from \$300,000 to \$500,000 of federal expenditures;**

(4) **AICPA Audit Guide, Governmental Auditing Standards and Circular A-133 Audits**, (latest edition);

(5) **AICPA Audit and Accounting Guide, State and Local Governments** (latest edition);

(6) 2.2.2 NMAC, **Requirements for Contracting and Conducting Audits of Agencies**, latest edition.

E. The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the **Codification of Governmental Accounting and Financial Reporting Standards (GASB)**, latest edition (see Appendix C). Auditors shall follow interpretations, technical bulletins, concept statements issued by GASB and other applicable pronouncements.

F. IPAs who perform government audits are expected to maintain professional libraries with current editions of the above publications. The audit guides published by Practitioners Publishing Company (PPC) are practice aides only and are not considered to be authoritative.

G. State compliance: An IPA shall identify significant state statutes and rules and regulations applicable to the governmental agency under audit and perform tests of compliance. In addition to those significant state statutes, rules and regulations identified by the IPA, the following state statutes and constitutional provisions will be tested:

(1) Procurement Code (13-1-1 to 13-1-199 NMSA 1978);

(2) Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978);

(3) Personnel Act (10-9-1 to 10-9-25 NMSA 1978);

(4) Public Money Act (6-10-1 to 6-10-63 NMSA 1978);

(5) Public School Finance (22-8-1 to 22-8-42 NMSA 1978);

(6) Investment of Public Money (6-8-1 to 6-8-21 NMSA 1978);

(7) Public Employees Retirement Act (10-11-1 to 10-11-38 NMSA 1978) [auditors should test to ensure **100% of payroll is reported to PERA**; this is a new PERA requirement; PERA membership is mandatory under the PERA Act, unless membership is specifically excluded by statute for: seasonal employees; student employees; certain elected officials who exercise an option to exclude themselves from PERA membership; and employees that participate in a private retirement program paid for by their government employer, that are ERA retirees and PERA retirees who return to work under NMSA 1978, Section 10-11-8, NMSA 1978, Section 10-

11-3 (2005)];

(8) Educational Retirement Act (22-11-1 to 22-11-45 NMSA 1978);

(9) Sale of Public Property (13-6-1 to 13-6-4 NMSA 1978);

(10) Anti-Donation Clause (NM Constitution Article IX, Section 14);

(11) Special, Deficiency, and Specific Appropriations (appropriation laws applicable for the year under audit);

(12) Budget Compliance (6-3-1 to 6-3-25 NMSA 1978);

(13) Lease Purchase Agreements (6-6-11 to 6-6-12, Montano v. Gabaldon, 108 NM 94, 766 P.2d 1328, 1989);

(14) 2.20.1.1 to 2.20.1.18 NMAC, **Accounting and Control of Fixed Assets of State Government** (updated for GASB 34 as applicable);

(15) 2.2.2 NMAC, **Requirements for Contracting and Conducting Audits of Agencies**;

(16) Article IX of the State Constitution limits on indebtedness;

(17) Governmental Conduct Act (10-16-1 to 10-16-18 NMSA 1978);

(18) Records, Legal Notices and Other Obsolete County Records (14-1-8 NMSA 1978); and

(19) Laws of 2006, Chapter 109, Section 3, Subsection L states, "Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9.1 NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2006 may be expended for payment of agency-issued credit card invoices."

H. Federal compliance:

(1) The following government pronouncements establish requirements and give guidance for "Yellow Book" and/or single audits.

(a) **Single Audit Act Amendments of 1996**; (Public Law 104-156);

(b) **Generally Accepted Government Auditing Standards** (GAGAS) issued by the U.S. general accounting office, latest effective edition and amendments;

(c) OMB Circular A-21, **Cost Principles for Educational Institutions**, as revised May 10, 2004;

(d) OMB Circular A-87, **Cost Principles for State, Local, and Indian Tribal Governments**, published May 17, 1995 and amended February 29, 1997;

(e) OMB Circular A-102, **Grants and Cooperative Agreements with State and Local Governments**, as revised October 9, 1994 and amended August 29, 1997;

(f) OMB Circular A-110,

Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, as revised November 19, 1993 and further amended September 30, 1999;

(g) OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, (June 27, 2003 revision);

(h) OMB Circular A-133, *Compliance Supplement*, latest edition; and

(i) OMB *Catalog of Federal Domestic Assistance* (CFDA), latest edition;

(2) IRS employee income tax compliance issues - noncompliance with these IRS requirements requires a current year audit finding.

(a) Employee fringe benefits are presumed by the IRS to be income to the employee unless they are specifically excluded from income by the tax code. Any employee fringe benefits not excluded from income by the tax code must be reported on the employee's W-2. Examples of such fringe benefits could be: meal allowances paid to employees for meals away from home when overnight travel is not involved; discounted housing like school district teacherages, dues for membership in clubs organized for business, pleasure, recreation, or other social purpose (except Rotary and Kiwanis Club); cash and non-cash awards, and employee insurance benefits for dependents who do not meet the IRS definition of a "dependent." Personal use of a government agency vehicle is always taxable income to the employee unless the vehicle is a qualified non-personal use vehicle [Rev. 1.274-5T(k)(3)] provided to the employee as a "working condition fringe benefit."

(i) Examples of qualified non-personal use vehicles are: clearly marked police and fire vehicles; unmarked law enforcement vehicles (officer must be authorized to carry a firearm and have arrest authority); ambulance or hearse; vehicle with gross weight over 14,000 lbs.; 20 passenger bus and school bus; tractor and other farm equipment; and delivery truck with driver seating only.

(ii) The value of commuting and other personal use of a "non-qualified vehicle" must be included on the employee's W-2. There are three rules the IRS allows to be used for valuing personal use of an employer's vehicle: automobile lease valuation rule; cents-per-mile rule; and the commuting rule (\$3 per day). For more detailed information regarding valuation of personal use of vehicles see IRS Pub. 15-B, Reg 1.61-21.

(b) Personal service contractors (1099 employees) who are retired employees of the governmental agency they

worked for must be able to meet the IRS tests to qualify as contract labor. In the event a personal services contractor is in substance an employee, the governmental agency could be liable for the employee's share of FICA and employer FICA match on the contract payments. Public employees retirement association (PERA) could expect excess retirement payments back. (Section 10-11-8(C) NMSA 1978)

(c) City or county "volunteer firefighters" who are reimbursed when they provide firefighting services on state or federal land have been determined by the IRS to be employees of the respective city or county.

(d) The social security administration now requires all state and local government employers to disclose to all new employees the fact that their job is not covered by social security if they were hired for a position not covered by social security. These employees must sign a statement that they are aware of a possible reduction in their future social security benefit entitlement. See the website at www.socialsecurity.gov/form1945 for the required form and instructions.

(e) For more information regarding these and other IRS issues please contact the federal state and local government specialist with the IRS in Las Cruces, NM at 505-527-6900 ext. 232, or in Albuquerque, NM at 505-837-5554.

I. Audit findings:

(1) The 2007 Revision of the Yellow Book states in Paragraph 5.10 that "auditors should report, as applicable to the objectives of the audit, and based upon the audit work performed, (1) significant deficiencies in internal control, identifying those considered to be material weaknesses; (2) all instances of fraud and illegal acts unless inconsequential; and (3) violations of provisions of contracts or grant agreements and abuse that could have a material effect on the financial statements." "A **control deficiency** exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis" (SAS 112 Paragraph 5). "The significance of a control deficiency depends on the potential for a misstatement, not on whether one actually has occurred" (SAS 112 Paragraph 9). "A **significant deficiency** is a deficiency in internal control, or a combination of deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected. A **material**

weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected" [GAGAS 5.11 (2007) and SAS 112 Paragraph 6]. "A misstatement is **inconsequential** if a reasonable person would conclude, after considering the possibility of further undetected misstatements, that the misstatement, either individually or when aggregated with other misstatements would clearly be immaterial to the financial statements. If a reasonable person would not reach such a conclusion regarding a particular misstatement, that misstatement is more than inconsequential." Qualitative and quantitative factors should also be taken into consideration in determining whether a misstatement is inconsequential (SAS 112 Paragraph 7 and 8). Auditors should include all significant deficiencies in the auditors' report on internal control over financial reporting and indicate those that represent material weaknesses. [GAGAS 5.13 (2007)].

(a) Per SAS 112 Paragraph 9, "The auditor must evaluate identified control deficiencies and determine whether they individually or in combination, are significant deficiencies or material weaknesses." Evaluation guidance is provided by SAS 112 Paragraphs 9 through 19. The SAS 112 Appendix lists examples of circumstances that may be control deficiencies, significant deficiencies, or material weaknesses. SAS 112 Paragraph 18 describes areas in which deficiencies are ordinarily at least significant deficiencies in internal controls. SAS 112 Paragraph 19 describes indicators of control deficiencies that "should be regarded as at least a significant deficiency and are a strong indicator of a material weakness in internal control."

(b) Section 12-6-5, NMSA 1978 (Reports of Audits) states each report shall set out in detail, in a separate section, **any** violation of law or good accounting practices found by the audit or examination. **Therefore, all such findings must be included in the annual financial audit report.**

(i) All deficiencies in internal control must be reported.

(ii) All instances of fraud or illegal acts must be reported.

(iii) All violations of provisions of contracts or grant agreements and abuse must be reported.

(2) *Generally Accepted Government Auditing Standards*, Section 4.09 (2007) requires the "auditors to evaluate whether the audited entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements. When

planning the audit, auditors should ask management of the audited entity to identify previous audits, attestation engagements, and other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented. Auditors should use this information in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives." In addition to this standard, the IPA will report the status of all prior-year findings by reference number (i.e., 05-1, 05-2, 06-1, 07-1) and descriptive title in the audit report as being resolved or repeated in the current-year audit report. Findings from special audits performed by the state auditor must be included in the findings of the annual financial and compliance audits of the related fiscal year.

(3) Current-year:

(a) All current-year audit findings shall have a reference number and a short title that identifies the finding (i.e., 06-1, 06-2, 07-1).

(b) Written audit findings should be prepared and submitted to the agency management as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. **Findings are not subject to negotiation.** The agency should also prepare a corrective action plan as required by GAGAS (2007) 5.32. The agency shall respond, in writing, to the IPA's audit findings within 10 workdays. Responses to the audit findings should be included in the audit report. Lack of agency responses within the 10 days does not warrant delay of the audit. If the responses are not received, indicate that they were not received and the reason why after each finding.

(c) Each audit finding (including unresolved prior-year findings) shall specifically state and describe the following:

(i) condition (quantify where possible-number of instances, dollar amounts, etc.);

(ii) criteria (which must include specific reference to the law, regulation, or other guidance that was violated);

(iii) effect;

(iv) cause;

(v) recommendation addressing each condition and cause; and

(vi) agency response (i.e., agency comments and a specific corrective action plan).

(4) Failure to file the audit report by the due date set in 2.2.2.9 NMAC is considered noncompliance with this rule and shall be a current-year audit finding. The finding should be reported as an instance of noncompliance in the agency's internal con-

trols over financial reporting.

(5) If an agency has entered into any professional services contract with an IPA without written state auditor approval, this should be reported as a finding of non-compliance with Subsection H of 2.2.2.8 NMAC.

(6) Component unit audit findings must be reported in the primary government's financial audit report.

(7) A release of the audit report, by the IPA or agency, prior to being officially released by the state auditor is a violation of state statute (Section 12-6-5, NMSA 1978) and will require an additional finding in the audit report.

(8) When auditors detect deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse that are required to be reported by Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007), but do not rise to the level of significant deficiencies or material weaknesses under SAS 112, the auditor must communicate those deficiencies, in written findings, and refer to those findings in the report on internal control in the second paragraph of the "compliance and other matters" section of the report. The paragraph should state "We noted certain matters that are required to be reported under *Government Auditing Standards January 2007 Revision* Paragraph 5.14 and 5.16, and Section 12-6-5, NMSA 1978, which are described in the accompanying schedule of findings and responses as findings 07-X and 07-Y." [Section 12-6-5, GAGAS 5.16 & 5.20 (2003), GAGAS 5.14 & 5.16 (2007) and the example report at www.saonm.org].

J. Exit conference and related confidentiality issues:

(1) The IPA must hold an exit conference with representatives of the agency's governing authority and top management including representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.) if applicable. If component unit representatives cannot attend the combined exit conference, a separate exit conference must be held with the component unit's governing authority and top management. The exit conference must be held in person, a telephone exit conference will not meet this requirement. The date of the conference(s) and the names and titles of personnel attending must be stated in a concluding paragraph of the audit findings and recommendations section of the audit report.

(2) The IPA shall deliver to the agency a draft audit report (stamped "Draft"), a list of the "passed audit adjustments," and a copy of all the adjusting entries at the exit conference. The draft audit report shall include the independent

auditor's report, a complete set of financial statements, notes to the financial statements, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on compliance and internal control required by government auditing standards and the Single Audit Act. The agency will have at least ten (10) workdays to review the draft audit report and respond to the IPA regarding any issues that need to be resolved prior to submitting the report to the State Auditor. The audit report shall be delivered to the state auditor on or before the due date specified in Subsection A of 2.2.2.9 NMAC, with copies of the signed management representation letter, the list of "passed audit adjustments," and the completed and signed preliminary review guide with page numbers referenced. **A report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed management representation letter, the passed adjustments, and the completed preliminary review guide are also submitted to the office.**

(3) **Neither the IPA nor agency personnel shall release any information to the public relating to the audit at the time of the exit conference or at any other time until the audit report becomes public record.** Agencies subject to the Open Meetings Act (act) who wish to have a quorum of the governing board present at the exit conference will have to schedule the exit conference during a closed meeting in compliance with the act in order to avoid disclosing audit information that is not yet public record, in a public meeting.

(a) Pursuant to the Open Meetings Act (10-15-1 to 10-15-4 NMSA 1978), any closed meetings shall be held only after reasonable notice to the public.

(b) Section 12-6-5, NMSA 1978 (Reports of Audits) provides that an audit report does not become a public record, subject to public inspection, until ten business days after it is released by the state auditor to the agency audited.

(c) The attorney general's *Open Meetings Act Compliance Guide* states that if the agency being audited is governed by a public body subject to the Open Meetings Act and where discussion of the report occurs at an exit conference at which a quorum of the members of that body is present, such an exit conference **shall not** be open to the public in order to preserve the confidentiality of the information protected by Section 12-6-5, NMSA 1978.

(d) Once the audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required waiting period of ten business days has passed, the audit report **shall** be presented to a quorum of the governing author-

ity of the agency for approval at a public meeting.

(e) If the agency would like to waive the ten day waiting period required by Section 12-6-5, NMSA 1978, in order to make the agency audit report a public document immediately upon release by the state auditor, the agency should submit a written request to the state auditor to waive the ten day waiting period.

K. Possible violations of criminal statutes in connection with financial affairs:

(1) SAS 99 *Consideration of Fraud in a Financial Statement Audit*, is effective for fiscal periods beginning on or after December 15, 2002 (FY04). This SAS significantly changes what auditors must do in order to fulfill their responsibility to plan and perform the audit to provide reasonable assurance that the financial statements are free of material misstatement, whether caused by error or fraud (SAS AU Sec. 110.02). There are two types of misstatements of the financial statements, those caused by fraudulent financial reporting and those caused by misappropriation of assets. New procedures are required on every audit and auditors must:

(a) exercise an attitude of professional skepticism (a questioning mind and critical assessment of audit evidence) throughout the entire engagement;

(b) brainstorm as a team about how fraud could occur in the agency;

(c) obtain information needed to identify the risks of material misstatement due to fraud by:

(i) inquiring of management and others within the entity about the risks of fraud;

(ii) considering the results of the analytical procedures performed in planning the audit;

(iii) considering fraud risk factors: incentives/pressures to perpetrate fraud; opportunities to carry out the fraud; or attitudes/rationalizations to justify fraudulent actions;

(iv) considering other information including inherent risks at the individual account balance or class of transaction level;

(d) assess identified risks after taking into account an evaluation of the agency's programs and controls;

(e) respond to the risk assessment results;

(i) in the overall conduct of the audit;

(ii) in the nature, timing, and extent of the auditing procedures to be performed; and

(iii) by performing procedures addressing the risk due to fraud involving management override of controls;

(f) evaluate audit evidence;

(i) assess fraud risk throughout the audit;

(ii) at the end of the audit evaluate whether accumulated results of procedures affect the fraud risk assessment;

(iii) consider whether identified misstatements may be indicative of fraud, and if so evaluate their implications;

(g) communicate about fraud to management, the audit committee, and others (SAS 99 Paragraph 79 through 82 and Paragraph (3) of Subsection K of 2.2.2.10 NMAC; and

(h) document the auditor's consideration of fraud.

(2) GAGAS (2007) paragraphs 4.10 to 4.13 states that "auditors should design the audit to provide reasonable assurance of detecting misstatements that result from violations of provisions of contracts or grant agreements and could have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives. If specific information comes to the auditors' attention that provides evidence concerning the existence of possible violations of provisions of contracts or grant agreements that could have a material indirect effect on the financial statements, the auditors should apply audit procedures specifically directed to ascertaining whether such violations have occurred. When the auditors conclude that a violation of provisions of contracts or grant agreements has or is likely to have occurred, they should determine the effect on the financial statements as well as the implications for other aspects of the audit. Abuse, involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement. If during the course of the audit, auditors become aware of abuse that could be quantitatively or qualitatively material to the financial statements, auditors should apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives. After performing additional work, auditors may discover that he abuse represents potential fraud or illegal acts. Because the determination of abuse is subjective, auditors are not required to provide reasonable assurance of detecting abuse."

(3) Every agency and IPA, pur-

suant to Section 12-6-6, NMSA 1978 (Criminal Violations), shall notify the state auditor immediately, in writing, upon discovery of any possible criminal statute violation in connection with its financial affairs. The notification shall include an estimate of the dollar amount involved, and a complete description of the violation, including names of persons involved and any action taken or planned. The state auditor will determine whether a special audit is warranted based upon the **written** information provided. If warranted, the state auditor will conduct the special audit. The IPA shall not enter into **any financial or special** audit contract unless selected through a process consistent with the Procurement Code and subject to the **prior written approval** of the state auditor. A copy of the report must be provided to the state auditor.

(4) Section 12-6-6, NMSA 1978, states that the state auditor shall immediately report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation.

L. Compensated absences:

(1) Vacation pay and other compensated absences should be computed in accordance with the requirements of GASB Statement No. 16, *Accounting for Compensated Absences*, and be reported in the financial statements.

(2) The statement of net assets, governmental activities column should report both the current (**amount expected to be paid out over the next year**) and long-term portions of the compensated absence liability because the government-wide financial statements report all liabilities. Per GASB 34 Paragraph 31 "liabilities whose average maturities are greater than one year should be reported in two components—the amount **due within one year** and the amount due in more than one year."

(3) A liability for compensated absences should not be reported in the governmental fund balance sheet unless it was actually due and payable at year-end for payments due to retired or terminated employees, but not paid for until shortly after year-end.

(4) The notes to the financial statements should disclose the accounting treatment applied to compensated absences.

(5) GASB 34 Paragraph 119 requires the following disclosures of the agency's long-term compensated absences (and other long term liabilities) presented in the statement of net assets: beginning and end-of-year balances; increases and decreases shown separately; the portion due within one year; and which governmental funds typically have been used to liquidate the liabilities in prior years. GASB 38 Paragraph 18 requires similar detailed disclosure for the short-term portion of the

compensated absences.

M. Special revenue funds authority: The authority for creation of special revenue funds must be shown in the audit report (i.e., cite the statute number, executive order, resolution number, or other specific authority) in the divider page or notes to the financial statements.

N. Public monies:

(1) Definition - All monies coming into all agencies i.e., vending machines, fees for photocopies, telephone charges, etc., shall be considered public monies and be accounted for as such. For state agencies, all revenues generated must be authorized by legislation. (Section 6-4-2, NMSA 1978 and MAPS Section 3.3)

(2) Compliance Issues - The auditor should test for compliance with:

(a) the requirements of Sections 6-10-10A and B, NMSA 1978, that county and municipal treasurers deposit money in banks, savings and loan association or credit unions located in their respective counties; and

(b) the requirements of Section 6-10-17, NMSA 1978, that the public official or public board has received a joint safe keeping receipt for pledged collateral from the custodial bank for the collateral delivered by the depository institution.

(3) List of individual deposit accounts and investment accounts required by Section 12-6-5, NMSA 1978; each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union) or statewide human resources accounting and management reporting system (SHARE) fund number;

(b) account name;

(c) type of deposit or investment account (checking, savings, U.S. treasury, U.S. agencies, commercial paper, corporate bonds);

(d) account balance of deposits and investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date, as reported in the financial statements.

(4) Pledged collateral:

(a) All audit reports should disclose the collateral requirements in the notes to the financial statements. In addition, there should be a **supplementary schedule** to the financial statements that discloses the collateral pledged by each bank and savings and loan association (S&L) that is a depository for public funds. The schedule should disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, CUSIP number, **fair market value** and maturity date. The schedule

should also disclose the name of the custodian and the place of safekeeping for all collateral.

(b) If the pledged collateral for deposits in banks, savings and loan associations, or credit unions, in an aggregate amount is not equal to one half of the amount of public money in each account (Section 6-10-17, NMSA 1978), there should be a finding in the audit report. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union shares insurance fund (NCUSIF) according to Section 6-10-16, NMSA 1978. The collateral requirements should be calculated separately for each bank and disclosed in the notes as follows to show compliance and GASB 40 disclosure information:

<p>\$300,000</p> <p><u>100,000</u></p> <p>200,000</p> <p>(50,000)</p> <p>(75,000)</p> <p>(12,500)</p> <p><u>(12,500)</u></p> <p><u>(\$50,000)</u></p>	<p>(i) Total amount of deposit in bank or credit union</p> <p>(ii) Less: FDIC or NCUSIF coverage*</p> <p>(iii) Uninsured public funds</p> <p>(iv) Pledged collateral held by agency's agent in the agency's name</p> <p>(v) Pledged collateral held by the pledging bank's trust department in the agency's name</p> <p>(vi) Pledged collateral held by the pledging financial institution</p> <p>(vii) Pledged collateral held by the pledging bank's trust department or agent but not in the agency's name</p> <p>(viii) Uninsured and uncollateralized</p>
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Custodial credit risk is defined as the risk that the government's deposits may not be returned to it in the event of a bank failure. GASB 40 requires the custodial credit risk related to items (vi) and (vii) and (viii) above to be disclosed. To determine compliance with the 50% pledged collateral requirement of Section 6-10-17, NMSA 1978, the following disclosure should also be included for each financial institution.

<p>\$100,000</p> <p><u>(150,000)</u></p> <p><u>(\$50,000)</u></p>	<p>50% pledged collateral requirement per statute</p> <p>Total pledged collateral</p> <p>Pledged collateral (over) under the requirement</p>
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[*The FDIC issued an advisory opinion (FDIC 94-24) on June 13, 1994, stating that public funds are entitled to \$100,000 insurance for time or savings deposits and \$100,000 for demand deposits deposited within the state in compliance with 12 CFR Subsection 330.15]

(c) **Repurchase agreements** must be covered by 102% of pledged collateral per Section 6-10-10 H, NMSA 1978. Disclosure similar to that shown above is also required for the 102% of pledged collateral.

(d) The value of collateral consisting of obligations of the state of New Mexico, its agencies, institutions, counties, municipalities or other subdivisions shall be par value. All other securities shall be accepted as security at market value. (Section 6-10-16 C, NMSA 1978)

(e) State agency cash on deposit with the state treasurer does not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the agency notes to the financial statement should refer the reader to the state treasurer's separately issued financial statements which do disclose the collateral pledged to secure state treasurer cash and investments.

(f) If an agency has other "authorized" bank accounts, pledged collateral information should be obtained from the bank and disclosed in the agency financial statement notes. The state treasurer monitors pledged collateral related to most state agency bank accounts. In the event pledged collateral information specific to the agency is not available, the following note disclosure should be made. Detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, the state treasurer's office collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Applicable standards:

(a) GASB Statement No. 40, **Deposit and Investment Risk Disclosures**, is effective

tive for financial statements for periods beginning after June 15, 2004 (FY05). This statement requires disclosure of the following when applicable.

(i) "Credit risk is disclosed by describing the credit quality ratings of investments in debt securities as described by rating agencies. Obligations of the U.S. government or obligations explicitly guaranteed by the U.S. government are exempt."

(ii) Custodial credit risk for deposits should be disclosed as described above in subsection (4)(b). "Investment securities are exposed to custodial credit risk when the securities are: uninsured and not registered in the name of the government, and are held by either the counterparty or the counterparty's trust department or agent, but not in the agency's name. Disclosure for investments exposed to custodial credit risk should be by type of investment", the reported amount, and how the investments are held. Investments in external investment pools and in open-end mutual funds are not exposed to custodial credit risk." Custodial credit risk disclosure is required for securities lending collateral that is reported in the statement of net assets and for the underlying securities per guidance in GASB 40 Paragraph 10.

(iii) Concentration of credit risk exists when an agency has investments in any one issuer that represent five percent or more of total investments of the agency or of a fund of the agency. Disclosure by amount and issuer is required when concentration of credit risk exists for an agency. Concentration of credit risk does not apply to investments issued by or explicitly guaranteed by the U.S. government or investments in mutual funds, external investment pools, and other pooled investments.

(iv) Disclosure of an agency's interest rate risk related to debt investments should be organized by investment type, using one of the following five methods: segmented time distribution; specific identification; weighted average maturity; duration; or the simulation model. Pooled investments that do not meet the definition of a 2a7-like pool should disclose interest rate risk information according to one of these methods.

(v) "If an agency's deposits or investments are exposed to foreign currency risk, the government should disclose the U.S. dollar balances of such deposits or investments, organized by currency denomination and, if applicable, investment type."

(b) SAS No. 101, *Auditing Fair Value Measurements and Disclosures*, was issued January 2003 and is effective for audits of financial statements for periods beginning on or after June 15, 2003 (FY04).

The standard requires the auditor to:

(i) obtain audit evidence providing reasonable assurance that fair value amounts and disclosure are in accordance with GAAP;

(ii) understand the agency's process for determining fair value and its controls over that process in order to develop an effective audit approach;

(iii) evaluate whether fair value amounts and disclosures are in accordance with GAAP;

(iv) evaluate: management's intent and ability to carry out planned actions related to the use of fair value amounts and disclosures; the related requirements of presentation and disclosure; and how changes in fair values are reported in the financial statements;

(v) when there are no market prices available, evaluate whether the agency's valuation method used to determine fair value is appropriate;

(vi) evaluate if the agency is applying fair value measurements consistently;

(vii) consider whether to engage a specialist; and

(viii) determine that the audit committee is informed about management's process used to arrive at sensitive accounting estimates, including fair value estimates, and about the basis for the auditor's conclusions about the reasonableness of those estimates.

(6) State treasurer external investment pool (local government investment pool): Agencies that have investments in the state treasurer's short-term investment fund must include the required GASB Statement No. 31 Paragraph 15 disclosure in the notes to their financial statements. The following information may be helpful for this disclosure:

(a) the investments are valued at fair value based on quoted market prices as of the valuation date;

(b) the state treasurer local government investment pool is not SEC registered; the state treasurer is authorized to invest the short-term investment funds, with the advice and consent of the state board of finance, in accordance with Sections 6-10-10 I through 6-10-10 P and Sections 6-10-10.1 A and E, NMSA 1978;

(c) the pool does not have unit shares; per Section 6-10-10.1F, NMSA 1978, at the end of each month all interest earned is distributed by the state treasurer to the contributing entities in amounts directly proportionate to the respective amounts deposited in the fund and the length of time the fund amounts were invested; and

(d) participation in the local government investment pool is voluntary.

O. Budgetary presentation:

(1) Prior year balance included in

budget:

(a) If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures budget and/or actual and budgetary comparison schedules shall include the amount of **fund balance** required to balance the budget.

(b) If the agency prepares its budget on the cash basis, the statement of revenues and expenditures budget and/or actual and budgetary comparison schedules shall include the amount of **prior-year cash balance** required to balance the budget.

(2) The differences between the budgetary basis and GAAP basis revenues and expenditures should be reconciled. **This reconciliation is required at the individual fund level.** If the required budgetary comparison information is included in the basic financial statements, the reconciliation should be included on the statement itself or in the notes to the financial statements. If the budgetary comparison is presented as supplemental information as required by Subsection (3)(c) below, the reconciliation to GAAP basis should be presented at the bottom of the budgetary comparison. If the required budgetary comparison is presented as RSI [for reasons described below in subsection (3)(b) below] the reconciliation should appear in either a separate schedule or in notes to RSI according to the *AICPA Audit and Accounting Guide, State and Local Governments*, (AAG-SLV 11.14).

(3) Budgetary comparison statements and schedules must show the original and final appropriated budget (same as final budget approval by DFA), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a) The basic financial statements must include budgetary comparison statements for **only** the general fund and major special revenue funds if the budget structure for those funds is similar enough to the GAAP fund structure to provide the necessary information.

(b) The required supplemental information section is the place where the budgetary comparison schedules should appear for the general fund and major special revenue funds if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for only those specific funds. An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds

budgetary comparison data. See GASB Statement No. 41, *Budgetary Comparison Schedules -Perspective Differences*, Paragraphs 3 and 10. When budgetary comparisons have to be presented as required supplemental information (RSI) due to such perspective differences it is a requirement of the state auditor that they be audited and included in the auditor's opinion. See AAG-SLV 14.53 and Appendix A Example 14 A.14 in AAG-SLV 14.79 in the *AICPA Audit and Accounting Guide, State and Local Governments (2006)*.

(c) Supplemental information (SI) is the place where all other budgetary comparison information should appear except the general and major special revenue fund budgetary comparisons. Nonmajor governmental funds and proprietary funds that have legally adopted budgets (including budgets approved by a resolution) should have budgetary comparisons appearing in the SI section of the report. Budgetary comparisons for multiple-year capital projects should include: a budget column showing revenues and the amount appropriated for the capital project, a column showing the current year expenditures; a column showing expenditures for the project to-date; and a column showing the variance between the project to-date expenditures column and the final budget column. It is a requirement of the state auditor that budgetary comparison statements presented in the basic financial statements or as required supplemental information (RSI) or supplemental information (SI) be audited and included in the auditor's opinion. For an example of an opinion that includes SI and/or RSI see Example 14 A-14 in the *AICPA Audit and Accounting Guide, State and Local Governments (2006)*.

P. Appropriations to agencies:

(1) The budgetary comparison presented in the financial statements must be at least at the same appropriation level as the approved budget to demonstrate compliance with legal requirements. If actual expenditures exceed budgeted expenditures at the legal level of budgetary compliance, that fact must be reported in a finding. If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables required to balance the budget), that fact must also be reported in a finding. If the agency budgets cash or fund balance that did not exist at the beginning of the fiscal year, a finding should be reported.

(2) Special, deficiency, and specific appropriations (including capital outlay)

(a) Special, deficiency, and specific appropriations must be disclosed in the financial statements. The original appropri-

ation, the appropriation period, expenditures to date, outstanding encumbrances and unencumbered balances should be shown in a supplementary schedule or in a note to the financial statements. **This is a special requirement of the state auditor.**

(b) The accounting treatment of any unexpended balances should be fully explained in the supplementary schedule or in a note to the financial statements regarding the special appropriations.

Q. Consideration of the internal control and risk assessment in a financial statement audit:

(1) Internal control:

(a) SAS No. 55, *Consideration of Internal Control in a Financial Statement Audit*, and SAS No. 78, *Consideration of Internal Control in a Financial Statement Audit, an Amendment to SAS No. 55*, SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit and Governmental Auditing Standards* footnote 43, provide IPAs with guidance related to consideration of internal control as part of an audit.

(b) SAS No. 78, replaced the SAS No. 55 definition and description of internal control with the definition and description from *Internal Control-Integrated Framework*, published by the committee on sponsoring organizations of the treadway commission (the COSO Report). SAS No. 78 describes internal control as consisting of five interrelated components: control environment; risk assessment; control activities; information and communication; and monitoring.

(c) SAS No. 94, *The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit* amended SAS No. 55 further. "Information technology (IT) encompasses automated means of originating, processing, storing, and communicating information, and includes recording data devices, communication systems, computer systems (hardware and software components and data), and other electronic devices. An entity's use of IT may be extensive; however, the auditor is primarily interested in the entity's use of IT to initiate, record, process, and report transactions or other financial data. ...Controls in systems that use IT consist of a combination of automated controls (for example, controls embedded in computer programs) and manual controls." In obtaining an understanding of the internal controls of an entity that uses IT, "the auditor considers how an entity's use of IT and manual procedures may affect controls relevant to the audit. The auditor then assesses control risk for the assertions embodied in the account balance,

transaction class, and disclosure components of the financial statements." The FY04 implementation of SAS 99 also has an extensive impact on the auditor's consideration of internal controls and risk assessment. See Paragraph (1) of Subsection K of 2.2.2.10 NMAC for related details.

(d) SAS No. 105, *Amendment to Statement on Auditing Standards No. 95, Generally Accepted Auditing Standards*, is effective for audits of periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS expands the scope of the second standard of field work from the old version, "A sufficient understanding of internal control is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed," to the new version, "The auditor must obtain a sufficient understanding of the entity and its environment, including its internal control, to assess the risk of material misstatement of the financial statements whether due to error or fraud and to design the nature, timing, and extent of further audit procedures to be performed."

(e) SAS No. 109, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*, is effective for audits of periods beginning on or after December 15, 2006 (FY08) with earlier application permitted. This SAS provides guidance regarding understanding specified aspects of the entity and its environment and internal control in order to identify and assess risks of material misstatement, and related further audit procedures.

(f) SAS No. 112, *Communicating Internal Control Related Matters Identified in an Audit*, is effective for audits of periods ending on or after December 15, 2006 (FY07), with earlier application permitted. This SAS requires the auditor to communicate in writing, to management and those charged with governance, significant deficiencies and material weakness identified in an audit. See Section 2.2.2.10.I.(1) above for definitions of significant deficiencies and material weaknesses. See the additional audit rule requirement per section 2.2.2.10.I.(8) above, that the auditor also include in this report deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse required to be reported by Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007), that do not rise to the level of significant deficiencies or material weaknesses under SAS 112.

(2) All financial audits performed under this rule are required to include tests of internal controls (manual and/or automated) over assertions about the financial

statements and about compliance related to laws, regulations, and contract and grant provisions. Inquiry alone is not sufficient testing of internal controls. The requirement to test internal controls applies even in circumstances when the auditor has assessed control risk at maximum. **This is a special requirement of the state auditor.** This requirement does not require an auditor to retest controls previously tested during the performance of a SAS 70 audit, when the auditor is relying on the SAS 70 audit report.

(3) Risk Assessment

(a) SAS No. 104, *Amendment to Statement on Auditing Standards No. 1, Codification of Auditing Standards and Procedures ("Due Professional Care in the Performance of Work")*, is effective for periods beginning on or after December 15, 2006 (FY08) with earlier application permitted. The SAS expands the definition of the term reasonable assurance. "The auditor must plan and perform the audit to obtain sufficient appropriate audit evidence so that the audit risk will be limited to a low level that is, in his or her professional judgment, appropriate for expressing an opinion on the financial statements. The high, but not absolute, level of assurance that is intended to be obtained by the auditor is expressed in the auditor's report as obtaining reasonable assurance about whether the financial statements are free of material misstatement (whether caused by error or fraud)."

(b) SAS No. 110, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*, is effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted. This SAS provides the auditor with guidance in: (1) determining overall responses to address risks of material misstatement at the financial statement level; (2) designing and performing further audit procedures that are responsive to the assessed risks of material misstatement at the relevant assertion level; and (3) evaluating whether the risk assessments remain appropriate and to conclude whether sufficient appropriate audit evidence has been obtained; and (4) the related documentation.

(c) SAS No. 111, *Amendment to Statement on Auditing Standards No. 39, Auditing Sampling*, is effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS amends SAS No. 39 regarding auditing sampling to incorporate guidance from SAS No. 107, *Audit Risk and Materiality in Conducting an Audit*, and from SAS No. 99, *Consideration of Fraud in a Financial Statement Audit*, and from SAS No. 110, *Performing Audit Procedures in Response to Assessed Risks*

and Evaluating the Audit Evidence Obtained. This SAS also enhances guidance relating to the auditor's judgment about establishing tolerable misstatement for a specific audit procedure and on the application of sampling to tests of controls.

(d) SAS No. 113, *Omnibus Statement on Auditing Standards*, Paragraphs 1 through 5 are effective for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. This SAS clarifies terminology used to describe professional requirements imposed on auditors in the 10 standards. This SAS adds to SAS No. 99, *Consideration of Fraud in a Financial Statement Audit*: (1) footnote 15 linking the auditor's consideration of fraud to the auditor's assessment of risk; and (2) footnote 21 linking the auditor's consideration of fraud and the auditor's response to assessed risks.

R. Lease purchase agreements:

(1) The New Mexico supreme court has held that it is unconstitutional for agencies to enter into lease purchase agreements after January 9, 1989, unless special revenue funds are the designated source of payments for the agreement. (Any agreements executed prior to that date may not be extended or amended without compliance with the guidelines of **Montano v. Gabaldon**, 108 N.M. 94, 766 P.2d 1328).

(a) The attorney general interpreted **Montano** to mean that long-term contracts for professional services, leases, and real property rental agreements may still be entered into within the constraints of the Bateman Act and the Procurement Code. However, **any** agreement which is in effect for more than one fiscal year, including leases of real property, must have a provision allowing the agency to terminate the agreement at will at anytime, or at least at the end of each fiscal year, without penalty. Furthermore, the agency must have no "equitable or moral" duty to continue to make payments under the contract. The agreements must also contain a non-appropriation clause allowing for termination of the agreement in the event the agency decides not to appropriate funds for each fiscal year.

(b) The attorney general subsequently opined that if the source of funds to repay the debt is solely repaid from the project revenue or from a special non-general-tax fund and not from any general tax revenue, then the debt, be it in the form of bonds or a lease purchase agreement, is not the sort of debt which triggers the constitutional requirement of approval by the voters. This is the teaching of the **Connelly** case relied on by the court in **Montano**. **Montano** did not reverse **Connelly**, **Seward** and the other cases which have

consistently limited the application of constitutional restrictions to debts which are paid out of general tax revenues.

(c) If specific questions as to the constitutionality of a particular lease agreement remain, an independent legal opinion should be obtained from the attorney general.

(2) Accounting for lease purchases that meet the FASB Statement No. 13 criteria for a capital lease purchase:

(a) modified accrual basis of accounting for fund financial statements:

(i) At the time of the lease purchase, the aggregate purchase liability should be reported as an expenditure and as "other financing source" in the governmental fund that acquired or constructed the general asset. (NCGAS 5 Paragraph 14 and AAG-SLV 7.34)

(ii) Subsequent governmental fund lease payments should be recognized as expenditures in the accounting period in which the fund liability is incurred, if measurable. (NCGAS 1 Paragraph 8 (a) and AAG-SLV 8.70)

(b) Full accrual basis of accounting for government-wide statements:

(i) At the time of the lease purchase, record the capitalized asset and related credit to net assets-invested in capital assets, net of related debt. The amount recorded is generally the lesser of the net present value of the minimum lease payments or the fair value of the leased property excluding executory costs and profit. (NCGAS 5 Paragraph 16 and AAG-SLV 7.33)

(ii) The leased property is amortized in accordance with the government's normal depreciation policy for owned assets of the same type, but the amortization period is limited to the lease term, rather than the useful life of the asset. (AAG-SLV 7.33)

(iii) Per GASB 34 Paragraph 33, at the time of the lease purchase, record the liability for the current and long-term portions of the minimum lease payments due, with the related debit to net assets-invested in capital assets net of related debt.

S. "Interfund activity: Under the GASB 34 reporting model (AAG-SLV 9.07) interfund activities and balances that must be reported are:

(1) interfund loans that are generally reported as interfund receivables/payables;

(2) interfund services provided and used that generally appear as revenues and expenditures/expenses;

(3) interfund transfers that appear as other financing sources/uses or after non-operating revenues/expenses; and

(4) interfund reimbursements that should appear as expenditures/expenses

only in the funds that are responsible for them.”

T. Required auditor's reports:

(1) The independent auditor's report should follow the examples contained in the *AICPA Audit and Accounting Guide, Audits of State and Local Governments (2006)*. Appendix 14A-illustrative auditor's reports provide report illustrations. Example A-14.1 illustrates how to opine on the basic financial statements and the combining and individual fund financial statements presented as supplementary information. Guidance provided in Chapter 14, Appendix A Footnote 3 requires the following wording when opining on budgetary comparison statements, “and the respective changes in financial position and cash flows, where applicable, thereof and the respective budgetary comparison for the (indicate the funds involved) for the year then ended in conformity with.” All independent auditors' reports should include a statement regarding the conduct of the audit being in accordance with auditing standards generally accepted in the United States of America and with applicable *Government Auditing Standards* per GAGAS 5.05 (2007). This statement should be modified in accordance with GAGAS 1.12 (2007) if some GAGAS requirements were not followed. The first sentence of the SAS 29 opinion paragraph should state that the audit was conducted for the purpose of forming opinions on the basic financial statements and the combining and individual financial statements presented as supplemental information.

(2) Dating of the independent auditor's report

(a) SAS No. 103, *Audit Documentation*, became effective for audits of periods ending on or after December 15, 2006 (FY07) with earlier application permitted.

(b) The independent auditor's report should be dated no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion:

(i) There should be evidence that the audit documentation has been reviewed;

(ii) The agency financial statements including disclosures have been prepared;

(iii) Agency management has asserted that it has taken responsibility for the financial statements; and

(iv) The report date will ordinarily be close to the report release date (the date the auditor grants the agency permission to use the auditor's report in connection with the financial statement); delays in releasing the report may require the audi-

tor to perform additional procedures regarding subsequent events per SAS No. 1, *Codification of Auditing Standards and Procedures*.

(v) SAS No. 113, *Omnibus Statement on Auditing Standards—2006*, Paragraphs 7 through 14 are effective for audits of periods ending on or after December 15, 2006 (FY07), with earlier application permitted; this SAS amends SAS numbers 101, 59, 57, and 1 to **change old references to “completion of fieldwork” to “the date of the auditor's report”** because SAS 103 changed the date of the audit report from the date of completion of field work to “the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion on the financial statements”; SAS 113 also amends SAS 85 so that the date of the management representations is “the date of the auditor's report.”

(3) **The report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards** should follow the AICPA report examples that have been updated for the implementation of SAS No. 112. The report examples are not available in the most recent *AICPA Audit and Accounting Guide, State and Local Governments*. However, they are available on the AICPA governmental audit quality center website at www.gaqc.aicpa.org. Click on “New SAS 112 Compliant, Yellow Book Illustrative Auditor's Reports Now Available.” **The state auditor requires these report examples to be modified as described in Section 2.2.2.10.I.(8)** above when the auditor detects deficiencies in internal controls or immaterial violations of provisions of contracts or grant agreements or abuse (that do not rise to the level of significant deficiencies or material weaknesses under SAS 112) that must be reported pursuant to Section 12-6-5, NMSA 1978, and GAGAS 5.14 and 5.16 (2007).

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be **dated the same date as the independent auditor's report date**.

(b) Section 12-6-5, NMSA 1978, states that each report shall set out in detail, in a separate section, any violation of law or good accounting practices by the audit or examination. Therefore, all findings must be reported in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accor-

dance with government auditing standards.

(c) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency will be considered a violation of the terms of the audit contract and may result in further action by the state auditor.

(4) One report cover: The state auditor requires the following reports to be **included under one report cover** with the independent auditor's report, rather than presented under separate report covers: Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards (required by GAGAS and SAS 112); the report on compliance with requirements applicable to each major program and on internal control over compliance in accordance with OMB Circular A-133, (required by OMB Circular A-133), the SAS 29 opinion on the schedule of expenditures of federal awards and the HUD financial data schedule (required by SAS AU 551 and HUD Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards). The report must also contain a table of contents and official roster. An **exemption** from the “one report cover” rule must be obtained from the state auditor in order to present any of the above information under a separate cover.

U. Service organizations:

(1) An auditor should obtain an understanding of each of the five components of the agency's internal control sufficient to plan the audit. This understanding may encompass **controls placed in operation by the agency and controls placed in operation by a service organization** whose services are part of the agency's information system. According to SAS AU 324.03, a service organization's activities are part of an agency's information system if they affect any of the following:

(a) the classes of transactions in the agency's operations that are significant to the agency's financial statements;

(b) the procedures, both automated and manual, by which the entity's transactions are initiated, recorded, processed, and reported from their occurrence to their inclusion in the financial statements;

(c) the related accounting records, whether electronic or manual, supporting information, and specific accounts in the agency's financial statements involved in initiating, recording, processing and reporting the agency's transactions;

(d) how the agency's information system captures other events and conditions that are significant to the financial statements; and

(e) the financial reporting process used to prepare the entity's financial statements, including significant accounting estimates and disclosures.

(2) When an agency uses a service organization that affects the agency's financial statements (as described above), the agency's auditor must obtain an understanding of the internal controls of both the agency and the internal controls of the service organization in order to plan the audit. The auditor's understanding of the service organization's internal controls can be obtained either by the auditor performing procedures to obtain the understanding, or by the auditor relying on a SAS 70 audit performed by another auditor. The understanding obtained should be documented.

(3) Some examples of service organizations and potential service organizations are:

(a) the New Mexico statewide human resources accounting and management reporting system (SHARE) system;

(b) EDP service centers that process transactions and related data for others;

(c) bank trust departments that invest and hold assets for employee benefit plans or others;

(d) payroll service companies that process payroll transactions and make payroll disbursements;

(e) public housing authority fee accountants; and

(f) tax collection authorities.

(4) SAS No. 98, *Omnibus Statement on Auditing Standards-2002*, amended SAS No. 70 to require an auditor performing a SAS 70 audit to inquire of management about subsequent events.

V. Disposition of property:

(1) Sections 13-6-1 and 13-6-2, NMSA 1978, and the Procurement Code, govern the disposition of obsolete, worn-out or unusable tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least thirty days prior to any such disposition of property on the agency inventory list described below in Subsection Y of 2.2.2.10 NMAC, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action must be sent to the state auditor.

(2) In the event a computer is included in the planned disposition, the agency shall "sanitize" all licensed software and any electronic media pertaining to the agency. Hard drive erasure certification is still required even if the asset originally cost less than \$5,000 and was not included in the capital asset inventory. According to the May 5, 2002 memorandum from the chief information technology security and priva-

cy office on this subject, "ordinary file deletion procedures do not erase the information stored on hard disks or other magnetic media. Sanitizing erases or overwrites totally and unequivocally, all information stored on the media. There are three basic approaches:

(a) purchasing and using a commercial degaussing product to erase magnetic disks;

(b) overwriting stored data a minimum of five times; or

(c) reformatting the drives (F diskling)."

(3) The agency will certify in writing the proper erasure of the hard drive and submit the certification along with the notification of the proposed disposition of property to the state auditor at least thirty days prior to taking action. The IPA shall test for compliance with this requirement.

This is a special requirement of the state auditor and it applies even if the original purchase price of the computer was less than \$5,000.

W. Joint powers agreements and memorandums of understanding:

(1) All joint powers agreements (JPA) and memorandums of understanding (MOU) must be listed in a supplementary schedule in the audit report. The schedule should include the following information for each JPA or MOU:

(a) participants;

(b) party responsible for operations;

(c) description;

(d) beginning and ending dates of the JPA or MOU;

(e) total estimated amount of project and portion applicable to the agency;

(f) amount the agency contributed in current fiscal year;

(g) audit responsibility;

(h) fiscal agent if applicable; and

(i) name of government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under joint powers agreements or memorandum of understanding, see Subsection X of 2.2.2.10.NMAC (self-insurance).

X. Self insurance: Those agencies that have self-insurance agreements should disclose the data in the notes to the financial statements. The note should include the name of the agency that is providing the insurance and the amount of contribution by the agency to the fund during the year. There should be full disclosure in the notes to the financial statements per the requirements of GASB 10.

Y. Capital asset inventory:

(1) The Audit Act (12-6-10, NMSA 1978) requires agencies to capitalize only chattels and equipment that cost over

\$5,000. All agencies should update their capitalization policies in accordance with the law. The state auditor still encourages agencies to maintain a separate accountability report of those items that cost \$5,000 or less, for asset safeguarding and management purposes.

(2) Section 12-6-10, NMSA 1978, requires each agency to conduct an annual physical inventory of movable chattels and equipment on the inventory list at the end of each fiscal year. The agency shall certify the correctness of the inventory after the physical inventory. This certification should be provided to the agency's auditors.

Z. Working paper documentation:

(1) SAS No. 103, *Audit Documentation*, supersedes SAS No 96 and SAS AU 339, *Audit Documentation*, and amends SAS AU 530, *Dating of the Independent Auditor's Report*. This SAS is effective for audits of financial statements for periods ending on or after December 15, 2006 (FY07), with earlier application permitted establishes the following general principles:

(a) "The exercise of professional judgment is used in determining the quantity, type, and content of audit documentation consistent with SAS No. 103.

(b) Audit documentation must be in sufficient detail to provide a clear understanding of the work performed, the audit evidence obtained and its source, and the conclusions reached.

(c) The audit documentation is the principal support for the auditor's representation that the audit was performed in accordance with generally accepted auditing standards.

(d) The audit documentation is the principal support for the auditor's opinion expressed regarding the financial information, or the assertion to the effect that an opinion cannot be expressed."

(2) Some of the specific principles of audit documentation clarified by SAS No. 103 follow.

(a) "The audit documentation should enable an experienced auditor with no previous connection to the audit to understand: the nature, timing, and extent of auditing procedures performed to comply with SAS and applicable legal and regulatory requirements; the results of the audit procedures and the audit evidence obtained; the conclusions reached; and that the accounting records agree or reconcile with the audited financial statements or other audited information.

(b) The auditor should document significant findings or issues, actions taken to address them, and the basis for the final conclusions reached: selection and application of GAAP; audit procedures indicating material misstatement or need to revise the

auditor's previous assessment of the risks of material misstatement and the auditor's responses to those risks; significant difficulty the auditor had in applying auditing procedures; findings that could result in a modification of the auditor's report; audit adjustments that could individually or when aggregated with other misstatements, have a material effect on the financial statements; the resolution of contradictions to the auditor's final conclusions regarding significant findings or issues.

(c) Documentation that is not engagement-specific like auditor independence and staff training may be documented either centrally within the firm or in the audit documentation for an audit engagement.

(d) Documentation of the nature, timing, and extent of audit procedures should record who performed the audit work, the date it was completed, and who reviewed specific audit documentation, and the date of the review. It is not necessary for each specific working paper to include evidence of review.

(e) Identifying characteristics of specific items tested should be included in audit documentation when audit procedures or tests of internal controls involve inspection of documents or confirmations.

(f) In rare circumstances when the auditor departs from a presumptively mandatory (defined in SAS No. 102) audit requirement, the auditor must document the justification for the departure and how the alternative procedures performed were sufficient to achieve the objectives of the presumptively mandatory requirement."

(g) **SAS 103 changes the requirements for dating the independent auditors' report. See Subparagraph (b) of Paragraph 2 of Section T of 2.2.2.10 NMAC above.**

(h) When the auditor discovers after the release of an audit report that: (1) necessary audit procedures were omitted, then SAS AU 390 should be followed; or (2) if the auditor becomes aware of information that was not previously known to the auditor then SAS AU 561 should be followed. "In these circumstances the auditor should make the changes necessary to reflect either the performance of the new audit procedure or the new conclusion reached, including documenting: when and by whom the changes were made and reviewed; the specific reasons for the changes; and the effect, if any, of the changes on the auditor's conclusions."

(i) **"The assembly and completion of the audit file should be completed within 60 days following the report release date (documentation completion date). The report release date should be recorded in the audit documentation.**

After the documentation completion date, the auditor must not delete or discard audit documentation before the end of the specified retention period (five years). If the auditor finds it necessary to make an addition (including amendments) to the audit documentation after the documentation completion date, the auditor should document the addition as in (h) above.

(j) Audit documentation is the property of the auditor. The auditor has an ethical and sometimes legal obligation to maintain the confidentiality of client information that might be in the audit documentation. The auditor needs reasonable procedures to maintain the confidentiality of that information.

(k) The auditor needs appropriate and reasonable controls over audit documentation to: (1) determine when and by whom audit documentation was created, changed, or reviewed; (2) protect the integrity of the information at all stages of the audit; (3) prevent unauthorized changes to the documentation; and (4) allow access to the documentation by the audit team and other authorized parties so they can properly perform their duties."

(3) The Appendix of SAS No. 103 includes references to various other SAS requirements for documentation.

AA. GASB 34 implementation issues:

(1) Agency funds are excluded from the statement of changes in fiduciary net assets (GASB 34 Paragraph 110) because they have no "net assets." Therefore it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the agency funds be included as supplemental information (SI) for all agencies that have agency funds. This schedule should appear toward the end of the table of contents and requires a SAS 29 opinion. See also Subparagraph (e) of Paragraph (4) of Subsection C of 2.2.2.12 NMAC for more information regarding the presentation of school district agency fund statements of changes in assets and liabilities for agency funds.

(2) Per GASB 34 Paragraph 148, Phase 2 governments that were required to implement GASB 34 in FY03 must retroactively report all major general infrastructure assets for fiscal years beginning after June 15, 2006 (FY07).

BB. Accounting for forfeited property:

(1) Seized property should be accounted for in an agency fund before the Section 31-27-6, NMSA 1978 "judgment of forfeiture."

(2) Once the judgment of forfeiture is made, the property should be accounted for in a special revenue fund

because the revenues are legally restricted for specified purposes. The balance sheet of such a special revenue fund that accounts for seized property may have zero balances at the end of a fiscal year because net balance amounts may have been transferred to the general fund of the governing body of the seizing law enforcement agency, or the general fund to be used for drug abuse treatment services, for drug prevention and education programs, for other substance abuse demand-reduction initiatives or for enforcing narcotics law violations. Exceptions are forfeitures of property arising from: violations of hunting or fishing regulations that must be deposited in the game protection fund; and violations against cultural properties that must be used for the restoration of the affected cultural property, with net balances being deposited into the general fund.

(3) Seized property resulting in forfeiture proceeds creates revenue for the governmental agency that seized the property. That revenue and related expenditures must be included in the budget process of the governmental agency.

(4) See Section 31-27-1, NMSA 1978, and related cross references for guidance on various types of seizures and forfeitures. Section 31-27-7, NMSA 1978, provides statutory guidance for proper disposition of forfeited property and use (allowable expenditures) of all related proceeds.

CC. SAS No. 106, *Audit Evidence*: SAS 106 "supersedes SAS No. 31, *Evidential Matter*, as amended, and is effective for audits of financial statements for periods beginning on or after December 15, 2006, (FY08) with earlier application permitted. This statement provides guidance about the third standard of field work 'The auditor must obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.' The SAS defines audit evidence. It defines relevant assertions and discusses their uses in assessing risks and designing appropriate further audit procedures." SAS 106 Paragraph 22 requires tests of controls in two sets of circumstances. However, the audit rule requires tests of controls in every audit, pursuant to Section 2.2.2.10.Q.(2) above. SAS 106 also "discusses qualitative aspects that the auditor considers in determining the sufficiency and appropriateness of audit evidence."

DD. SAS No. 107, *Audit Risk and Materiality in Conducting an Audit*: SAS No. 107 supersedes SAS No. 47, *Audit Risk and Materiality in Conducting an Audit*, as amended, and is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08), with earlier application permitted. "This statement provides guid-

ance on the auditor's consideration of audit risk and materiality when performing an audit of financial statements in accordance with generally accepted auditing standards. Audit risk and materiality affect the application of generally accepted auditing standards, especially the standards of field work and reporting, and are reflected in the auditor's standard report. Audit risk and materiality, among other matters, need to be considered together in designing the nature, timing, and extent of audit procedures and in evaluating the results of those procedures."

EE. SAS No. 108, *Planning and Supervision*: This statement supersedes *Appointment of the Independent Auditor* as amended, of Statement on Auditing Standards No. 1 and SAS No. 22, *Planning and Supervision*, as amended. SAS No. 108 is effective for audits of financial statements for periods beginning on or after December 15, 2006 (FY08). "The auditor must plan the audit so that it is responsive to the assessment of the risk of material misstatement based on the auditor's understanding of the entity and its environment, including its internal control. Planning is not a discrete phase of the audit, but rather an iterative" (repetitious) "process that begins with engagement acceptance and continues throughout the audit as the auditor performs audit procedures and accumulates sufficient appropriate audit evidence to support the audit opinion. As a result of performing planned audit procedures, the auditor may obtain disconfirming evidence that might cause the auditor to revise the overall audit strategy."

FF. Financial reporting for postemployment benefit plans other than pension plans: GASBS 43 requirements for OPEB plan reporting are effective (FY07, FY08, and FY09) one year prior to the effective date of the related statement for the employer (single-employer plan) or for the largest participating employer in the plan (multiple-employer plan). The requirements of the related statement are effective in three phases based on a government's total annual revenues, as defined in that statement, in the first fiscal year ending after June 15, 1999- the same criterion used to determine a government's phase for implementation of GASB 34. The statement establishes uniform financial reporting standards for OPEB plans and supersedes the interim guidance included in Statement No. 26, *Financial Reporting for Postemployment Healthcare Plans Administered by Defined Benefit Pension Plans*. The approach followed in this Statement generally is consistent with the approach adopted in Statement No. 25, *Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans*, with modifi-

cations to reflect differences between pension plans and OPEB plans. GASB 43 Paragraphs 16 through 40 provide reporting requirements for OPEB plans that are administered as trusts, or equivalent arrangements. If the fund used to accumulate assets and to pay benefits in a multiple-employer OPEB plan does not meet the trust-type criteria described in GASB 43 Paragraph 4, the plan administrator or sponsor should report the fund as an agency fund, following the guidance of GASB 43 Paragraph 41. [2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 4-16-07]

2.2.2.11 THE ACCOUNTABILITY IN GOVERNMENT ACT:

A. The purpose of the Accountability in Government Act (AGA) (Section 6-3A-1 to 6-3A-9, NMSA 1978) is to provide for more cost-effective and responsive government services by using the state budget process and defined outputs, outcomes and performance measures to annually evaluate the performance of state government programs.

B. Agency performance measures are included in the General Appropriations Act. The agency shall include a schedule of performance data (outcomes, outputs, efficiency, etc.) if, the schedule is required by the agency's oversight agency such as DFA, HED and PED and preparation guidelines are issued by the oversight agency.

C. The auditor's responsibilities for performing procedures and reporting on required supplemental information (RSI) is provided in SAS No. 52, *Omnibus Statement on Auditing Standards* 1987 (AICPA, Professional Standards, vol. 1, AU 558, *Required Supplemental Information*). The auditor ordinarily should apply the following limited procedures to RSI.

(1) Inquire of management about the methods of preparing the information, including:

- (a) whether it is measured and presented within prescribed guidelines;
- (b) whether methods of measurement or presentation have been changed from those used in the prior period and the reasons for any such changes; and
- (c) any significant assumptions or interpretations underlying the measurement or presentation.

(2) Compare the information for consistency with:

- (a) management's responses to the foregoing inquiries;
- (b) audited financial statements; and
- (c) other knowledge obtained during the audit.

(3) Consider whether to include

representations on RSI in the management representation letter.

D. Apply additional procedures, if any, that other AICPA SAs, SAS interpretations, audit and accounting guides, or statements of position prescribe for specific types of RSI.

E. Make additional inquiries if applying the foregoing procedures causes the auditor to believe that the information may not be measured or presented within applicable guidelines.

F. The IPA should report on the performance data in either an agency-prepared or auditor submitted document when:

(1) the required performance data is omitted;

(2) the auditor concludes that the measurement or presentation of the performance data departs materially from prescribed guidelines;

(3) the auditor is unable to complete the prescribed procedures; and

(4) the auditor is unable to remove substantial doubts about whether the performance data conforms to prescribed guidelines.

G. The IPA generally has no reporting requirement; however, the IPA may disclaim an opinion on the information.

[2.2.2.11 NMAC - Rp, 2.2.2.11 NMAC, 4-16-07]

2.2.2.12 SPECIFIC CRITERIA:

The applicable specific criteria should be considered in planning and conducting governmental audits. These requirements are not intended to be all-inclusive; therefore, the appropriate state statutes should be reviewed in planning governmental audits.

A. PERTAINING TO AUDITS OF STATE AGENCIES:

(1) Due dates for agency audits: House Bill 219 amended Section 12-6-3, NMSA 1978 so that by statute, state agency reports are due no later than 60 days after the financial control division of the department of finance and administration provides the state auditor with notice that the agency's books and records are ready and available for audit. The financial control division mandates that each agency, with the help of its independent auditor, identify a schedule of deliverables and agree to milestones for the audit to ensure that the agency's books and records are ready and available for audit and the auditor delivers services on time. The sixty days to the audit deadline will be based on the schedule of deliverables and milestones; however, the deadline cannot extend beyond December 15. This requirement does not prevent the auditor from performing interim audit work prior to receipt of the DFA notice of agency

preparedness. Once the agency and auditor have certified to the financial control division of the department of finance and administration that the agency's books and records are ready and available for audit, if the auditor or agency find that the scheduled audit deliverables or agreed upon milestones are not accomplished timely and there is a possibility the audit report will be late, the auditor or agency shall immediately write a dated letter to the state auditor describing the problems. The financial control division of the department of finance administration must be sent a photocopy of the letter.

(2) **Materiality at the individual fund level** means at the individual statewide human resources accounting and management reporting system (SHARE) fund level for state agencies. The individual SHARE funds should be shown in the combining financial statements and opined on in the independent auditor's report.

(3) **Accounts payable at year-end:** If goods and services were received by the end of the fiscal year, but not paid for by the end of the fiscal year, a related account payable should be recorded for the respective amount due in both the government-wide financial statements and the fund financial statements (NCGAS 1 Paragraph 70).

(4) **Net assets/fund balance:**

(a) The government-wide statement of net assets and the proprietary fund balance sheet should show net assets as: (1) invested in capital assets, net of related debt; (2) restricted; and/or (3) unrestricted. GASB 34 Paragraphs 33 through 37 explain the components of net assets. Net assets are restricted when constraints placed on net asset use are either: externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or imposed by law through constitutional provisions or enabling legislation. Note that restricted net assets are not the equivalent of reserved fund balances. Encumbrances should not be shown as restricted net assets.

(b) Governmental fund financial statement fund balances should be segregated into reserved fund balances and unreserved and legally designated fund balances (GASB 34 Paragraph 84). In general, an agency should show reserved fund balance related to encumbrances (only for an appropriation period that extends beyond the fiscal year), inventories, and petty cash. All other reservations must be specifically required or authorized by legislation and the notes to the financial statements must disclose the specific legal authority for all such reservations of fund balance. Reserved fund balances of the combined nonmajor funds should be displayed in sufficient

detail to disclose the purposes of the reservations (i.e., reserved for debt service or reserved for encumbrances). Unreserved fund balances of nonmajor funds should be displayed by fund type on the face of the balance sheet (GASB 34 Paragraph 84).

(c) The statement of fiduciary net assets (fiduciary fund financial statement) should show net assets as "held in trust for " (GASB 34 Paragraph 108 and Example E-1).

(5) **Books of record:**

(a) DFA maintains a statewide human resources accounting and management reporting system (SHARE). DFA provides: a three-volume set of DFA model accounting practices (MAPs) available that describes state agency accounting policies, procedures, and document processing; a GASB 34 implementation guide; and various white papers. These documents provide guidance for an auditor regarding policy and procedure requirements and they are available on DFA's website at www.dfafcd.state.nm.us.

(b) The SHARE chart of accounts reflects the following appropriation levels. The statement of revenues and expenditures in the audit report should be presented in accordance with GAAP, by function or program classification. However, the budgetary comparison statements must be presented using the level of appropriation reflected in the final approved budget.

Appropriation Unit Code	Appropriation Unit Description
200	Personal Services & Employee Benefits
300	Contractual Services
400	Other
500	Other Financing Uses
600	Non-budgeted

Revenue categories of appropriations to state agencies are listed below. The budgetary comparison statements for state agencies must be presented in the audit report by the revenue categories shown below and by the expenditure categories that appear in the agency's final approved budget.

- (i) state general fund;
- (ii) other state funds;
- (iii) internal service funds/inter-agency transfers; or
- (iv) federal funds.

For more detail about the chart of accounts see the DFA website.

(6) **Reversions to state general fund:**

(a) All reversions to the state general fund must be identified in the financial statements by the fiscal year of appropriation (i.e., reversion to state general fund FY 07). The gross amount of the appropriation and the gross amount of the reversion must be shown separately.

(b) Section 6-5-10, NMSA 1978, requires "all unreserved, undesignated fund balances in reverting funds and accounts as reflected in the central accounting system as of June 30 shall revert by September 30, to the general fund. The division may adjust the reversion **within forty five days** of release of the audit report for that fiscal year." Failure to transfer reverting funds timely in compliance with the statute requires an audit finding.

(7) **Nonreciprocal** (not payments for materials or services rendered) interfund (internal) activity includes (a) transfers (redefined to include activities previously known as "operating transfers" and "residual equity transfers" and (b) reimbursements (GASB 34 Paragraph 410):

(a) Intra-agency transfers between funds within the agency should offset. Reasons for intra-agency transfers should be fully explained in the notes to the financial statements. In the separate audit report of the state agency these transfers between their internal funds should be shown as other financing sources or uses in the fund financial statements and as transfers (that get eliminated) in the government-wide financial statements.

(b) Inter-agency transfers (between an agency's internal funds and other funds of the state) should be segregated from intra-agency transfers and should be fully explained in the notes to the financial statements along with the agency number and cash account (SHARE fund number) to whom and from whom transferred. The transfers may be detailed in supporting schedules rather than in the notes, but agency and cash account numbers must be shown. The schedule should be presented on the modified accrual basis. The IPA is responsible for performing audit procedures on all such inter-agency transfers.

(c) Inter-agency transfers between legally separate component units and the primary government, the state:

(i) The *AICPA Audit and Accounting Guide, Audits of State and Local Governments (2006)*, lists some examples of potential component units (blended and/or discrete) of a state in Section 12.02: school districts; colleges and universities; utilities; hospi-

tals and other health care organizations; and public employee retirement systems.

(ii) If the inter-agency transfer is between a blended component unit of the state and other funds of the state, then the component unit's separately issued financial statements should report such activity between itself and the primary government as revenues and expenses. When the blended component unit is included in the primary government's financial statements, such inter-agency transfers would be reclassified as transfers. (GASB 34 Paragraph 318)

(iii) All resource flows between a discretely presented component unit of the state and other funds of the state are required to be reported as external transactions-revenues and expenses in the primary government's financial statements and the component unit's separately issued financial statements (GASB 34 Paragraph 318).

(d) All transfers to and from SHARE fund 853, the state general fund appropriation account, must be clearly identifiable in the audit report as state general fund appropriations, reversions, or collections.

(e) Reimbursements are transfers between funds that are used to reallocate the revenues and expenditures/expenses to the appropriate fund. Reimbursements should not be reported as interfund activity in the financial statements.

(8) General services department (GSD) capital projects: GSD records the state of New Mexico capitalized land and buildings for which it is responsible, in its accounting records. The cost of furniture, fixtures, and moveable equipment owned by agencies is to be capitalized in the accounting records of the agency that purchased them. The agency must capitalize those assets based on actual amounts expended, in accordance with GSD instructions issued in 2.20.1.10 NMAC, *Valuation of Assets*.

(9) State-owned motor vehicle inventory: Successful management of the state-owned vehicles pursuant to the Transportation Services Act (15-8-1 to 15-8-11 NMSA 1978) is dependent on reliable and accurate capital assets inventory records and physical verification of that inventory. Thus, the annual audit of state agencies shall include specific tests of the reliability of the capital assets inventory and verification that a physical inventory was conducted for both the agency's owned vehicles and long-term leased vehicles.

(10) Independent auditor's report:

(a) The independent auditor's report for state agencies, district attorneys, and district courts **must include an explanatory paragraph preceding the opinion paragraph**. The explanatory para-

graph should reference the summary of significant accounting principles disclosure regarding the reporting agency, and indicate that the financial statements are intended to "present the financial position and changes in financial position and, where applicable, cash flows of only that portion of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the state that is attributable to the transactions of the department. They do not purport to, and do not, present fairly the financial position of the state as of June 30, 20XX, the changes in its financial position, or where applicable, its cash flows for the year then ended." See Example A.16 in Appendix A of AAG-SLV 14.79 in the *AICPA Audit and Accounting Guide State and Local Governments (2006)*.

(b) A statement should be included that the audit was made in accordance with generally accepted government auditing standards per GAGAS (2007) Paragraphs 5.05 and 1.12 and 1.13.

(11) Modified accrual budget basis: The General Appropriation Act of 2004, which applies to fiscal year 2005 budgets established the **modified accrual basis** of accounting as the budgetary basis of accounting for the state of New Mexico. State agencies will have a **different budget basis** beginning in the fiscal year ended June 30, 2005. DFA has a white paper on this subject available at www.dfafcd.state.nm.us, named basis of accounting-modified accrual and the budgetary basis. Under the new law, encumbrances related to single year appropriations lapse at year end. The portion of an encumbrance representing goods and services received by the last day of the fiscal year should be reclassified as accounts payable. Any remaining encumbrances related to single year appropriations must be reclassified as unreserved fund balance and a liability recorded to recognize any amounts subject to reversion. If the legislature provides a new appropriation for a specific encumbrance, it is carried forward to a new appropriation period to be charged against the new budget. If the legislature does not provide a new appropriation for an encumbrance, the encumbrance is no longer authorized. Appropriation periods are sometimes for periods in excess of twelve months (multiple-year appropriations). When such appropriation periods lapse, the authority for the budget also lapses and encumbrances can no longer be charged to that budget. The accounts receivable period of availability will be 60 days following the end of the fiscal year. Agencies should be recording receivables regularly, not just at year end.

(12) Bond proceeds presentation:

(a) The state treasurer's office

(STO) administers the debt service funds for various bond issues that are obligations of the state of New Mexico. STO should not report in its basic financial statements bonds payable that are obligations of the state of New Mexico. The proper reporting of these payables and the related bond face amounts (proceeds) is in the state's comprehensive annual financial report (CAFR). The STO audit report, notes to the financial statements must: (1) explain the following-by statute STO is responsible for making the state's bond payments and keeping the related records, however, it is not responsible for the related debt, the state is; and (2) refer the reader to the detailed supplemental information in the STO audit report and the statewide CAFR. The STO's financial statements include audited supplemental information (SI) regarding the state of New Mexico bond obligations. The SI schedules must show: (1) the beginning and end-of-year bond payable balances, increases and decreases (separately presented), and the portions of each bond issuance that are due within one year, as required by GASB 34 Paragraph 119; (2) the details of debt service requirements to maturity required by GASB 38 Paragraph 10; and (3) any violations of bond covenants and related actions taken to address violations of bond covenants, required by GASB 38 Paragraph 9 and Section 12-6-5, NMSA 1978.

(b) State agencies that receive appropriated bond proceeds to administer for project recipients should report those appropriations and related activity as follows so that the primary users of the separate agency audit reports, the legislators, can easily identify specific appropriations. Appropriate reclassifications for GAAP presentation in the statewide CAFR will occur during the CAFR compilation:

(i) A special revenue fund should be used to account for the proceeds and related expenditures.

(ii) In the statement of activities, the proceeds should be reported as general revenue under the caption "bond proceeds appropriations."

(iii) In the statement of revenues, expenditures, and changes in fund balances, the bond proceeds should be reported as revenue using the same caption, "bond proceeds appropriation."

(iv) **The entire amount of the proceeds appropriated should be recognized as revenue, and expenses once the bonds are sold** and as "due from other state agency" and "due to project recipient." Unexpended balances-that under law or the terms of the bond statement are due to another fund-should be reported as a liability to the appropriate fund. The bond statement identifies the fund owed.

(v) In the notes to the financial statements, agencies should

include an explanation that the bond proceeds were allocated by the legislature to the agency to administer disbursements to the project recipients and that the agency is not obligated in any manner for the related indebtedness. Agencies should also disclose any restrictions on the use of the proceeds, such as reversions of unexpended balances. (Any restrictions are listed in the bond statement, appropriation act, or both).

(c) The DFA state board of finance deposits bond proceeds into an agency fund for arbitrage administration purposes. As the proceeds are needed, agencies draw them down. This activity should be reported by DFA as follows:

(i) The entire amount of bond proceeds held in the agency fund for the special revenue funds of DFA should be accounted for in the agency fund as a liability under the caption "due to other funds" and as an asset in the special revenue funds under the caption "due from other funds." For financial reporting purposes, these amounts must be reclassified from DFA's agency funds to assets of the DFA fund they belong to in accordance with GASB 34 Paragraph 111.

(ii) The entire amount of bond proceeds held in the agency fund for the special revenue funds of state agencies, other than DFA, should be accounted for and reported as a liability in the agency fund under the caption "due to other state agencies" and in the special revenue funds of the recipient administering state agencies as an asset under the caption "due from other state agencies." (Agencies should encourage their independent auditors to confirm with the board of finance the balances due to the agency special revenue funds).

B. PERTAINING TO HOUSING AUTHORITIES:

(1) **The state of New Mexico currently has 52 housing authorities that are included under the Audit Act:**

- (a) regional housing authorities 7
- (b) component unit of public housing authorities 2
- (c) component units or department of municipalities 33
- (d) component units or department of counties 9
- (e) component unit of the state 1

(2) The housing authority must be included in the financial report of the primary government by discrete presentation unless an exemption from this requirement is obtained from the state auditor.

(a) Discrete presentation shows financial data of the component unit in a column, to the right of and separate from the financial data of the primary government.

See GASB 14 Paragraphs 44 through 50 for additional guidance.

(b) The primary government and/or auditor must make the determination whether the housing authority is a component unit of the primary government. See Paragraph (1) of Subsection A of 2.2.2.10 NMAC for guidance in this determination. In the event the primary government and/or auditor determine that the housing authority is a department of, rather than a component unit of the primary government, a **request for exemption from the discrete presentation requirement must be submitted to the state auditor, by the agency, explaining why the housing authority should not be a discretely presented component unit.**

The request for exemption must include evidence that the housing authority is not a separate legal agency from the primary government and that the corporate powers of the housing authority are held by the primary government. Evidence included in the request must address these issues:

(i) the housing authority is not a corporation registered with the public regulation commission;

(ii) there was never a resolution or ordinance making the housing authority a public body corporate; and

(iii) the housing authority was authorized under Section 3-45-1, NMSA 1978, Municipal Housing Law.

(c) Upon receipt of the exemption granted by the state auditor from the requirement for discrete presentation, the housing authority department or program would be included in the financial report of the primary government like any other department or program of the primary government.

(d) **An annual exemption is required.**

(3) Audits of the public housing authorities that are **departments** of the local government shall be conducted by the same IPA that performs the audit of the local government. Separate audit contracts will not be approved.

(a) Local governments are encouraged to include representatives from the public housing authorities that are departments in the IPA selection process.

(b) The IPA shall include the housing authority's governing board and management representatives in the entrance and exit conferences with the primary government. If it is not possible to hold such combined conferences, the IPA shall hold a separate entrance and exit conference with housing authority's management and a member of the governing board.

(4) Housing authorities that are component units of a local government:

(a) must account for financial activity in proprietary funds;

(b) are authorized by the amendment to Section 12-6-3 (D), NMSA 1978, in Senate Bill 263, "at the public housing authority's discretion, to be audited separately from the audit of its local primary government entity; if a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity;" the amendment further stipulates in Section 12-6-4 (A), NMSA 1978, that "a public housing authority (other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity."

(c) Any separate audits of component unit housing authorities must be conducted according to the following requirements.

(i) The primary government auditor must agree to use the information from the work of the component unit auditor.

(ii) The component unit auditor selected must appear on the office of the state auditor list of eligible independent public accountants.

(iii) The bid and auditor selection processes must comply with the requirements of this rule.

(iv) The office of the state auditor standard contract form must be used.

(v) All component unit findings must be disclosed in the primary government's audit report.

(vi) Any separately issued component unit audit report must be submitted to the state auditor for the review process described in 2.2.2.13 NMAC.

(vii) The audit report will be released by the state auditor separately from the primary government's report, under a separate release letter to the housing authority.

(5) Auditors and public housing authorities must follow the requirements of *Guidelines on Reporting and Attestation Requirements of Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities Not-for-Profit Multifamily Program Participants and their Independent Accountants*, which is available on the real estate assessment center (REAC) web site at www.hud.gov under a search for UFRS. Additional administrative issues related to the audit of public housing authorities follow.

(a) Housing authority audit contracts must include the cost of the audit firm's SAS 29 opinion on the financial data schedule (FDS) if the public housing authority expended \$500,000 or more of

federal funds or is part of a local government that expended \$500,000 or more of federal funds. The PHA must electronically submit a final approved FDS based on the audited financial statements no later than 9 months after the PHA's fiscal year end. The auditor must:

(i) electronically report on his comparison of the electronic FDS submission in the REAC staging data base through the use of an ID and password;

(ii) include a hard copy of the FDS in the audit report;

(iii) render a SAS 29 opinion on the FDS; and

(iv) explain any material differences between the audited FDS and the financial statements in the notes to the financial statements; **the audit must include this separate attestation engagement; the preparation and submission cost for this HUD requirement must be included in the audit contract.**

(b) The IPA shall consider whether any fee accountant used by the housing authority is a service organization according to the criteria of SAS 70. See Subsection U of 2.2.2.10 NMAC, SAS AU 324, and the SAS 98 amendment to SAS 70 for further explanation regarding service organizations and related auditing requirements. If the housing authority has not implemented effective internal controls over the fee accountant's work product, the auditor will have to obtain sufficient understanding of the internal controls the fee accountant has over his/her work product to plan the audit. A service auditor is the auditor who reports on the processing of transactions by a service organization. A service auditor's report on controls placed in operation at the fee accountant's organization should be helpful in providing a sufficient understanding to plan the audit of the housing authority; however, relying on that report alone, the housing authority auditor cannot reduce the assessed level of control risk below the maximum. To do that the housing authority auditor would have to do one or more of the following:

(i) test the housing authority's controls over the activities of the fee accountant;

(ii) obtain a copy of the fee accountant's auditors' report on controls placed in operation and tests of operating effectiveness, or a report on the application of agreed-upon procedures that describes relevant tests of controls; or

(iii) perform tests of the fee accountant's internal controls at the fee accountant's office. (SAS AU 324.12)

(c) The IPA shall provide the housing authority with an itemized cost breakdown by program area for audit services rendered in conjunction with the housing authority.

(6) Single audit reporting issue: If a single audit is performed on the separate audit report for the public housing authority, including the housing authority schedule of expenditures of federal awards, then the housing authority federal funds do not need to be subjected a second time to a single audit during the single audit of the primary government. In this situation the housing authority federal expenditures do not need to be included in the primary government's schedule of expenditures of federal awards. See Paragraph 6.11 of *the AICPA Audit Guide, Government Auditing Standards* and Circular A-133 audits for more information regarding this issue.

C. PERTAINING TO SCHOOL DISTRICTS:

(1) Update to the auditor selection process: After completing the evaluation for each IPA the school district shall submit the IPA recommendation to the state public education department (PED) for approval, prior to submitting the recommendation to the state auditor for approval. The sample cover letter provided in Appendix A may be used for the PED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Audit planning level of materiality:

(a) As explained in Sections 2.2.2.10.A.(1) and (2) the level of planning materiality and required auditor opinion will be at the individual fund level for the primary government and at the individual fund level for the component units.

(b) If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1 NMSA 1978, requires that entity to be audited regardless of materiality.

(3) Regional education cooperative (REC) audits:

(a) For accounting purposes, RECs are considered joint ventures, in accordance with the GASB *Codification of Governmental Accounting and Financial Reporting Standards*, Section J50 "Accounting for Participation in Joint Ventures and Jointly Governed Organizations".

(b) A separate financial and compliance audit is required on activities of RECs. The IPA shall provide a copy of this report to the participating school districts and the PED once the report has been released by the state auditor. The presentation of these funds should be in conformity with accounting principles generally accepted in the United States of America.

(c) Audits of RECs should test for compliance with PED Regulations 6.23.3.7 through 6.23.3.12.

(d) Any on-behalf payments for fringe benefits and salaries made by RECs for employees of school districts should be

accounted for in accordance with GASB Cod. Sec. N50.135 and communicated to the employer in accordance with Sec. N50.131.

(4) School district audits must address the following issues:

(a) Audits of school districts shall test for compliance with PED Regulation 6.20.2 NMAC, *Governing Budgeting and Accounting for New Mexico Public Schools and School Districts* and the *Manual of Procedures*, primarily Supplement 7, *Cash Controls*.

(b) The audit report of each school district shall include a cash reconciliation schedule which reconciles the cash balance as of the end of the previous fiscal year to the cash balance as of the end of the current fiscal year. This schedule will account for cash in the same categories as used by the district in its monthly cash reports to the state public education department.

(c) On-behalf payments of salaries and fringe benefits made for school district employees by RECs must be accounted for in accordance with GASB Cod. Sec. N50.129 through .133 and disclosed in accordance with Sec. N50.134. "Employer governments should obtain information about the amount of on-behalf payments for fringe benefits and salaries from the paying entity or the third-party recipient; interentity cooperation is encouraged. If information cannot be obtained from those sources, employer governments should make their best estimates of the amounts." (GASB 24 Paragraph 9)

(d) Any joint ventures or other entities created by the school districts are agencies subject to the Audit Act.

(e) Agency fund reporting: Under GASB 34 a statement of changes in fiduciary net assets is required for pension trust funds, investment trust funds, and private-purpose trust funds. Agency funds have no net assets and will be excluded from this presentation (GASB 34 Paragraph 110). Therefore, it is a requirement of the state auditor that a schedule of changes in assets and liabilities for the fiscal year be included as supplemental information in the audit report, showing the changes in agency funds summarized by school.

(f) Capital expenditures by the NM public school facilities authority: School districts must: review capital expenditures made for repairs and building construction projects of the school district by the NM public school facilities authority; determine the amount of capital expenditures that should be added to the capital assets of the school district; and account for those additions properly. The auditor should test the school district capital asset additions for proper inclusion of these expenditures.

(5) Pertaining to charter schools:

(a) A charter school is a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school. A charter school is considered a public school, accredited by the state board of public education and accountable to the school district's local school board for ensuring compliance with applicable laws, rules and charter provisions. A charter school is administered and governed by a governing body in a manner set forth in the charter.

(b) In defining a school district's financial reporting agency, certain GASB 14 criteria must be applied to determine whether the district (primary government) has any component units that must be included. A charter school is a component unit of its sponsoring school district. The charter schools must be included in the financial statements of their sponsoring school districts by discrete presentation. Discrete presentation entails reporting component unit financial data in a column(s) separate from the financial data of the primary government.

(c) Financial statement presentation requirements for charter school component units follow. Note that the scope of the audit includes supplemental information consisting of component unit fund financial statements and combining statements which must be opined on. The charter schools should be reported in the following manner.

(i) All charter schools should be reported as significant and therefore major component units of the school district. All the charter schools should be included in the basic financial statements (full accrual basis presentation) in one of the following manners: a separate column for each component unit presented in the government-wide statement; combining statements of component units presented as a basic financial statement after the fund financial statements; or as condensed financial statements in the notes to the basic financial statements (GASB 34 Paragraphs 124 to 126).

(ii) Fund financial statements are required because such information is not available in separately issued financial reports on the charter schools. This modified accrual basis presentation should be presented as supplemental information (SI) according to AAG-SLV 3.20 (2006). If any funds presented are the result of combining nonmajor funds, a combining statement should also be included in the SI presentation.

(d) The state auditor requires that individual budget-to-actual comparison schedules for the charter schools be included in the supplemental information section of the financial report following the fund

financial statements and related combining statements, to demonstrate compliance with legally adopted budgets. The individual budgetary comparison schedules are also included in the scope of the audit and must be audited and included in the auditor's opinion.

(6) New Mexico public schools insurance authority (NMPSIA): Both legal compliance and substantive tests should be performed at the agency level on these transactions.

D. PERTAINING TO LOCAL PUBLIC BODIES:

(1) Obsolete county records: Section 14-1-8, NMSA 1978 requires that "An official charged with the custody of any records and who intends to destroy those records, shall give notice by registered or certified mail to the state records administrator, state records center, Santa Fe, New Mexico, of the date of the proposed destruction and the type and date of the records he intends to destroy. The notice shall be sent at least sixty days before the date of the proposed destruction. If the state records administrator wishes to preserve any of the records, the official shall allow the state records administrator to have the documents by calling for them at the place of storage." The auditor should test for compliance with this statute.

(2) Tax roll reconciliation - county governments: Counties' audit reports must include two supplementary schedules. The first one is a "tax roll reconciliation of changes in the county treasurer's property taxes receivable" showing the June 30th receivable balance and a breakout of the receivable for the most recent fiscal year ended, and a total for the previous nine fiscal years. Per Section 7-38-81(C), NMSA 1978, property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The second schedule titled "county treasurer's property tax schedule" must show by property tax type and agency, the amount of taxes: levied; collected in the current year; collected to-date; distributed in the current year; distributed to-date; the amount determined to be uncollectible in the current year; the uncollectible amount to-date; and the outstanding receivable balance at the end of the fiscal year. This information is necessary for proper revenue recognition on the part of the county as well as on the part of the recipient agencies, under GASB 33. Property taxes levied in January 2006 are budgeted for the fiscal year July 1, 2006 through June 30, 2007. If the county does not have a system set up to gather and report the necessary information, or the necessary information itself, for the property tax schedule, a related finding is required.

(3) The following is an example of a tax roll reconciliation schedule:

Continued on page 226

STATE OF NEW MEXICO (NAME) COUNTY TAX ROLL RECONCILIATION - CHANGES IN THE COUNTY TREASURER'S PROPERTY TAXES RECEIVABLE FOR THE YEAR ENDED JUNE 30, 2007	
Property taxes receivable, beginning of year	\$ 641,290
Changes to Tax Roll:	
Net taxes charge d to treasurer for fiscal year	4,466,602
Adjustments:	
Increases in taxes receivables	3,066
Charge off of taxes receivables	(6,144)
Total receivables prior to collections	5,104,814
Collections for fiscal year ended June 30, 2007	<u>(4,330,993)</u>
Property taxes receivable, end of year	<u>\$ 773,821</u>
Property taxes receivable by years:	
1997-2005	226,344
2006	<u>547,477</u>
Total taxes receivable	<u>\$ 773,821</u>

(4) An example of the schedule titled "county treasurer's property tax schedule" is shown in Appendix E.

E. **PERTAINING TO AUDITS OF COLLEGES AND UNIVERSITIES:**

(1) Update to the auditor selection process: After completing the evaluation for each IPA the college or university shall submit the IPA recommendation to the higher education department (HED) for approval, prior to submitting the recommendation to the state auditor for approval. The sample cover letter provided in Appendix A may be used for the HED approval signature. The IPA recommendation is due to the state auditor on or before May 31.

(2) Budgetary comparison schedules: The state auditor requires that every college and university's audit report include budgetary comparison schedules as supplementary information (SI). The budgetary comparison schedules must show columns for: the original budget; the revised budget; actuals on the budgetary basis; and a variance column. **The budget comparison schedules must be audited and an auditor opinion must be rendered.** A SAS opinion does not meet this requirement. See Section 14.53 of the *AICPA Audit and Accounting Guide State and Local Governments (2006)* (AAG-SLV). The auditor must confirm the final adjusted and approved budget with the HED. The auditor's opinion on the budgetary SI should follow Example A-14 in AAG-SLV 14.79 (2006) and footnote 3 of 14.79. A reconciliation of actual amounts on the budgetary basis to financial statement accrual basis amounts should be disclosed on the budgetary comparison schedule. The reconciliation is required only at the "rolled up" level of unrestricted and restricted - all operations and should include revenues and expenses. The HED approved the following format for audited budgetary comparison schedules. This rule requires that the format be used in reporting the budgetary comparison data as supplementary information.

(a) Unrestricted and restricted - all operations (Schedule 1)
Beginning fund balance: Unrestricted and restricted revenues: State general fund appropriations, federal revenue sources, tuition and fees, land and permanent fund, endowments and private gifts, other
Total unrestricted and restricted revenues
Fund balance budgeted
Total unrestricted and restricted revenues and fund balance budgeted
Unrestricted and restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant, student social and cultural activities, research, public service, internal service, student aid grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness, other (student aid, grants and stipends; and independent operations)
Total unrestricted and restricted expenditures
Change in fund balance net assets (budgetary basis), ending fund balance
(b) Unrestricted - Non Instruction & General (Schedule 2)
Beginning fund balance: Unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other

Total unrestricted revenues
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Student social and cultural activities, research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total unrestricted expenditures: net transfers
Change in fund balance (budgetary basis), ending fund balance
(c) Restricted - Non-Instruction and General(Schedule 3)
Beginning fund balance: Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Student and social activities, research, public service, internal services, student aid, grants and stipends, auxiliary services, intercollegiate athletics, independent operations, capital outlay, building renewal and replacement, retirement of indebtedness
Total restricted expenditures
Net transfers
Changes fund balance (budgetary basis), ending fund balance
(d) Unrestricted - instruction and general (Schedule 4)
Beginning fund balance, unrestricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total unrestricted revenues
Fund balance budgeted
Total unrestricted revenues and fund balance budgeted
Unrestricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total unrestricted expenditures
Net Transfers
Change in net assets (budgetary basis)
Ending fund balance
(e) Restricted - instruction and general (Schedule 5)
Restricted revenues: Tuition, miscellaneous fees, federal government appropriations, state government appropriations, local government appropriations, federal government contracts/grants, state government contracts/grants, local government contracts/grants, private contracts/grants, endowments, land and permanent fund, private gifts, sales and services, other
Total restricted revenues
Fund balance budgeted
Total restricted revenues and fund balance budgeted
Restricted expenditures: Instruction, academic support, student services, institutional support, operation and maintenance of plant
Total restricted expenditures
Change in net assets (budgetary basis)

(3) The level of planning materiality required by the state auditor follows: Institutions must report using the business type activities (BTA) model. The level of planning materiality described in the *AICPA Audit and Accounting Guide, State and Local Governments (2006)*, Section 4.26, must be used for the audit of these institutions. Planning materiality for component units is at the individual component unit level. **If a 501(c) 3 component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-1, NMSA 1978, requires that entity to be audited regardless of materiality.** See Section 2.2.2.10.A.(1) for more information about contracting for these required audits.

(4) Compensated absence liability should be shown as follows: The statement of net assets should reflect the current portion of compensated absences under current liabilities, and the long-term portion of compensated absences under noncurrent liabilities.

(5) Component unit issues: Legally separate entities that meet the criteria set forth in GASB 14 as amended by GASB 39 to qualify as a component unit of an educational institution must be included in the educational institution's audit report **as a discrete component unit**. An exemption must be obtained from the state auditor in order to present any component unit as blended. The **same auditor** must audit the component unit and the educational institution unless an exemption is obtained from the state auditor. **These exemptions must**

be obtained annually.

(a) If the college or university has no component units there should be a statement to that effect in the notes to the financial statement in the description of the reporting entity.

(b) Individual component unit budget comparison schedules are required if the component unit has a "legally adopted budget." A component unit has a legally adopted budget if it receives any federal funds, state funds, or any other appropriated funds whose expenditure authority derives from an appropriation bill or ordinance that was signed into law.

(c) There is also no level of materiality for reporting findings of component units that do not receive public funds. All component unit findings must be disclosed in the primary government's audit report.

(6) Management discussion and analysis (MD&A): The MD&A analysis of significant variations between original and final budget amounts and between final budget amount and actual budget results is required by this rule for colleges and universities. The analysis should include any currently known reasons for those variations that are expected to have a significant effect on future services or liquidity.

F. PERTAINING TO MUTUAL DOMESTIC WATER ASSOCIATIONS : Associations created pursuant to the Sanitary Projects Act (3-29-1, NMSA 1978) are subject to audit under the Audit Act 12-6-2, NMSA 1978 and this rule. However, the policy of the office of the state auditor's office has been to exempt Mutual Domestic Water Association (MDWA's) from the requirement to receive an annual audit unless one of the following circumstances requires an audit: the MDWA's bylaws or governing board require an annual audit; a state agency (like the NM environment department) that has provided the MDWA with a grant or pass-down federal funds requires that MDWA to obtain an audit; the office of the state auditor requires an audit; or the MDWA expends \$500,000 or more of federal funds during a fiscal year, requiring a single audit. Attorney General Opinion 06-02 determined that MDWA created pursuant to the Sanitary Projects Act, NMSA 1978 are public bodies/political subdivisions, whose revenues are "public money" and they have statutory responsibilities to abide by: the Open Meetings Act, the Inspection of Public Records Act, the Procurement Code, and the Per Diem and Mileage Act. Due to the fact that MDWA's have officially been determined to be governmental nonprofit organizations, their financial statements must follow the government format (GASBS 34), not the nonprofit format for fiscal years ending June 30, 2007 and thereafter.

[2.2.2.12 NMAC - Rp, 2.2.2.12 NMAC, 4-16-07]

2.2.2.13 REVIEW OF AUDIT REPORTS AND WORKING PAPERS:

A. Section 12-6-14(B), NMSA requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract. All audits under contracts approved by the state auditor are subject to review.

(1) Upon receipt of each audit report the office will make a cursory review to determine whether the report is ready for review or is incomplete and/or conspicuously erroneous. Substandard reports will be returned to the IPA with a letter rejecting the report and the reasons for the rejection. The agency will receive a copy of the rejection letter. Reports that are initially accepted will be reviewed as follows.

(2) A preliminary review will be made of all audit reports received for proper reporting and presentation of financial statements, note disclosures and audit findings.

(3) The state auditor notifies the IPA regarding any deficiencies found during the review process. A copy of the deficiency comments is faxed to the agency at the same time. The IPA shall submit related corrections or notification of disagreement with the review comments to the state auditor **within ten working days** of receipt of the deficiency notification.

(4) If the IPA does not respond to the deficiency notification the state auditor will notify the agency to select a different auditor for future audits.

B. Released audit reports may be subject to a comprehensive desk and working paper review by the state auditor. These review checklists used by the office during this process are public documents available on the website at www.saonm.org/pdfguides.html, unless the review is performed in conjunction with a federal agency. It should be noted that any reviews of working papers will include testing of audit firm documentation for:

(1) continuing professional education (CPE) for compliance with GAGAS requirements;

(2) the independence safeguards on nonaudit services, for compliance with GAGAS (2007) Paragraph 3.30 requirements; and

(3) documentation of any additional audit procedures performed after the date of the independent auditor's report, as required by SAS 103 Paragraphs 23 through 26.

C. If during the course of such a quality control review, the state auditor determines that deficiencies noted are significant enough that the audit was not

performed in accordance with auditing standards generally accepted in the United States of America and/or this rule, any or all of the following action(s) may be taken:

(1) the IPA may be required to correct the working papers and reissue the audit report to the agency, and any others receiving copies;

(2) the IPA's future audit engagement may be limited in number;

(3) the IPA may be required to submit working papers along with the audit report to the state auditor for review by the office, prior to the release of the report, for some or all audit contracts;

(4) the IPA may be denied the issuance of future audit contracts; and/or

(5) the IPA may be referred to the New Mexico public accountancy board for possible licensure action.

D. Results of review:

(1) A letter will be issued upon completion of each report or working paper review to advise the IPA of the results of the review. The IPA is required to respond to all review comments as directed.

(2) any corrective actions will be approved by the state auditor based on the recommendation of the in-charge reviewer.

(3) the IPA may request a review of the recommended action by the state auditor. If requested, the state auditor will schedule a conference, within fifteen days, to allow the IPA an opportunity to analyze the results of the desk or working paper review and present any information the IPA deems appropriate.

E. Revisions to the audit report: Revisions to the audit reports from reviews conducted by the federal inspector generals and the state auditor will be made by the IPA, to all copies of the audit report held by the agencies and the state auditor.

[2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 4-16-07]

2.2.2.14 CONTINUING EDUCATION AND QUALITY CONTROL REQUIREMENTS:

A. Per generally accepted government auditing standards (GAGAS) (2007) Section 3.46, "Each auditor performing work under GAGAS should complete, every two years, at least 24 hours of CPE that directly relates to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. For auditors who are involved in any amount of planning, directing, or reporting on GAGAS assignments and those auditors who are not involved in those activities but charge 20 percent or more of their time annually to GAGAS assignments should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every two year period) that enhances the auditor's profes-

sional proficiency to perform audits or attestation engagements.” The GAO issued *Government Auditing Standards: Guidance on GAGAS Requirements for Continuing Professional Education*, GAO-05-568G, April 2005. It provides helpful guidance to auditors and audit organizations regarding the implementation of the Yellow Book CPE requirements. The guide is available at www.gao.gov/gov-aud/ybcp2005.pdf

B. U.S. GAO *Government Auditing Standards, 2007 Revision* (GAGAS), Section 3.50 states “each audit organization performing audits and/or attestation engagements in accordance with GAGAS should have an appropriate internal quality control system in place and should undergo an external peer review.” Section 3.53 requires. “Audit organizations performing audits and attestation engagements in accordance with GAGAS should have an external peer review of their auditing and attestation engagement practices at least once every three years by reviewers independent of the audit organization being reviewed. The external peer review should determine whether during the period under review, the reviewed audit organization’s internal quality control system was adequate and whether quality control policies and procedures were being complied with to provide the audit organization with reasonable assurance of conforming with applicable professional standards. Audit organizations should take remedial, corrective actions as needed based on the results of the peer review.”

(1) The AICPA PR Section 100 *Standards for Performing and Reporting on Peer Reviews* section on the “timing of reviews” provides the following information. “A firm’s due date for its initial peer review is eighteen months from the date it enrolled in the program or should have enrolled, whichever date is earlier. If a firm is enrolled in the program, but does not perform engagements requiring it to undergo a peer review, it is not required to undergo a peer review. However, when a firm performs its first engagement requiring a peer review, the firm’s due date will be eighteen months from the year-end of that engagement. A firm’s subsequent peer review ordinarily has a due date of three years and six months from the year-end of the previous review. When a firm, subsequent to the year-end of its report or engagement review, performs an engagement under the SASs, *Government Auditing Standards* or examinations of prospective financial statements under the SSAEs that would have required the firm to have a system review, the firm should (a) immediately notify the administering entity and (b) undergo a system review. The system review will be due

eighteen months from the year-end of the engagement (for financial forecasts and projections eighteen months from the date of report) requiring a system review or by the firm’s next scheduled due date, whichever is earlier. Firms that fail to inform the administering entity of the performance of such an engagement will be required to participate in a system review that includes such engagement with a peer review year-end that covers the engagement. A firm’s subsequent peer review will be due three years and six months from this peer review year-end.”

(2) If the firm is unable to complete its external quality control review by the required due date, it will render the firm ineligible to conduct audits of governmental agencies. **Extension requests to complete the external quality control review that are approved by the administering organization will not be accepted by the state auditor.**

(3) The state auditor requires the location of the external quality control review to be the office of the firm under review, regardless of whether the firm reviewed is a sole practitioner and regardless of the number of firm employees. External quality control reviews performed at a location other than the office of the firm under review will not be accepted by the state auditor.

(4) The IPA firm profile submission to the state auditor requires copies of:

(a) the employing organization of the peer reviewers’ quality control review showing an unqualified opinion (this is a special requirement of the state auditor);

(b) external quality control review report for the auditor’s firm;

(c) the corresponding letter of comments;

(d) auditor’s response to letter of comments;

(e) the letter of acceptance from the peer review program in which the firm is enrolled; and

(f) a list of the governmental audits reviewed during the peer review; the office assumes that at least one of these will be a New Mexico governmental audit.

(5) Failure to submit the required IPA firm profile documentation, or an opinion less than **modified** on the auditor’s peer review, will disqualify the IPA from doing governmental audits.

(6) During the procurement process audit firms shall provide a copy of their most recent external peer review report to the agency upon submitting a bid proposal or offer.

(7) Individuals conducting peer reviews of an audit organization’s system of quality control should meet the following requirements per GAGAS (2007) 3.54:

(a) have current knowledge of GAGAS and the government environment relative to the work being reviewed;

(b) be independent (as defined in GAGAS) of the audit organization being reviewed, its staff, and the assignments selected for review;

(c) have knowledge on how to perform a peer review (knowledge can be obtained from on-the-job training, training courses, or both); and

(d) the state auditor also requires that the employing organization of the peer reviewers should have received an unqualified opinion on the review of their organization’s system of quality controls.

(8) The New Mexico public accountancy board determined that performing peer review constitutes the practice of public accountancy; therefore, a CPA from another state who enters New Mexico to perform a peer review for a New Mexico CPA firm must file a notification of intent to practice under the substantial equivalency provision.

(9) The reviewer must be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the office.

(10) The review should include [GAGAS (2007) Paragraph 3.55]:

(a) “a review of the organization’s internal quality control policies and procedures, including related monitoring procedures, audit and attestation engagement reports, audit and attest documentation, and other necessary documents (for example, independence documentation, CPE records, personnel management files related to compliance with hiring, performance evaluation, and assignment policies);

(b) interviews with various levels of the reviewed organization’s professional staff to assess their understanding of and compliance with relevant quality control policies and procedures;

(c) use of one of the following approaches to selecting assignments for review:

(i) select assignments that provide a reasonable cross section of the assignments performed by the reviewed organization in accordance with GAGAS; or

(ii) select assignments that provide a reasonable cross section of the reviewed organization’s work subject to quality control requirements, including one or more assignments performed in accordance with GAGAS.

(d) the review should be sufficiently comprehensive to provide a reasonable basis for concluding whether the reviewed audit organization’s system of quality control was complied with to pro-

vide the organization with reasonable assurance of conforming with professional standards in the conduct of its work. Reviewers should consider the adequacy and results of the reviewed audit organization's monitoring efforts to efficiently plan its peer review procedures; and

(e) reviewers should prepare a written report(s) communicating the results of the external peer review; the report should indicate the scope of the review, including any limitations thereon, and should express an opinion on whether the system of quality control of the reviewed organization's audit and/or attestation engagement practices was adequate and was being complied with during the year reviewed to provide the audit organization with reasonable assurance of conforming with professional standards for audits and attestation engagements; the report should state the professional standards to which the reviewed audit organization is being held; the report should also describe the reason(s) for any modifications to the opinion; when there are matters that resulted in a modification to the opinion, reviewers should report a detailed description of the findings and recommendation, either in the peer review report or in a separate letter of comment or management letter, to enable the reviewed audit organization to take appropriate actions; the written report should refer to the letter of comment or management letter if such a letter is issued along with a modified report."

C. The state auditor performs its own quality control review of IPA audit reports and working papers. When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding letter of comments, the state auditor will no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor will take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

[2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 4-16-07]

HISTORY of 2.2.2 NMAC:

Pre-NMAC Regulatory Filing History:

The material in this part was derived from that previously filed with the State Records Center and Archives under SA Rule No. 71-1, Regulations of state auditor Relating to Audit Contracts with Independent Auditors by State Agencies, filed 5-14-71; SA Rule No. 71-2, Regulations of State Auditor for Audits by Independent Auditors, filed 5-27-71; SA Rule No. 72-1, Regulations of State Auditor Relating to Audit Contracts With Independent Auditors by Agencies of the

State of New Mexico, filed 6-1-72; SA Rule No. 72-2, Regulations of State Auditor for Audits by Independent Auditors, filed 6-1-72; SA Rule No. 74-1, Regulations of State Auditor Relating to Reporting Statutory Violations, filed 2-28-74; SA Rule No. 74-2, Rotation of Assignments, filed 2-28-74; SA No. 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 11-3-78; Amendment No. 1 to SA Rule 78-1, Regulations Governing the Auditing of New Mexico Governmental Agencies, filed 5-28-80; SA Rule No. 82-1, Regulation Governing the Auditing of New Mexico Governmental Agencies, filed 12-17-82; SA Rule No. 84-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 4-10-84; SA Rule No. 85-1, Regulations Governing the Auditing of Agencies of the State of New Mexico, filed 1-28-85; SA Rule No. 85-3, Regulation for State Agencies Concerning NCGA Statement No. 4 - Accounting and Financial Reporting Principles for Claims and Judgements and Compensated Absences, filed 4-16-80; SA Rule No. 85-4, Regulations Governing the Auditing of Housing Authorities of the State of New Mexico, filed 6-12-85; SA Rule No. 85-5, Regulations Pertaining to Single Audits of State Agencies and Local Public Bodies, filed 6-17-85; SA Rule No. 85-6, Audits of Grants to Subrecipients, filed 6-17-85; SA Rule 86-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 1-20-86; SA Rule No. 86-2, Regulation Governing Violations of Criminal Statutes in Connection with Financial Affairs, filed 3-20-86; SA Rule No. 86-3, Professional Services Contracts, filed 7-9-86; SA Rule 87-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-13-87; SA Rule 87-2, Approval of Audit Contracts, filed 4-2-87; SA Rule 87-3, Audit Requirements for Deferred Compensation, Retirement Plans, Budget and Public Money for the State of New Mexico, filed 8-14-87; SA Rule 88-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-10-88; SA Rule 89-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-10-89; SA Rule 90-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-1-90; SA Rule 90-3, Auditor's Responsibilities Related to Fees Collected on Convictions Relating to Intoxicating Liquor and Controlled Substances, filed 5-7-90; SA Rule 91-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-13-91; SA Rule 92-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-6-92; SA Rule 93-1, Regulations Governing the Audits of Agencies of the

State of New Mexico, filed 2-25-93; SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 2-25-94; Amendment 1 to SA Rule 94-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 5-16-94; SA Rule 95-1, Regulations Governing the Audits of Agencies of the State of New Mexico, filed 3-16-95; and 2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies, filed 4-2-96.

History of Repealed Material:

2 NMAC 2.2, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-30-01.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-29-02.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-30-03;

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-31-04.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 5-13-05.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 3-16-06.

2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies - Repealed 4-16-07.

Print on Agency Letterhead

Date

Hector H. Balderas, State Auditor
 2113 Warner Circle
 Santa Fe, NM 87505-5499

Dear Mr. Balderas,

In accordance with the requirements of Paragraph (6) of Subsection C of 2.2.2.8 NMAC *Requirements for Contracting and Conducting Audits of Agencies*, the agency name is recommending that the firm of recommended IPA be the agency’s Independent Public Accountant (IPA) for the financial and compliance audit of the agency financial statements for the fiscal year ended ____; and requesting approval of this selection by the State Auditor.

(This section applies only to school districts and universities only). This IPA recommendation has been reviewed and approved by our oversight agency (please circle one) the Higher Education Department (HED) or the Public Education Department (PED) (circle one) as required by Section 12-6-14, NMSA 1978, and as indicated by the following oversight agency signature and date.

_____ Printed name of signer _____ Date _____
 Oversight Agency Signature

- This is a multi-year proposal and we will be in the _____ year of a 3 year proposal.
- This is an annual audit for the period indicated above.

Please check the appropriate box:

- This is a multi-year proposal and we will be in the period indicated above.

If your agency entered into any contracts with any of the audit firms on the State Auditor’s approved list from of audit firms from January 1, 1 2006, until the date this form was completed, with the exception of an annual financial and compliance audit contract, please list them here.

Contract Date	Contract Amt	Contract Firm	Services Provided by the Auditor
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____

If you have any questions regarding this IPA recommendation please contact _____ at phone number _____ at the agency office.

Respectfully,

Agency Representative

Enc: Evaluation for the Recommended IPA

[2.2.2 NMAC Appendix A - Rp, 2.2.2 NMAC Appendix A, 4-16-07]

NEW MEXICO STATE AUDITOR'S OFFICE
 Audit Contract Proposal Evaluation Form
 Part One

Name of Agency _____
 Agency Contact _____ Phone # _____
 Audit Firm Name _____ Date Completed _____

<u>Evaluation Criteria</u>		Points	Points Awarded
Section I. <u>Capability of Firm</u>			
A)	The firm has the resources to perform the type and size of audit required. # of firm team members _____ Total audit hours available _____	0-5	
B)	External Quality Control Review (Peer Review) 1. Peer review results: Obtain most recent copy of the external quality control review report including letter of comments 2. - Opinion received _____ Unmodified 10 Modified 5 If report is less than modified (adverse) STOP HERE. FIRM DOES NOT QUALIFY. 3. Results of reference checks and agency's prior experience with firm (check should include timeliness, planning, technical expertise, etc.).	0-10	
c)	Organization and completeness of proposal or bid for audit services	0-5	
Section I Total			
Section II. <u>Work Requirements & Audit Approach</u>			
A)	Auditor knowledge of audit objectives, agency needs, and product to be delivered	0-5	
B)	Proposal or bid contains a sound technical plan and realistic estimate of time to complete the audit. Start Date _____ End Date _____	0-5	
C)	Plans for using agency staff, including internal auditors.	0-3	
D)	If the proposal or bid is for a multi-year contract, approach for planning and conducting the work efforts of subsequent years.	0-2	
Section II Total			
Section III. <u>Technical Experience</u>		0-20	
A)	Governmental audit experience of audit firm.		
B)	Audit team experience: Specialization in your type of government (e.g., state agencies, schools, hospitals, counties, cities, etc.), including component units (housing authorities, charter schools, foundations)	0-15	
C)	Attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.	0-5	
Section III Total			
Section IV. <u>Firm Strengths or Weaknesses</u>			
Specify _____		0-5	
Section IV Total			
Total All Sections			

Submit a copy of this form for the proposal selected to the State Auditor along with the Agency recommendation letter.

SCORE	Maximum Points	Points Awarded
SCORE, Part One: Bring forward score from Part One of Evaluation Form	90	
FINAL SCORE	100	

Evaluated By

_____	Name and Title	_____	Date
_____	Name and Title	_____	Date
_____	Name and Title	_____	Date

[2.2.2 NMAC Appendix B - Rp, 2.2.2 NMAC Appendix B, 4-16-07]

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
1	Authoritative Status of NCGA Pronouncements and AICPA Industry Audit Guide	On issuance July 1984
2	Financial Reporting of Deferred Compensation Plans Adopted under the Provisions of Internal Revenue Code Section 457	Financial statements for periods ending after 12/15/86
3	Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements	Financial statements for periods ending after 12/15/86
4	Applicability of FASB Statement No. 87, "Employers' Accounting for Pensions," to State and Local Government Employers	On issuance September 1986
5	Disclosure of Pension Information by Public Employee Retirement Systems and State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 12/15/86
6	Accounting and Financial Reporting for Special Assessments	Financial statements for periods beginning after 06/15/87
7	Advance Refundings Resulting in Defeasance of Debt	Fiscal periods beginning after 12/15/86
8	Applicability of FASB Statement No. 93, "Recognition of Depreciation by Not-for-Profit Organizations," to Certain State and Local Governmental Entities	On issuance January 1988
9	Reporting Cash Flows of Proprietary and Nonexpendable Trust Funds and Governmental Entities that Use Proprietary Fund Accounting	Financial statements for fiscal years beginning after 12/15/89
10	Accounting and Financial Reporting for Risk Financing and Related Insurance Issues	Public entity risk pools: periods beginning after 06/15/90; Entities other than pools: periods beginning after 06/15/94
11	Measurement Focus and Basis of Accounting - Governmental Fund Operating Systems	Deferred by GASB 17 to periods beginning approximately two years after an implementation standard is issued (early application not permitted)
12	Disclosure of Information on Post-employment Benefits Other than Pension Benefits by State and Local Governmental Employers	Financial reports issued for fiscal years beginning after 06/15/90
13	Accounting for Operating Leases with Scheduled Rent Increases	Proprietary and similar trust funds: prospectively for leases with terms beginning after 06/30/90 Governmental and similar trust funds: Measurement criteria - prospectively for leases with terms beginning after 06/30/90; Recognition criteria - two changes: one for financial statements for periods approximately two years after an implementation standard is issued (early application not permitted)
14	The Financial Reporting Entity	Financial statements for periods beginning after 12/15/92
15	Governmental College and University Accounting and Financial Reporting Models	Financial statements for periods beginning after 06/15/92

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
16	Accounting for Compensated Absences	Financial statements for periods beginning after 06/15/93
17	Measurement Focus and Basis of Accounting - Governmental Fund Operating Statements: Amendment of the Effective Dates of GASB Statement 11 and Related Statements (an Amendment of GASB Statements 10, 11 and 13)	On issuance June 1993
18	Accounting for Municipal Solid Waste Landfill Closure and Post-closure Care Costs	Financial statements for periods beginning after 06/15/93
19	Governmental College and University Omnibus Statement (an Amendment of GASB Statements 10 and 15)	Pell grants - periods beginning after 06/15/93; Risk financing activities - periods beginning after 06/15/94
20	Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities that use Proprietary Fund Accounting	Financial statements for periods beginning after 12/15/93
21	Accounting for Escheat Property	Financial statements for periods beginning after 06/15/94
22	Accounting for Taxpayer-Assessed Tax Revenues in Governmental Funds	Financial statements for periods beginning after 06/15/94
23	Accounting and Financial Reporting for Refundings of Debt Reported by Proprietary Activities	Financial statements for periods beginning after 06/15/94
24	Accounting and Financial Reporting for Certain Grants and Other Financial Assistance	Financial statements for periods beginning after 06/15/95
25	Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 26 in the same fiscal year
26	Financial Reporting for Post-employment Health Care Plans Administered by Defined Benefit Pension Plans	Financial statements for periods beginning after 06/15/96 Earlier implementation is encouraged; however, implement GASB 25 in the same fiscal year
27	Financial Reporting for Pensions by State and Local Governmental Employers	Financial statements for periods beginning after 06/15/97 Earlier implementation is encouraged
28	Accounting and Financial Reporting for Securities Lending Transactions	Financial statements for periods beginning after 12/15/95 Earlier implementation is encouraged
29	The Use of Not-for-Profit Accounting and Financial Reporting Principles by Governmental Entities	Financial statements for periods beginning after 12/15/94 For entities that have applied the AICPA Not-for-Profit model but previously have not followed the governmental accounting and financial reporting standards required by Paragraphs 5 and 6 of this statement, the provisions of those governmental standards are effective for financial statements for periods beginning after 12/15/95 Earlier application is encouraged
30	Risk Financing Omnibus - an amendment of GASB Statement No. 10	Financial statements for periods beginning after 6/15/96

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
31	Accounting and Financial Reporting for Certain Investments and for External Investment Pools	Financial statements for periods beginning after 6/15/97
32	Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans	Financial statements for periods beginning after 12/31/98 or when plan assets are held in trust under the requirements of IRC Section 457, subsection (g), if sooner
33	Accounting and Financial Reporting for Non-Exchange Transactions	Financial statements for periods beginning after June 15, 2000 Earlier application is encouraged
34	Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments	<p>The requirements of this Statement are effective in three phases based on a government's total annual revenues in the first fiscal year ending after June 15, 1999. Governments with total annual revenues (excluding extraordinary items) of \$100 million or more (phase 1) should apply this Statement for periods beginning after June 15, 2001. Governments with at least \$10 million but less than \$100 million in revenues (phase 2) should apply this Statement for periods beginning after June 15, 2002. Governments with less than \$10 million in revenues (phase 3) should apply this Statement for periods beginning after June 15, 2003. Earlier application is encouraged. Governments that elect early implementation of this Statement for periods beginning before June 15, 2000, should also implement GASB Statement No. 33, <i>Accounting and Financial Reporting for Non-exchange Transactions</i>, at the same time. If a primary government chooses early implementation of this Statement, all of its component units also should implement this standard early to provide the financial information required for the government-wide financial statements.</p> <p>Prospective reporting of general infrastructure assets is required at the effective dates of this Statement. Retroactive reporting of all major general governmental infrastructure assets is <i>required</i> four years after the effective date on the basic provisions for all major general infrastructure assets that were required or significantly reconstructed, or that received significant improvements, in fiscal years ending after June 30, 1980. Phase 3 governments are encouraged to report infrastructure retroactively, but may elect to report general infrastructure prospectively only.</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
35	Basic Financial Statement - and Management's Discussion and Analysis - For Public Colleges and Universities	Colleges and Universities that are a unit of a state or local government will implement the new standards at the same time as their primary government, generally for fiscal years beginning July 1, 2001.
36	Recipient Reporting for Certain Shared Non-exchange Revenues	This Statement should be implemented simultaneously with Statement 33, for periods beginning after June 15, 2000.
37	Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments: Omnibus (An amendment of GASB Statement No. 21 and No. 34)	<p>This Statement should be implemented simultaneously with Statement 34. For governments that implemented Statement 34 prior to the issuance of this Statement, this Statement's requirements are effective for financial statements for periods beginning after June 15, 2000.</p> <p>Accounting changes adopted to conform to the provisions of this Statement should be applied retroactively, if practical, by restating financial statements for all prior periods presented. If restatement is not practical, the cumulative effect of applying this Statement, if any, should be reported as a restatement of beginning net assets, fund balances, or fund equity, as appropriate, for the earliest period restated. In the period this Statement is first applied, the financial statements should disclose the nature of any restatement and its effect. Also, the reason for not restating prior periods presented should be explained.</p> <p>The provisions of this Statement need not be applied to immaterial items.</p> <p>The requirements of this Statement are effective in three phases based on the revenues of the government as described in paragraph 143 of Statement 34;</p> <p>* Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002.</p> <p>* Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002.</p> <p>* Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003.</p> <p>Earlier application is encouraged. However,</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
		<p>paragraphs 6, 14, and 15 should be implemented only if Statement 34 has also been implemented.</p> <p>The provisions of this Statement need not be applied to immaterial items.</p>
38	Certain Financial Statement - Note Disclosures	<p>The requirements of this Statement are effective in three phases on the revenues of the government as described in paragraph 143 of Statement 34:</p> <ul style="list-style-type: none"> * Phase 1 governments should implement paragraphs 6 through 11 for fiscal periods beginning after June 15, 2001. These governments should implement paragraphs 12 through 15 for fiscal periods beginning after June 15, 2002. * Phase 2 governments should apply this Statement for fiscal periods beginning after June 15, 2002. * Phase 3 governments should apply this Statement for fiscal periods beginning after June 15, 2003. <p>Earlier application is encouraged. However, paragraphs 6, 14, and 15 should be implemented only if Statement 34 has been implemented.</p> <p>The provision of this Statement need not be applied to immaterial items.</p>
39	Determining Whether Certain Organizations Are Component Units	<p>The requirements of the statement are effective for financial statements for periods beginning after June 15, 2003. Earlier application is encouraged. Adjustments resulting from a change to comply with this statement should be treated as adjustments of prior periods. The financial statements of all prior periods presented should be restated, if practical, to show the financial information of the new reporting entity for all periods. If restatement of the financial statements for prior periods is not practical, the cumulative effect of applying this statement should be reported as a restatement of beginning net assets/fund balance for the earliest period restated.</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
40	Deposit and Investment Risk Disclosures	The requirements of this statement are effective for financial statements for periods beginning after June 15, 2004 (FY 05). Earlier application is encouraged. The Statement addresses common deposit and investment risks related to credit risk, concentration of credit risk, interest rate risk, and foreign currency risk. As an element of interest rate risk, this Statement requires certain disclosures of investments that have fair values that are highly sensitive to changes in interest rates. It requires the deposit and investment policies related to the risks identified in the Statement to be disclosed. The custodial credit risk disclosures previously required by Statement 3 are modified by Statement 40
41	Budgetary Comparison Schedules- Perspective Differences	The provisions of this statement should be implemented simultaneously with Statement 34. For governments that implemented Statement 34 prior to the issuance of Statement 41, the requirements of the Statement are effective for financial statements for periods beginning after June 15, 2002 (FY03). This amendment to Statement No. 34 clarifies the budgetary presentation requirements for governments with significant budgetary perspective differences that result in their not being able to present budgetary comparison information for their general fund and major special revenue funds. These governments are required to present budgetary comparison schedules as required supplementary information (RSI) based on the fund, organization, or program structure that the government uses for its legally adopted budget.
42	Accounting and Financial Reporting for Impairment of Capital Assets and for Insurance Recoveries	The provisions of this statement are effective for fiscal periods beginning after December 15, 2004 (FY06). This statement requires governments to report the effects of capital asset impairments in their financial statements when they occur rather than as a part of the ongoing depreciation expense for the capital asset or upon disposal of the capital asset. The Statement also requires all governments to account for insurance recoveries in the same manner.

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
43	Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans	<p>The requirements of this Statement for OPEB plan reporting are effective one year prior (FY07, FY08, and FY09) to the effective date of the related Statement for the employer (single-employer plan) or for the largest participating employer in the plan (multiple-employer plan). The requirements of the related Statement are effective in three phases based on a government's total annual revenues, as defined in that Statement, in the first fiscal year ending after June 15, 1999 - the same criterion used to determine a government's phase for implementation of GASB 34. The statement establishes uniform financial reporting standards for OPEB plans and supersedes the interim guidance included in Statement No. 26, <i>Financial Reporting for Postemployment Healthcare Plans Administered by Defined Benefit Pension Plans</i>. The approach followed in this Statement generally is consistent with the approach adopted in Statement No. 25, <i>Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans</i>, with modifications to reflect differences between pension plans and OPEB plans.</p>
44	Economic Condition Reporting: The Statistical Section	<p>The provisions of this Statement are effective for statistical sections that are a required part of a CAFR, prepared for periods beginning after June 15, 2005, (FY06). The Statement establishes the objectives of the statistical section and the five categories of information it contains (1) financial trend information; (2) revenue capacity information; (3) debt capacity information; (4) demographic and economic information; and (5) operating information. The more specific requirements of the Statement should be adapted by each type of government in order to meet the overarching objectives.</p>

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
45	Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions	Implementation is required in three phases in FY08, FY09, and FY10, based on a government's total annual revenues in the first fiscal year ending after June 15, 1999. The revenue cutoff points for implementation are the same as those in GASB 34. This Statement establishes standards for the measurement, recognition, and display of OPEB, expense/expenditures and related liabilities (assets), note disclosures, and if applicable, required supplementary information (RSI) in the financial reports of state and local governmental employers. This Statement generally provides for prospective implementation - that is, that employers set the beginning net OPEB obligation at zero as of the beginning of the initial year.
46	Net Assets Restricted by Enabling Legislation	The requirements of this Statement are effective for periods beginning after June 15, 2005, (FY06), with earlier application encouraged. The statement clarifies the meaning of the phrase <i>legally enforceable</i> as it applies to restrictions imposed on net assets.
47	Accounting for Termination Benefits	The requirements of this Statement are effective for periods beginning after June 15, 2005 (FY06), except for termination benefits provided through an existing defined benefit OPEB plan, in which case the Statement should be implemented simultaneously with the requirements of Statement 45. The Statement determines (1) when a liability and expense should be recognized (a) on the accrual basis for voluntary and involuntary termination benefits and (b) on the modified accrual basis; and (2) how health care-related termination benefits should be measured.

GASB STATEMENTS AND EFFECTIVE DATES

Appendix C

GASB	TITLE	EFFECTIVE DATE
48	Sales and Pledges of Receivables and Future Revenues and Intra-Entity Transfers of Assets and Future Revenues	The requirements of this statement are effective for financial statements for periods beginning after December 15, 2006 (FY08). This statement establishes criteria that governments will use to determine whether the proceeds received from the sale or pledge of receivables and future revenue should be reported as revenue or as a liability. The transaction will be treated as a collateralized borrowing unless the criteria indicating a sale has taken place are met. The statement stipulates that governments should not revalue assets that are transferred between financial reporting entity components. The statement also includes guidance regarding the recognition of other assets and liabilities resulting from a sale of specific receivables or future revenues, including residual interests and recourse.
49	Accounting and Financial Reporting for Pollution Remediation Obligations	The requirements of this statement are effective for financial statements for periods beginning after December 15, 2007 (FY09). Once any of five events occurs, this statement requires governments to estimate parts of expected pollutions remediation outlays and determine whether related outlays should be accrued as liabilities or be capitalized when the goods and services are acquired.

[2.2.2 NMAC Appendix C - Rp, 2.2.2 NMAC Appendix C, 4-16-07]

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i> <i>No.</i>	<i>Title</i>	<i>AU</i> <i>Section</i>
1	Codification of Auditing Standards and Procedures	See Part II of Cross-References To SASs section
7	Communications Between Predecessor and Successor Auditors	315
8	Other Information in Documents Containing Audited Financial Statements	550
12	Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments	337
19	Client Representation	333
21	Segment Information	435
22	Planning and Supervision	311
25	The Relationship of Generally Accepted Auditing Standards to Quality Control Standards	161
26	Association With Financial Statements	504
29	Reporting on Information Accompanying the Basic Financial Statements in Auditor Submitted Documents	551
31	Evidential Matter	326
32	Adequacy of Disclosure of Financial Statements	431
37	Filings Under Federal Securities Statutes	711
39	Audit Sampling	350
41	Working Papers	339
43	Omnibus Statements on Auditing Standards	150.06; 331.14 350.46; 420.15 901.01; 901.24 901.28
45	Omnibus Statement on Auditing Standards-1983	313; 334
46	Consideration of Omitted Procedures After the Report Date	390
47	Audit Risk and Materiality in Conducting an Audit	312
48	The Effects of Computer Processing on the Audit of Financial Statements	311.03; 311.09-.10; 326.12
50	Reports on the Application of Accounting Principles	625
51	Reporting on Financial Statements Prepared for Use in Other Countries	534
52	Omnibus Statement on Auditing Standards-1987	551.15; 558
53	The Auditors Responsibility to Detect and Report Errors and Irregularities	316A
54	Illegal Acts by Clients	317
56	Analytical Procedures	329
57	Auditing Accounting Estimates	342
58	Reports on Audited Financial Statements	508
59	The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern	341
60	Communication of Internal Control Related Matters Noted in an Audit	325
61	Communication With Audit Committees	380
62	Special Reports	623
64	Omnibus Statement on Auditing Standards-1990	341.12; 508.83; 543.16

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
65	The Auditor's Consideration of the Internal Audit Function in an Audit of Financial Statements	322
67	The Confirmation Process	330
69	The Meaning of <i>Present Fairly in Conformity With Generally Accepted Accounting Principles</i> in the Independent Auditor's Report	411
70	Reports on the Processing of Transactions by Service Organizations	324
71	Interim Financial Information	722
72	Letters for Underwriters and Certain Other Requesting Parties	634
73	Using the Work of a Specialist	336
74	Compliance Auditing Considerations in Audits of Governmental Entities and Recipients of Governmental Financial Assistance	801
76	Amendments to Statement on Auditing Standards No. 72, <i>Letters for Underwriters and Certain Other Requesting Parties</i>	634.01; 634.09; 634.10; 634.34 AT 300.01
77	Amendments to Statements on Auditing Standards No. 22, <i>Planning and Supervision</i> , No. 59, <i>The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern</i> , and No. 62, <i>Special Reports</i>	311.05; 341.13; 544.02; 544.04; 623.05; 623.08
78	Consideration of Internal Control in a Financial Statement Audit: An Amendment to Statement on Auditing Standards No. 55	319
79	Amendment to Statement on Auditing Standards No. 58, <i>Reports on Audited Financial Statements</i>	508
80	Amendment to Statement on Auditing Standards No. 31, <i>Evidential Matter</i>	326
81	Auditing Investments	332
82	Consideration of Fraud in a Financial Statement Audit	316
83	Establishing an Understanding with the Client	310
84	Communications Between Predecessor and Successor Auditors	315
85	Management Representations	333
86	Amendment to SAS No. 72, Letters for Underwriters and Certain Other Reporting Parties. Amendment is effective for comfort letters issued on or after June 30, 1998.	634
87	Restricting the Use of an Auditor's Report Statement is effective for reports issued after December 31, 1998	532
88	Service Organization and Reporting on Consistency	324; 420
89	Audit Adjustments	310.06; 333.06, 333.16; 380.09; and 380.10
90	Audit Committee Communications	380.03; 380.11; and 722.25-.27
92	Auditing Derivates Instruments, Heading Activities and Investments in Securities	332
93	Omnibus Statement on Auditing Standards - 2000	315.02; 315.12 411 (title) 411.01; 508.08 and 622

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
94	The Effect of Information Technology on the Auditor's Consideration of Internal Control in a Financial Statement Audit	319
95	Generally Accepted Auditing Standards	150
96	Audit Documentation	339
97	N/A	
98	Omnibus Statement on Auditing Standards-2002	150.05 161.02 and .03 312.34-41 324 508.65 558.08 & .10 558.02 561.03 560.01 530.03-.05
99	Consideration of Fraud in a Financial Statement Audit	230 336
100	Interim Financial Information	722
101	Auditing for Fair Value Measurements and Disclosures	328
102	Defining Professional Requirements in Statements on Auditing Standards – The SAS language “must” or “is required” must be complied with. However, if the SAS language used is “should,” the auditor is required to comply if the presumed circumstances exist. But in rare instances the auditor may depart if he/she documents the justification and how alternative procedures sufficed.	This SAS was effective upon issuance.
103	Audit Documentation – This SAS supersedes SAS 96 regarding audit documentation requirements. Among other changes in audit documentation requirements, the audit report should not be dated before documentation review, financial statement preparation and management assertion regarding responsibility for the financial statements.	This SAS is effective for financial statement for periods ending on or after December 15, 2006, (FY07), with earlier application permitted

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i>		<i>AU</i>
<i>No.</i>	<i>Title</i>	<i>Section</i>
104	Amendment to Statement on Auditing Standards No. 1, Codification of Auditing Standards and Procedures (“Due Professional Care in the Performance of Work”) – This SAS expands the definition of the term reasonable assurance. “The auditor must plan and perform the audit to obtain sufficient appropriate audit evidence so that audit risk will be limited to a low level that is, in his or her professional judgment, appropriate for expressing an opinion on the financial statements. The high, but not absolute, level of assurance that is intended to be obtained by the auditor is expressed in the auditor’s report as obtaining reasonable assurance about whether the financial statements are free of material misstatement (whether caused by error or fraud.)”	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted.
105	Amendment to Statement on Auditing Standards No. 95, Generally Accepted Auditing Standards – This SAS expands the scope of the second standard of field work from “internal control” to “the entity and its environment, including its internal control.” It amends the third standard of field work to replace references to specific audit procedures with “audit procedures” and replaces “evidential matter” with “audit evidence.” All three standards of field work are updated to begin with “The auditor must.”	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted
106	Audit Evidence – This SAS: (1) defines audit evidence; (2) defines relevant assertions and discusses their use in assessing risks and designing appropriate further audit procedures; (3) discusses qualitative aspects that the auditor considers in determining the sufficiency and appropriateness of audit evidence; and (4) and describes various audit procedures and discusses the purposes for which they may be performed.	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted
107	Audit Risk and Materiality in Conducting an Audit – The auditor should document: (1) the levels of materiality and tolerable misstatement including any changes, and the level on which those levels were determined; (2) a summary of uncorrected misstatements, related to known and likely misstatements; (3) the auditor’s conclusion as to whether uncorrected misstatements, individually or in aggregate, do or do not cause the financial statements to be materially misstated, and the basis for the conclusion; and (4) all known and likely misstatements identified during the audit, that have been corrected by management. Uncorrected misstatements should be documented so that the auditor can: (1) separately consider the effects of known and likely misstatements, including uncorrected misstatements identified in prior periods; (2) consider the aggregate effect of misstatements on the financial statements; (3) consider the qualitative factors relevant to the consideration whether misstatements are material.	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS</i>		<i>AU</i>
<i>No.</i>	<i>Title</i>	<i>Section</i>
108	Planning and Supervision – Planning and supervision continue throughout the audit. The auditor must plan the audit so that it is responsive to the assessment of the risk of material misstatement based on the auditor’s understanding of the entity and its environment, including its internal control. Planning is an interactive process throughout the audit. Firm personnel other than the auditor with final responsibility for the audit are referred to as assistants. “Auditor” refers to either the auditor with final responsibility for the audit or to assistants.	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted
109	Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement – This SAS explains the audit procedures that the auditor should perform to obtain the understanding of the entity and its environment, including its internal control (risk assessment procedures). It provides guidance regarding understanding specified aspects of the entity and its environment and internal control in order to identify and assess risks of material misstatement, and related further audit procedures. It provides guidance regarding assessing the risks of material misstatement. The auditor should: consider the classes of transactions, account balances, and disclosures; relate the identified risks to what could go wrong at the relevant assertion level; and consider the significance and likelihood of material misstatement for each identified risk. The SAS provides guidance in determining significant risks and requires auditor evaluation of the design of the entity’s controls to determine whether they are adequate and have been implemented. Related documentation guidance is also provided.	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted
110	Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained – This SAS provides the auditor with guidance: (1) in determining overall responses to address risks of material misstatement at the financial statement level; (2) in designing and performing further audit procedures that are responsive to the assessed risks of material misstatement at the relevant assertion level; and (3) in evaluating whether the risk assessments remain appropriate and to conclude whether sufficient appropriate audit evidence has been obtained; and (4) related documentation.	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted
111	Amendment to Statement of Auditing Standards No. 39, Audit Sampling – This SAS amends SAS No. 39 to: (1) move guidance from SAS No. 107 Appendix into the text of the statement; (2) to incorporate guidance from SAS No. 99 regarding fraud and SAS No. 110 regarding audit procedures in response to assessed risks and evaluating audit evidence; and (3) to enhance guidance relating to the auditor’s judgment about establishing tolerable misstatement for a specific audit procedure and on the application of sampling to tests of controls.	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted

AICPA STATEMENTS ON AUDITING STANDARDS

Appendix D

<i>SAS No.</i>	<i>Title</i>	<i>AU Section</i>
112	Communicating Internal Control Related Matters Identified in an Audit - This SAS defines the terms “significant deficiency” and “material weakness.” It provides guidance on evaluating the severity of control deficiencies identified in an audit. SAS 112 requires the auditor to communicate, in writing, to management and those charged with governance, significant deficiencies and material weaknesses identified in an audit.	Effective for periods ending on or after December 15, 2006, (FY07), with earlier application permitted
113	Omnibus Statement on Auditing Standards – 2006 - This SAS clarifies terminology used to describe the professional requirements imposed on auditors in the 10 standards. This SAS adds to SAS No. 99: footnote 15 that links the auditor’s consideration of fraud to the auditor’s assessment of risk; and footnote 21 that links the auditor’s consideration of fraud and the auditor’s response to assessed risks.	Effective for periods beginning on or after December 15, 2006, (FY08), with earlier application permitted
113	Omnibus Statement on Auditing Standards – 2006 – This SAS amends SAS Numbers 101, 59, 57, and 1 to change old references to “completion of fieldwork” to “the date of the auditor’s report” because SAS 103 changed the date of the audit report from the date of completion of fieldwork to “the date on which the auditor has obtained sufficient appropriate audit evidence to support the opinion on the financial statements.” SAS 113 also amends SAS 85 so that the date of management representations is “the date of the auditor’s report.”	Effective for periods ending on or after December 15, 2006, (FY07), with earlier application permitted
114	Auditor’s Communication With Those Charged With Governance – This SAS supersedes SAS No. 61, Communication With Audit Committees, as amended. It establishes standards and provides guidance on the auditor’s communication with those charged with governance in relation to an audit of financial statements.	Effective for periods beginning on or after December 15, 2006 (FY08).

[2.2.2 NMAC Appendix D - Rp, 2.2.2 NMAC Appendix D, 4-16-07]

STATE OF NEW MEXICO
(NAME) COUNTY TREASURER'S
PROPERTY TAX SCHEDULE
FOR THE YEAR ENDED JUNE 30, 2007

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Grant County:									
General ad valorem									
1997-2005	\$22,211,105	\$5,196,659	\$21,959,143	\$5,196,659	\$21,959,143	\$ 5,644	\$ 25,618	\$ -	\$ 226,344
2006	2,480,000	1,942,523	1,942,523	1,942,523	1,942,523	-	-	-	547,477
Total General ad valorem	24,701,105	2,462,182	23,901,666	2,462,182	23,901,666	5,644	25,618	-	773,821
Non-rendition fees									
1997-2005	\$ 58,580	-	\$ 58,025	-	\$ 58,025	\$ 195	\$ 555	-	-
2006	6,520	6,520	6,520	6,520	6,520	-	-	-	-
Total Non-rendition fees	65,100	6,520	64,545	6,520	64,545	195	555	-	-
Copper production									
1997-2005	\$14,382,000	-	\$14,382,000	-	\$14,382,000	-	-	-	-
2006	1,598,437	1,598,437	1,598,437	1,598,437	1,598,437	-	-	-	-
Total Copper production	15,980,437	1,598,437	15,980,437	1,598,437	15,980,437	-	-	-	-
Re-appraisal program									
1997-2005	\$250,272	-	\$ 250,272	-	\$250,272	-	-	-	-
2006	27,808	27,808	27,808	27,808	27,808	-	-	-	-
Total Re-appraisal program	278,080	27,808	278,080	27,808	278,080	-	-	-	-
Hospital bond									
1997-2005	\$ 963	-	\$ 963	-	\$ 963	-	-	-	-
2006	107	107	107	107	107	-	-	-	-
Total Hospital bond	1,070	107	1,070	107	1,070	-	-	-	-
Total Grant County	41,025,792	4,095,054	40,225,798	4,095,054	40,225,798	5,839	26,173	-	773,821
Municipalities:									
City of Bayard									
1997-2005	\$ 148,500	\$ 901	\$148,193	\$ 901	\$148,193	\$ 150	\$ 307	-	-
2006	16,500	16,000	16,500	16,000	16,500	-	-	-	-
Total City of Bayard	165,000	16,901	164,693	16,901	164,693	150	307	-	-
Village of Hurley									
1997-2005	\$ 72,000	\$ 43	\$ 71,640	\$ 43	\$ 71,640	\$ 50	\$ 360	-	-
2006	8,000	8,000	8,000	8,000	8,000	-	-	-	-

STATE OF NEW MEXICO
 (NAME) COUNTY TREASURER'S
 PROPERTY TAX SCHEDULE
 FOR THE YEAR ENDED JUNE 30, 2007

Agency	Property Taxes Levied	Collected in Current Year	Collected To-Date	Distributed in Current Year	Distributed To-Date	Current Amount Uncollectible	To-Date Amount Uncollectible	Undistributed at Year End	County Receivable at Year End
Total Village of Hurley	80,000	8,043	79,640	8,043	79,640	50	300	-	-
Village of Santa Clara									
1997-2005	\$ 45,000	\$ 708	\$44,700	\$ 708	\$44,700	\$ 30	\$ 300	-	-
2006	5,000	5,000	5,000	5,000	5,000	-	-	-	-
Total Village of Santa Clara	50,000	5,708	49,700	5,708	49,700	30	300	-	-
Town of Silver City									
1997-2005	\$ 1,847,583	-	\$ 1,847,278	-	\$ 1,847,278	\$ 75	\$ 305	-	-
2006	205,287	205,287	205,287	205,287	205,287	-	-	-	-
Total Town of Silver City	2,052,870	205,287	2,052,565	205,287	2,052,565	75	305	-	-
Total Municipalities	2,347,870	235,939	2,346,598	235,939	2,346,598	305	1,272	-	-
Grand Total	\$43,373,662	\$4,330,993	\$42,572,396	\$4,330,993	\$42,572,396	\$6,144	\$27,445	\$ -	\$773,821

Presumed paid after ten years per Section 7-38-81(C), NMSA 1978

[2.2.2 NMAC Appendix E - Rp, 2.2.2 NMAC Appendix E, 4-16-07]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

JUVENILE JUSTICE DIVISION

This is an amendment to 8.14.11 NMAC, Section 10, effective 4/16/07.

8.14.11.10 REFERRALS:

A. CSB is a residential transitional living program for adjudicated juvenile offenders deemed to be amenable to the CSB treatment program as an alternative to other juvenile justice facility placement or as a condition of probation or parole. A client will reside at CSB for or during a period of time specified in the program's contract, and the client will receive services at CSB as prescribed by the program's contract or guidelines; and the client will receive services at CSB as prescribed by the program's contract.

B. CSB will only accept referrals as provided by the program's contract or by law.

C. Clients committed to the custody of the department will be screened at central intake for possible placement to CSB.

D. Clients accepted into CSB will include clients adjudicated of delinquent acts, between the ages of fourteen (14) to ~~[eighteen (18)]~~ nineteen (19) years of age but not clients adjudicated of:

~~(1) any violent offense;~~

~~(2) criminal sexual contact or criminal sexual penetration; or~~

~~(3) arson]~~

(1) arson resulting in bodily injury;

(2) aggravated arson;

(3) aggravated assault or aggravated battery;

(4) dangerous use of explosives;

(5) negligent use of a deadly weapon;

(6) murder;

(7) voluntary manslaughter;

(8) involuntary manslaughter;

(9) kidnapping;

(10) criminal sexual penetration;

(11) criminal sexual contact of a minor;

(12) homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;

(13) abandonment or abuse of a child;

(14) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978; and

(15) aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978.

E. If a client is subject to pending delinquency charges that would not disqualify the client from admission to the

program, at the time of transfer to CSB juvenile justice services shall contact the appropriate children's court attorney and seek their agreement as part of an adjudication and disposition, that if the client successfully completes the CSB program, the pending charges will be subject to probationary conditions which may include completion of the CSB program or other probationary conditions ordered by the court. If the CCA does not agree to such probation, the department will hold a case staffing and consult with the contractor concerning whether the client still should participate in the CSB program.

F. Clients with mental illness requiring psychotropic medication or intensive mental health intervention will be evaluated by treatment decision making team (TDM) to determine if placement at CSB is in the best interests of the client.

[8.14.11.10 NMAC - Rp, 8 NMAC 14.11.10, 08/31/05; A, 4/16/07]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.200.430 NMAC, Section 16, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to state that premium payments must be paid in full each month.

8.200.430.16 RECIPIENT FINANCIAL RESPONSIBILITIES: Providers who participate in medicaid agree to accept the amount paid as payment in full, see 42 CRF 447.15, with the exception of co-payment amounts required in certain medicaid categories. Other than the co-payments, a provider cannot bill a recipient for any unpaid portion of the bill or for a claim that is not paid because of provider administrative error or failure of multiple providers to communicate eligibility information. Native Americans are exempt from co-payment requirements.

A. **Failure to follow managed care policies:** A recipient must be aware of the physicians, pharmacies, hospitals, and another provider who participate in their health maintenance organization (HMO) or other managed care plan. A recipient is responsible for payment for services if he/she uses a provider who is not a participant in his/her plan or if he/she receives any services without complying with the rules, policies, and procedures of the plan.

B. **Denied emergency room claims:** A recipient is responsible for payment of a hospital outpatient emergency room claims if a determination is made by MAD or its designee that an emergency did not exist at the time the service was fur-

nished.

(1) A provider can bill the recipient directly for the denied emergency room charge.

(2) The recipient cannot be billed for denied ancillary services, such as laboratory and radiology services.

C. **Other recipient payment responsibilities:** If all the following conditions are met before a service is furnished, a recipient can be billed directly by a provider for services and is liable for payment:

(1) the recipient is advised by a provider that the particular services is not covered by medicaid or are advised by a provider that he/she is not a medicaid provider;

(2) the recipient is informed by a provider of the necessity, options, and charges for the services and the option of going to other provider who is a medicaid provider; and

(3) the recipient agrees in writing to have the service provided with full knowledge that he/she is financially responsible for the payment.

D. **Co-payment responsibility for SCHIP and WDI recipients:** It is the recipient's responsibility to pay the co-payment to the provider. Children eligible for category 032 with family income between 185-235% of poverty (SCHIP) and working disabled individuals (WDI), category 043, will have co-payment requirements as follows:

(1) WDI

(a) \$7 per outpatient physician visit, other practitioner visit, clinic visit, urgent care visit, outpatient therapy session, or behavioral health session;

(b) \$7 per dental visit;

(c) \$20 per emergency room visit;

(d) \$30 per inpatient hospital admission;

(e) \$5 per prescription, applies to prescription and non-prescription drug items.

(2) SCHIP

(a) \$5 per outpatient physician visit, other practitioner visit, clinic visit, urgent care visit, outpatient therapy session, or behavioral health session;

(b) \$5 per dental visit;

(c) \$15 per emergency room visit;

(d) \$25 per inpatient hospital admission;

(e) \$2 per prescription, applies to prescription and non-prescription drug items.

E. **Co-payment exclusions:** Certain services and populations are exempt from co-payment responsibilities.

(1) Preventive, prenatal care services and contraceptive management services are exempt from the copayment requirement.

(2) Services provided at Indian health service facilities, by urban Indian providers and by tribal 638s are also exempt from the co-payment requirement.

(3) There is no co-payment required during presumptive eligibility or retroactive eligibility periods.

(4) There is no co-payment required for services provided to Native Americans.

F. Co-payment maximum for SCHIP and WDI: It is the responsibility of the family to track and total the co-payments paid. Once the family yearly maximum amount for SCHIP and WDI recipients has been paid by the family via co-payments on medicaid covered services, the recipient must notify the medical assistance division. Verification must be provided to the medical assistance division that the co-payment maximum for SCHIP and WDI recipients has been paid. The first month that co-payments will no longer be required by the SCHIP and WDI recipient is the month following the month in which it has been verified by the medical assistance division that the maximum amount has been met. If the determination is made after the twenty-fifth (25th) of the month, the change is made effective the second month after the request. No retroactive eligibility for the “met co-payment maximum” criteria is allowed. Subsequent to establishing that the co-payment maximum amount has been met, the WDI recipient and the family of SCHIP recipients is not responsible for payment of co-payments for the remainder of that calendar year.

(1) Co-payment maximum amounts for SCHIP recipients are calculated at initial determination and re-determination of eligibility by ISD. The co-payment maximum amount calculated at the re-determination is effective for the following year.

(2) If the family income decreases to below 185% of federal income poverty guidelines, the family may report that change and have the children changed to category 032 eligibility up to 185% of poverty, with no co-payment requirements. The change is effective in the month following the month of such determination. If the determination is made after the twenty-fifth (25th) of the month, the effective date of the change is the second month after such verification.

(3) The family maximum co-payment amounts for SCHIP recipients are as follows:

(a) families with income between 185-200% FPL- maximum is 3%

(b) families with income between 201-215% FPL- maximum is 4%

(c) families with income between 216-235% FPL- maximum is 5%

(4) The co-payment maximum varies depending on the recipient’s earned and unearned income. Once the recipient has reached his/her co-payment maximum on covered medicaid services, co-payments cease for the rest of that calendar year, only after the recipient has fulfilled the required steps. For SCHIP, see Paragraph (5) of Subsection A of Section 16 of 8.200.430 NMAC; for WDI, see Section 9 of 8.243.600 NMAC.

(5) Co-payment maximum amounts for WDI recipients are calculated at initial determination, based on the income received the first month of eligibility, and every twelve months thereafter. The co-payment maximum amount calculated at the initial determination is prorated for the rest of the calendar year and is also determined for the following calendar year. At each annual periodic review, the co-payment maximum will be calculated for the following calendar year.

(a) Recipients with earned and unearned income below 100% FPL - maximum is \$600.

(b) Recipients with earned and unearned income between 100-250% FPL - maximum is \$1500.

G. Co-payment responsibility for state coverage insurance (SCI) recipients: It is the recipient’s responsibility to pay the co-payment to the provider. Adults eligible for category 062 with family income from 0-200% of federal poverty limit will have co-payment responsibility as follows:

Service	Co-pay at 0% - 100% FPL- 062	Co-pay at 101% - 150% FPL-062	Co-pay at 151% - 200% FPL-062
Physician/provider visits (no co -pay for preventive services-see below)	\$0	\$5	\$7
Pre/post natal care	\$0	\$0	\$0
Preventive services	\$0	\$0	\$0
Hospital inpatient medical/surgical	\$0/day	\$25/day	\$30/day
Hospital inpatient maternity	\$0/day	\$25/day	\$30/day
Hospital outpatient surgery/procedures	\$0	\$5	\$7
Home health	\$0	\$5	\$7
PT, OT & SLP	\$0	\$5	\$7
Diagnostics (excluding routine lab and x -ray)	\$0 (included in office visit)	\$0 (included in office visit)	\$0 (included in office visit)
DME/supplies	\$0	\$5	\$7
Emergency services	\$0	\$15 per visit, waived if admitted to a hospital within 24 hours	\$20 per visit, waived if admitted to a hospital within 24 hours
Urgent care	\$0	\$5	\$7
Prescription drugs: generic name brand	\$3 per prescription	\$3 per prescription	\$3 per prescription
Behavioral health and substance abuse: outpatient office visit and outpatient substance abuse treatment	\$0	\$5	\$7
inpatient behavioral health and inpatient detox	\$0	\$25	\$30
Limits on out-of-pocket expenses	Out of pocket charges for all participants will be limited to 5% of countable family income per benefit year. Pharmacy out-of-pocket charges for all participants will be limited to \$12 per month.		

H. Co-payment exclusions for SCI recipients: Certain services and populations are exempt from co-payment responsibilities.

(1) Prenatal care services are exempt from the co-payment requirement.

(2) Services provided at Indian health service facilities, by urban Indian providers and by tribal 638s are also exempt from the co-payment requirement.

I. Cost-sharing maximum for SCI recipients: It is the responsibility of the client to track and total the co-payments and the employee portion of the premiums paid. The employer portion of the premium is not counted toward the cost-sharing maximum and must be paid by (or on behalf of) the individual enrollee each month regardless of income category and/or cost-sharing maximum status. Once the yearly maximum amount for SCI recipients has been paid by the individual via co-payments and the employee portion of the premiums on covered services, the recipient must notify the managed care organization (MCO) in which he or she is enrolled. It is the client's responsibility to notify the MCO and provide verification to the MCO that the cost-sharing maximum for SCI has been paid. The first month that cost-sharing will no longer be required by the SCI recipient is the month following the month in which it has been verified by the MCO that the maximum amount has been met. If the determination is made after the twenty-fourth (24th) of the month, the change is made effective the second month after verification. No retroactive eligibility for the "met cost-sharing maximum" criteria is allowed. Subsequent to establishing that the cost-sharing maximum amount has been met, the SCI recipient is not responsible for payment of co-payments and employee portion of the premiums for the remainder of that benefit year. Co-payment maximum amounts for SCI recipients are calculated at initial determination and re-determination of eligibility by ISD at 5% of the annual countable income. The co-payment maximum amount calculated at the re-determination is effective for the following benefit year. See also 8.262.600.9 NMAC.

J. Premium payments must be paid in full each month, even if cost-sharing maximum has been reached and there is an overpayment. No partial payments of premiums or co-payments will be allowed. No premiums or co-payments will be refunded.

[2-1-95, 3-1-99, 7-1-00; 8.200.430.16 NMAC - Rn, 8 NMAC 4.MAD.437 & A, 1-1-01; A, 1-1-02; A, 6-1-04; A, 6-15-04; A, 7-1-05; A, 3-1-06; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.262.400 NMAC, Sections 7, 11, 17, and 19 which will be effective on April 16, 2007. The Medical Assistance Division amended section 7 to change/add to the definitions; in sections 11 and 17 language was added regarding premiums; in section 19 language was added regarding retroactive eligibility for Medicaid or Medicare.

8.262.400.7 DEFINITIONS:

A. Action: The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or a failure to provide a service in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.

B. Authorized representative: An individual or entity for whom or for which the applicant has signed a release of confidentiality and to whom notices will be sent.

C. Benefits: SCI-covered services provided by the SCI-participating MCO and for which payment is included in the capitation rate, as defined in 8.262.600 NMAC.

D. Capitation: A per-member, monthly payment to an MCO that covers contracted services and is paid in advance of service delivery. It is a set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed in units of "per member per month" (PMPM).

E. Catastrophic coverage: Insurance coverage for specific catastrophic events, such as death, fire, flood, and some medical conditions.

F. Category: A designation of the automated eligibility system. The assigned category is applicable for a period of 12 consecutive months regardless of changes in income or family status, subject to change by request from the recipient.

G. Cost-sharing: Premiums and copayments owed by the member based on income group category.

H. Cost-sharing maximum: The cost sharing maximum is determined during the initial eligibility determination and recertification process. The cost sharing maximum amount established at the point of eligibility determination for the benefit year represents an amount equal to 5% of the program participant's countable income.

I. Coverage: Coverage month is a month where all eligibility and enrollment requirements including premium payment, if applicable, are met.

J. Eligibility: The process of establishing that SCI residency, citizenship or alien status, health insurance coverage, income, living arrangement, and age requirements are met, as defined in this part and 8.262.500 NMAC.

K. Employer: An employer with fifty or fewer eligible employees on a full or part-time basis.

L. Employer group: A group of employees employed by an eligible employer who receive SCI benefits through the employer.

M. Employee: A person employed by an employer who participates in the SCI health benefit plan.

N. Employer enrollment period: Employer's standard practice for new and annual health insurance enrollment.

O. Enrollment: The process of enrolling eligible members in an MCO for purposes of management and coordination of health care delivery. The process of enrolling members either by the employer or individually in an available SCI-participating MCO for purposes of health care coverage. Enrollment encompasses selection of an MCO, notification of the selection to the MCO, and timely payment of premiums [~~to the MCO~~] as designed by the MCO.

P. Eligibility letter: A notice of SCI eligibility and the potential for SCI coverage contingent upon enrollment with a SCI participating MCO. The letter will include start and end dates of eligibility, the requirement to enroll before coverage will begin, and the need to enroll [~~with in a specified time period~~] 30 days subsequent to the month of issuance of the enrollment letter. The letter will also notify the member of the federal poverty level subcategory and of the responsibility to track out-of-pocket expenditures for SCI cost sharing.

Q. Fifth degree of relationship: The following relatives are within the fifth degree of relationship to a dependent child:

- (1) father (biological or adopted);
- (2) mother (biological or adopted);
- (3) grandfather, great grandfather, great-great-grandfather, great-great-great-grandfather;
- (4) grandmother, great grandmother, great-great-grandmother, great-great-great-grandmother;
- (5) spouse of child's parent (step-parent);
- (6) spouse of child's grandparent, great grandparent, great-great-grandparent, great-great-great-grandparent (step-grand-

parent);

(7) brother, half-brother, brother-in-law, stepbrother;

(8) sister, half-sister, sister-in-law, stepsister;

(9) uncle of the whole or half blood, uncle-in-law, great uncle, great-great uncle;

(10) aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;

(11) first cousin and spouse of first cousin;

(12) son or daughter of first cousin (first cousin once removed) and spouse;

(13) son or daughter of great aunt or great uncle (first cousin once removed) and spouse; or

(14) nephew/niece and spouses.

(15) **Note:** A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

R. Fiscal agent (medicaid fiscal agent): An entity contracted by the state medicaid program to sort and process eligibility information as well as pay fee-for-service and capitation claims.

S. Grievance (member): Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO or its operations that is not an MCO action.

T. Group of one: Individuals who enroll without an employer group but report self-employment.

[F:] U. Health insurance: Insurance against loss by sickness or bodily injury. The generic term for ~~the~~ any forms of insurance that provide lump sum or periodic payments in the event of bodily injury, sickness, or disease, and medical expense. This includes but is not exclusive to: medicare part A and/or medicare part B, medicaid, CHAMPUS, and other forms of government health coverage.

[H:] V. Hearing or administrative hearing: An evidentiary hearing that is conducted so that evidence may be presented.

[Y:] W. Income groupings- 0-100%, 101-150%, and 151-200% of federal poverty levels: These income groupings define the premium, copayment, and cost-sharing maximums for SCI cost-sharing purposes.

[W:] X. Individual: A person who enrolls in SCI who is not a member of an eligible employer group and pays the premium amount designated for both the employee share, if applicable based on income, and the employer share or has that amount paid on his/her behalf by another entity.

[X:] Y. Managed care organi-

zation (MCO): An organization licensed or authorized through an agreement among state entities to manage and coordinate and receive payment at actuarially sound payment rates for the delivery of specified services to enrolled members from a certain geographic area.

[X:] Z. Member: An eligible member enrolled in an MCO.

[Z:] AA. Member month: A calendar month in which a member is enrolled in an MCO.

[AA:] BB. Notice: A written statement that includes what action is being taken, the reasons for the intended action, the specific regulation that requires the action, and an explanation of the circumstances under which the service may be continued if a hearing is requested.

[BB:] CC. Parental or custodial relative status: The state of having a dependent child under the age of 18 who is the son, daughter, or relative within the fifth degree of relationship living in the household and under the care and control of the individual.

DD. Pre-enrollment (contact) letter: A notice sent by one of the participating SCI MCOs to the potential SCI enrollee indicating that the enrollee has contacted the MCO and obtained the required referral to the income support division to determine eligibility for SCI coverage.

[CC:] EE. Premium- employer: A specific monthly payment payable to the MCO by employers who enroll their employees in SCI at a rate set by the department. This amount may be paid by an individual member not in an employer group in order to participate in SCI. Premiums cannot be refunded.

[DD:] FF. Premium- employee: A specific monthly payment payable to the MCO calculated by the department based on a subcategory of eligibility representing an income grouping. 062 0-100% FPL, 062-101-150% FPL, 062-151-200% FPL. Premiums and copayments cannot be refunded.

[EE:] GG. Qualifying event: Termination of employment for any reason; loss of eligibility for health insurance benefits due to reduction in work hours; loss of health insurance coverage due to death, divorce or legal separation from spouse, loss of dependent status; moving to or from another state.

[FF:] HH. SCI (State coverage insurance): The New Mexico health care program implemented under the authority of the health insurance flexibility and accountability (HIFA) waiver granted to the state by the centers for medicare and medicaid services (CMS).

[GG:] II. Shoebox method: The method under which an SCI member is

responsible for tracking, and submission of a request for verification of total expenditures for himself, based on SCI employee premiums and copayments for purposes of establishing that the cost-sharing maximum amount has been met.

[HH:] JJ. Voluntary drop: The act of voluntarily terminating or discontinuing health insurance coverage. It will not be considered a voluntary drop when an individual (or spouse) fails to take advantage of an offer of health insurance by an employer (unless the insurance is SCI coverage), or fails or refuses to take advantage of a COBRA continuation policy. Also not considered to be a voluntary drop are loss of access to employer-sponsored insurance due to loss of employment, divorce, death of a spouse, or geographic move, loss of coverage as a dependent child, or loss of medicaid eligibility.

[8.262.400.7 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07]

8.262.400.11 ELIGIBILITY: To be eligible for SCI, an individual must ~~be considered to have met~~ meet all eligibility criteria regarding age, citizenship or alien status, noninsured status, voluntary drop of insurance, income, and living arrangement (i.e., living in a public institution). An eligibility determination will be made by the 45th day after the date of application. If it is determined that an individual does not meet all SCI eligibility criteria, a notice of denial with the reason for denial and rights to appeal will be issued. If it is determined that an individual meets all eligibility criteria, the individual will be awarded an "eligibility letter," which will notify the individual of their right to enroll, and of the fact that coverage will not begin unless and until the individual is enrolled ~~with~~ and has paid the determined premium amount to a SCI-contracted MCO. No partial payments of premiums will be allowed.

[8.262.400.11 NMAC - N, 7-1-05; A, 4-16-07]

8.262.400.17 SPECIAL RECIPIENT REQUIREMENTS:

A. **Age:** To be eligible for SCI, an individual must be age 19 through 64.

B. **Continuing eligibility on the factor of age:** When an individual has been determined eligible on the condition of age, he remains eligible on the condition until the applicable upper age limit is reached. An individual who exceeds the age limit during a given month is eligible for that month, unless the birthday is the first day of the month.

C. **Uninsured:** For purposes of SCI eligibility, an individual cannot have health insurance coverage ~~under a~~

~~commercial health care product, medicare, or other full coverage medicaid category].~~ An individual with access to health care at Indian health services, veteran's administration, or through worker's compensation, is not considered to be insured for purposes of this program by having such access. ~~[An individual with only a catastrophic coverage plan is not considered to be insured.]~~

D. **Enrolled:** An individual who has been determined eligible for SCI must notify an SCI-contracted MCO and ~~[be considered to]~~ must have made and continue to make premium payment as a condition of SCI coverage [each month].

E. **Premium payment:** SCI requires payment of premiums by the employer at a rate established by the department, and by the employee per month as calculated by income level, 062A-0, 062B and 062C. The individual is required to pay both the employers and employee's share based on income level. Nothing in this section prevents another entity from contributing the employer and/or employee premium share on behalf of an individual member. Nothing in this section prevents the employer from paying the employee portion of the premium on behalf of the employee. The due date of premium payments will be determined by the MCO.

F. **Voluntary drop of health insurance:** An individual who has voluntarily dropped health insurance will be ineligible for SCI for six months, starting with the first month the health insurance was dropped (i.e., the first month of no coverage). An employer who has voluntarily dropped health insurance will be ineligible to enroll employees in SCI for twelve months.

G. **Cost-sharing maximums:** An SCI-covered individual is responsible for tracking and reporting of the cost-sharing amount paid in a benefit year, and for reporting to the managed care organization (MCO) when the cost-sharing maximum amounts are met (also known as "shoebox methodology"). The first month of coverage without cost-sharing will be the month after the month of verification that the maximum expenditure limit has been met, unless the determination is made after the 24th of the month. Where the determination is made after the 24th of the month, the first month of coverage without cost-sharing will be the second month after verification. The period of coverage without cost-sharing will end on the last day of that benefit year. No partial payments of premiums or of copayments will be allowed. No premiums or copayments will be refunded. [8.262.400.17 NMAC - N, 7-1-05; A, 4-16-07]

8.262.400.19 NON - CONCURRENT RECEIPT OF ASSISTANCE: An SCI applicant/recipient cannot be simultaneously approved for any of the other New Mexico medicaid categories, any kind of partial or full medicare coverage, or for any medicaid program in another state. If the SCI member is given retroactive eligibility for medicaid or medicare, SCI premiums and copayments paid by the member will not be refunded for the months in which the client was later found retroactively eligible for medicaid.

[8.262.400.19 NMAC - N, 7-1-05; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.262.600 NMAC, Sections 9 and 14, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to state that premium payments must be paid in full each month and there will be no retroactive enrollment or benefit coverage.

8.262.600.9 BENEFIT DESCRIPTION: The benefit package is described in 8.306.7. NMAC, *Benefit Package*, SCI benefits are administered by contracted managed care organizations. There is no fee-for-service coverage under the SCI program.

A. The level of cost-sharing (i.e., the premium and co-payment amounts as well as the cost-sharing maximum amounts) required in the SCI program is contingent upon the income grouping associated with the applicant's countable income at the point of the application disposition. See also 8.262.500.9 NMAC.

B. The cost-sharing maximum is an amount calculated for the benefit year that represents an amount equal to 5% of the enrollee countable income at the time of the application disposition. It is the responsibility of each SCI-covered individual to track and total the amounts paid for the SCI employee portion of the premiums and SCI co-payments on SCI-covered services in a benefit year. Once the cost-sharing maximum amount has been paid by an SCI-covered individual, the individual must notify the MCO and provide verification of the paid amounts. Once the paid amounts have been verified as paid, the individual will not owe further employee premium or co-payment amounts for the remainder of that benefit year. The first month that cost sharing is not required by the SCI-covered individual is the month following the month in which it has been verified by the MCO that the cost-sharing maximum amount has been met. If the determination is made after

the twenty-fourth (24th) of the month, the change is made effective the second month after the verification. No retroactive eligibility for the "met cost-sharing maximum" amount is allowed. The employer portion of the premium is not counted toward the cost-sharing maximum and must be paid by (or on behalf of) the individual enrollee each month regardless of income category and/or cost-sharing maximum status. Premium payments must be paid in full each month, even if the cost-sharing maximum has been reached and there is an overpayment. No partial payments of premiums or copayments will be allowed. No premiums or copayments will be refunded.

C. Employer share payable by individual: An individual member (one who is enrolled outside of an employer group) is responsible for payment of the premium share for the employee as determined by federal poverty level and the employer premium. The employer portion of the premiums will not be counted toward the cost-sharing maximum.

[8.262.600.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07]

8.262.600.14 APPEAL RIGHTS - ELIGIBILITY ISSUES: To appeal a denial or termination of SCI eligibility, or determination of the income grouping, the individual may request an administrative hearing from the human services department (see 8.352.2 NMAC). If the individual is found to be eligible for SCI, the client can enroll with the MCO, but there will be no retroactive enrollment or benefit coverage under such circumstances.

[8.262.600.14 NMAC - N, 7-1-05; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.1 NMAC, Section 7, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to add/change some definitions in subsections E and G.

8.306.1.7 DEFINITIONS: The state of New Mexico is committed to reducing the number of uninsured working New Mexico residents and improving the number of small employers offering health benefit plans by implementation of a basic health coverage health insurance benefit provided by contracted managed care organization with cost sharing by members, employers and the state and federal governments. This section contains the glossary for the New Mexico state coverage insurance policy. The following definitions apply to terms used in this chapter.

A. Definitions beginning with letter "A":

(1) **Abuse:** Provider practices that are inconsistent with sound fiscal, business or medical practices and result in unnecessary cost to SCI, in reimbursement for services that are not medically necessary, or in services that fail to meet professionally recognized standards for health care. Abuse also includes member or member practices that result in unnecessary costs to SCI.

(2) **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or the failure to provide services in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.

(3) **Appeal:** A request from a member or provider for review of the managed care organization (MCO) action. Refers to an individual or entity appealing to a higher authority, as for a decision. An appeal is a request to change a previous decision made by the MCO. An appeal can be made to the contractor for review of a contractor action by a customer or a provider on a customer's behalf. An appeal may also be a request for a new hearing or a request for a transfer of a case from one court to a higher court.

(4) **Approvals:** Approvals are either initial or concurrent review decisions, which yield utilization management authorizations based on the member meeting the clinical criteria for the requested SCI service(s) and/or level of care.

B. Definitions beginning with letter "B":

(1) **Behavioral health planning council (BHPC):** Refers to the council created HB 271 to meet federal advisory council requirements and to provide consistent, coordinated input to the behavioral health service delivery in New Mexico. The SE will be expected to interact with the BHPC as an advisory council.

(2) **Behavioral health:** Refers to mental health and substance abuse, including co-occurring disorders.

(3) **Behavioral health purchasing collaborative (the collaborative):** refers to the interagency behavioral health purchasing collaborative pursuant to the passage of HB 271 effective May 19, 2004. The collaborative is made up of 17 publicly funded statutory member agencies including 15 direct service provision and funding agencies, including the human services department.

(4) **Benefit package:** SCI covered services that must be furnished by the

MCO and for which payment is included in the capitation rate.

(5) **Benefit year:** The year beginning with the month of enrollment in an MCO and payment of designated premiums if applicable and continuing for a period [~~of twelve~~] up to 12 continuous months as long as enrollment requirements are met.

(6) **Broker:** A person, partnership, corporation or professional corporation appointed by a health insurer licensed to transact business in New Mexico to act as its representative in any given locality for the purpose of soliciting and writing any policy or contract insuring against loss or expense resulting from the sickness of the insured.

C. Definitions beginning with letter "C":

(1) **Capitation:** A per-member, monthly payment to an MCO that covers contracted services and is paid in advance of service delivery. It is a set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed in units of "per member per month" (PM/PM).

(2) **Care coordination:** Is an office-based administrative function to assist members with multiple, complex and special cognitive, behavioral and/or physical health care needs on an as needed basis. It is member-centered, family-focused when appropriate, culturally competent and strengths-based. Care coordination can help to ensure that the physical and behavioral health needs of the SCI population are identified and services are provided and coordinated with the individual member and family, if appropriate. Care coordination operates within the MCO with a dedicated care coordination staff, functioning independently, but is structurally linked to the other MCO systems, such as quality assurance, member services, and grievances. Clinical decisions shall be based on the medically necessary covered services and not on fiscal considerations. If both physical and behavioral health conditions exist, the care coordination responsibility will lie with the care provider from the condition that is most acute at the time.

(3) **Case management:** Refers to a person or team of people who provide outreach to customers, provide information to them about services, work with them to develop a service plan, assist in obtaining needed services, supports and entitlements and advocate on their behalf. General case management is designed to access, coordinate and monitor services. It is a set of functions intended to ensure that individuals receive the services they need in a timely, appropriate, effective, efficient and coordinated fashion. It is individually centered, family/member-focused when appropriate,

culturally competent and strengths-based. The general purposes of case management are to access, coordinate and monitor services and to assess an individual's progress toward specific goals. Services typically include assessment, plan of care/service plan, development and review, advocacy, referral and linkage to services, housing activities, the individual's income maintenance activities, facilitation and natural helping resources and coordination of physical health and social services and outcomes.

(4) **Category:** A designation of the automated eligibility system. SCI has one designated category (062) and three income groupings that are assigned to an individual based on their income grouping. The assigned category is applicable for a period of 12 consecutive months regardless of changes in income or family status, subject to change by request from the recipient.

(5) **Clean claim:** A manually or electronically submitted claim from a participating provider that contains substantially all the required data elements necessary for accurate adjudication without the need for additional information from outside the health plan's system. A clean claim may include errors originating in the state's system. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity. A clean claim is not materially deficient or improper, such as lacking substantiating documentation currently required by the health plan, or has no particular or unusual circumstances requiring special treatment that prevents payment from being made by the health plan within 30 days of the date of receipt if submitted electronically or 45 days if submitted manually.

(6) **Client:** An individual who has applied for and been determined eligible for SCI. A "client" may also be referred to as a "member," "customer," or "consumer," or "program participant".

(7) **CMS:** Centers for medicare and medicaid services.

(8) **Continuous quality improvement (CQI):** CQI is a process for improving quality that assumes opportunities for improvement are unlimited; is customer-oriented, data driven, and results in implementation of improvements; and requires continual measurement of implemented improvements and modification of improvements, as indicated.

(9) **Cost-sharing:** Premiums and co-payments owed by the member based on income group category.

(10) **Cost-sharing maximum:** The cost sharing maximum is determined during the initial eligibility determination and recertification process. The cost shar-

ing maximum amount established at the point of eligibility determination for the benefit year represents an amount equal to 5% of the program participant's countable income.

(11) **Coverage:** Coverage month is a month where all eligibility and enrollment requirements including premium payment, if applicable are met.

(12) **Cultural competence:** Cultural competence refers to a set of congruent behaviors, attitudes and policies that come together in a system, agency, or among professionals, that enables them to work effectively in cross-cultural situations. Cultural competency involves the integration and transformation of knowledge, information and data about individuals and groups of people into specific clinical standards, skills, service approaches, techniques and marketing programs that match an individual's culture and increase the quality and appropriateness of health care and outcomes.

D. Definitions beginning with letter "D":

(1) **Delegation:** A formal process by which the MCO gives another entity the authority to perform certain functions on its behalf. The MCO retains full accountability for the delegated functions.

(2) **Denial-administrative/technical:** A denial of authorization requests due to the requested procedure, service or item not being covered by SCI or due to provider noncompliance with administrative policies and procedures established by either the SCI MCO or the medical assistance division, except pharmaceutical services which the formulary process covers.

(3) **Denial-clinical:** A non-authorization decision at the time of an initial request for a SCI service based on the member not meeting medical necessity for the requested service, except pharmaceutical services which are covered by the formulary process. The utilization management (UM) staff may recommend an alternative service, based on the member's need for a lower level of service. If the requesting provider accepts this alternative service, it is considered a new request for the alternative service and a clinical denial of the original service request.

(4) **Disenrollment, MCO initiated:** When requested by an MCO for substantial reason, removal of an individual SCI member from membership in the requesting MCO, as determined by HSD, on a case-by-case basis.

(5) **Disenrollment, member initiated (switch):** When requested by a member for substantial reason, transfer of an individual SCI member as determined by HSD on a case-by-case basis, from one SCI MCO to a different SCI MCO during a member lock-in period.

(6) **Durable medical equipment (DME):** Equipment that can withstand repeated use, is primarily used to serve a medical purpose, is not useful to individuals in the absence of an illness or injury and is appropriate for use at home.

E. Definitions beginning with letter "E":

(1) **Emergency:** An emergency condition is a physical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part.

(2) **Employer:** An employer with fifty or fewer eligible employees on a full or part time basis.

(3) **Employer group:** A group of employees employed by an eligible employer who receive SCI benefits through the employer or a self-employed person who will be considered a group of one.

(4) **Employee:** A person employed by an employer who participates in the SCI health benefit plan.

(5) **Encounter:** The record of a physical or behavioral health service rendered by a provider to an MCO member, client, customer or consumer.

(6) **Enrollee:** A SCI recipient who is currently enrolled in a managed care organization.

(7) **Enrollment:** The process of enrolling eligible members in an MCO for purposes of management and coordination of health care delivery. The process of enrolling members either by the employer or individually in an available SCI-participating MCO for purposes of health care coverage. Enrollment encompasses selection of an MCO, notification of the selection to the MCO, and timely payment of premiums to the MCO as determined by the MCO.

(8) **External quality review organization (EQRO):** An independent organization with clinical and health services expertise that is capable of reviewing health care delivery systems and their internal quality assurance mechanisms.

F. Definitions beginning with letter "F":

(1) **Family planning services:** Services provided to members of childbearing age to temporarily or permanently prevent or delay pregnancy (see 8.325.3 NMAC [MAD-762], *Reproductive Health Services*).

(2) **Fraud:** An intentional decep-

tion or misrepresentation made by an entity or person, including but not limited to, an MCO, subcontractor, provider or member with the knowledge that the deception could result in some unauthorized benefit to himself or to some other previously described entity or person. It includes any act that constitutes fraud under applicable federal or state law.

(3) **Full risk contracts:** Contracts that place the MCO at risk for furnishing or arranging for comprehensive services.

G. Definitions beginning with letter "G":

(1) **Gag order:** Subcontract provisions or MCO practices, either written, oral or implied, that effectively prevent a provider from furnishing accurate or complete information to members about options for diagnosis or treatment of physical, mental or behavioral illness, injury, or condition; or prevent a provider from talking to the member or HSD about the MCO or their business practices.

(2) **Grievance (member):** Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO or its operations that is not an MCO action.

(3) **Grievance (provider):** Oral or written statement by a provider to the MCO regarding utilization management decisions and/or provider payment issues.

(4) **Group of one: Individuals who enroll without an employer group but report self-employment.**

H. Definitions beginning with letter "H":

(1) **Health plan:** A health maintenance organization (HMO), managed care organization (MCO), or third party payer or their agents.

(2) **HIPAA:** Health Insurance Portability and Accountability Act of 1996.

(3) **Hospitalist:** A physician employed by a hospital to manage the care of a member admitted to the hospital for inpatient care.

(4) **Human services department (HSD):** The sole executive department in New Mexico responsible for the administration of SCI. "HSD" may also indicate the department's designee, as applicable.

I. Definitions beginning with letter "I":

(1) **Income groupings:** 0-100%, 101-150%, and 151-200% of federal poverty levels: These income groupings define the premium, copayment, and cost-sharing maximums for SCI cost-sharing purposes.

(2) **Incurred but not reported (IBNR):** Claims for services authorized or rendered for which the MCO has incurred financial liability, but the claim has not been received by the MCO. This estimating method relies on data from prior authoriza-

tion and referral systems, as well as other data analysis systems.

(3) **Individual:** A person who enrolls in SCI who is not a member of an eligible employer group and pays the premium amount designated for both the employee share, if applicable, based on income, and the employer share or has that amount paid on his behalf by another entity.

J. Definitions beginning with letter "J": [RESERVED]

K. Definitions beginning with letter "K": [RESERVED]

L. Definitions beginning with letter "L": [RESERVED]

M. Definitions beginning with letter "M":

(1) **Managed care organization (MCO):** An organization licensed or authorized through an agreement among state entities to manage, coordinate and receive payment for the delivery of specified services to enrolled members from a certain geographic area. Also referred to as a managed care plan and managed care program.

(2) **Marketing:** The act or process of promoting a business or commodity. Marketing includes brochures, leaflets, internet, newspaper, magazine, radio, television, billboard materials, MCO yellow page advertisements, and any other presentation materials used by an MCO, MCO representative, or MCO subcontractor to attract or retain SCI enrollment.

(3) **MCO appeal (member):** A request from a member or a provider, with the member's written consent, for review by the managed care organization (MCO) of an MCO action. An "MCO appeal" should not be confused with an applicant's or recipient's right to appeal an HSD fair hearing decision to state district court under the Public Assistance Appeals Act, NMSA 1978, Section 27-3-4 and pursuant to NMSA 1978, Section 39-3-1.1.

(4) **Medicaid:** The medical assistance program authorized under Title XIX of the Social Security Act or its successors, furnished to New Mexico residents who meet specific eligibility requirements.

(5) **Medically necessary services:**

(a) Medically necessary services are clinical and rehabilitative physical or behavioral health services that:

(i) are essential to prevent, diagnose or treat medical or behavioral health conditions or are essential to enable the individual to attain, maintain or regain functional capacity;

(ii) are delivered in the amount, duration, scope and setting that is clinically appropriate to the specific physical and behavioral health care needs of the individual;

(iii) are provided within professionally accepted standards of practice and national guidelines; and

(iv) are required to meet the physical and behavioral health needs of the individual and are not primarily for the convenience of the individual, the provider or the payer.

(b) Application of the definition:

(i) a determination that a health care service is medically necessary does not mean that the health care service is a covered benefit or an amendment, modification or expansion of a covered benefit;

(ii) the MCO/SE making the determination of the medical necessity of clinical, rehabilitative and supportive services consistent with the medicaid benefit package applicable to an eligible individual shall do so by: 1) evaluating individual physical and behavioral health information provided by qualified professionals who have personally evaluated the individual within their scope of practice, who have taken into consideration the individual's clinical history including the impact of previous treatment and service interventions and who have consulted with other qualified health care professionals with applicable specialty training, as appropriate; 2) considering the views and choices of the individual or the individual's legal guardian, agent or surrogate decision maker regarding the proposed covered service as provided by the clinician or through independent verification of those views; and 3) considering the services being provided concurrently by other service delivery systems;

(iii) physical and behavioral health services shall not be denied solely because the individual has a poor prognosis; required services may not be arbitrarily denied or reduced in amount, duration or scope to an otherwise eligible individual solely because of the diagnosis, type of illness or condition.

(6) **Member:** A eligible member enrolled in an MCO.

(7) **Member month:** A calendar month during which a member is enrolled in an MCO.

N. Definitions beginning with letter "N":

(1) **National committee for quality assurance (NCQA):** A private national organization that develops quality standards for managed health care.

(2) **Network provider:** An individual provider, clinic, group, association or facility employed by or contracted with an MCO to furnish physical or behavioral health services to the MCO's members under the provisions of the SCI managed care contract.

(3) **Notice:** A written statement that includes what action is being taken, the

reasons for the intended action, the specific regulation that requires the action, and an explanation of the circumstances under which the service may be continued if a hearing is requested.

O. Definitions beginning with letter "O": **Outreach:** The act or process of promoting an insurance product through established business channels of communications including brochures, leaflets, internet, print media, electronic media, signage or other materials used by MCOs to attract or retain SCI enrollment primarily through employer groups.

P. Definitions beginning with letter "P":

(1) **Parental or custodial relative status:** The state of having a dependent child under the age of 18 who is the son, daughter, or relative within the fifth degree of relationship living in the household and under the care and control of the individual.

(2) **Pend decision:** A prior authorization decision is considered pended when the decision is delayed due to lack of documentation, inability to contact parties involved or other reason which delays finalizing an approval. A decision by an MCO to pend approval does not extend or modify required utilization management decision timelines.

(3) **Pregnancy-related services:** Medically necessary medical or surgical services related to pregnancy, including procedures to terminate pregnancy.

(4) **Primary care:** All health services and laboratory services customarily furnished by or through a general practitioner, family physician, internal medicine physician, obstetrician/gynecologist, pediatrician, physician assistant or certified nurse practitioner.

(5) **Primary care provider (PCP):** A provider who agrees to manage and coordinate the care provided to members in the managed care program.

Q. Definitions beginning with letter "Q": [RESERVED]

R. Definitions beginning with letter "R":

(1) **Rate cell:** A combination of category of eligibility and demographics used to isolate utilization patterns for the determination of capitation.

(2) **Received but unpaid claims (RBUC):** Claims received by the MCO but not paid affecting appropriate expense and aging accounting categories. Such claims are counted as of the date of receipt by the MCO.

(3) **Reduction of care:** A utilization management staff authorization of the type of service requested by the provider but in lesser amounts or units of service, based on the member's physical health, medical or behavioral health clinical need,

than was originally requested, except pharmaceutical services which are covered by the formulary process.

(4) **Referral:** Any specialty, inpatient, outpatient, or diagnostic services that a physician or physician group orders or arranges, but does not provide directly.

(5) **Reinsurance:** Reinsurance is a proactive financial tool that may be used by an MCO to minimize exposure to losses incurred when members utilize health care services beyond anticipated levels or overall member utilization is greater than expected.

(6) **Risk:** The possibility that revenues of the MCO will not be sufficient to cover expenditures incurred in the delivery of contractual services.

(7) **Routine care:** All care, which is not emergent or urgent.

S. Definitions beginning with letter "S":

(1) **SCI (state coverage insurance):** The New Mexico health care program implemented under the authority of the health insurance flexibility and accountability (HIFA) waiver granted to the state by the centers for medicare and medicaid services (CMS).

(2) **SCI members with special health care needs (SCI-SHCN):** Individuals who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition, or low to severe functional limitation and who also require health and related services of a type or amount beyond that required by individuals.

(3) **Single statewide entity (SE):** Refers to the entity selected by the state of New Mexico through the collaborative to perform all contract functions defined in the behavioral health request for proposal (RFP). The SE is a single contractor selected to provide all defined service responsibilities statewide, including medicaid behavioral health benefits. The SE will receive delegation by the MCO for SCI managed care. The SE shall contract with the MCO and may be responsible for contracting with providers, paying provider claims, assuring care coordination, conducting utilization review and utilization management activities, assuring quality review and service delivery improvement, credentialing practitioners and provider agencies, privileging practitioners to deliver critical services or service approaches, evaluating and monitoring of service delivery and conducting any other administrative functions necessary to achieve the goals of the collaborative. The SE is the agent of the collaborative and shall "coordinate," "braid" or "blend" the funding, human resources and service capacity available from the various state agencies so as to increase flexibility, maximize available resources and create a

seamless single behavioral health service delivery system for New Mexico."

(4) **Subcontract:** A written agreement between the MCO and a third party, or between a subcontractor and another subcontractor, to provide services.

(5) **Subcontractor:** A third party who contracts with the MCO or an MCO subcontractor for the provision of services.

T. Definitions beginning with letter "T":

(1) **Terminations of care:** The utilization management review decision made during a concurrent review, which yields a denial, based on the current service being no longer medically necessary, except pharmaceutical services, which are covered by the formulary process.

(2) **Third party:** An individual entity or program, which is or may be, liable to pay all or part of the expenditures for SCI members for services furnished.

U. Definitions beginning with letter "U": **Urgent condition:** Acute signs and symptoms, which, by reasonable medical judgment, represent a condition of sufficient severity such that the absence of medical attention within 24 hours could reasonably be expected to result in an emergency condition.

[8.306.1.7 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.3 NMAC, Sections 10 and 11, which will be effective on April 16, 2007. The Medical Assistance Division amended Section 10 by changing the number of years a subcontractor shall maintain records and amended Section 11 regarding a consumer advisory board.

8.306.3.10 CONTRACT MANAGEMENT:

A. **General contract requirements:** The MCOs shall meet all specified terms of the SCI contract and the Health Insurance Portability and Accountability Act (HIPAA). This includes, but is not limited to, insuring confidentiality as it relates to medical records and any other health and enrollment information that identifies a particular member. The MCO will be held harmless in conversion to HIPAA electronic transmission formats when delays are the result of implementation issues at HSD. HSD is responsible for management of the SCI managed care contracts issued to MCOs. HSD shall provide the oversight and administrative functions to ensure MCO compliance with the terms of the SCI managed care contract.

B. Subcontracting

requirements: The MCO may subcontract to a qualified individual or organization the provision of any service defined in the benefit package or other required MCO function. The MCO shall be legally responsible to HSD for all work performed by any MCO subcontractor. The MCO shall submit boilerplate contract language and sample contracts for various types of subcontracts. Any substantive changes to contract templates shall be approved by HSD prior to issuance.

(1) **Credentialing requirements:** The MCO shall maintain policies and procedures for verifying that the credentials of its providers and subcontractors meet applicable standards.

(2) **Review requirements:** The MCO shall maintain a fully executed original of all subcontracts and make them available to HSD on request.

(3) **Minimum requirements:** Subcontracts shall contain the following provisions:

(a) subcontracts shall be executed in accordance with applicable federal and state laws, regulations, policies and rules;

(b) subcontracts shall identify the parties of the subcontract and the parties' legal basis of operation in the state of New Mexico;

(c) subcontracts shall include procedures and criteria for terminating the subcontract;

(d) subcontracts shall identify the services to be performed by the subcontractor including a description of how members access services provided under the subcontract;

(e) subcontracts shall include reimbursement rates and risk assumption, where applicable;

(f) subcontractors shall maintain records relating to services provided to members for ~~five~~ ten years;

(g) subcontracts shall require that member information be kept confidential, as defined by federal or state law and be HIPAA compliant;

(h) subcontracts shall provide that authorized representatives of HSD have reasonable access to facilities, personnel and records for financial and medical audit purposes;

(i) subcontracts shall provide for the subcontractor to release to the MCO any information necessary to perform any of its obligations;

(j) the subcontractor shall accept payment from the MCO for any services provided under the benefit package and may not request payment from HSD for services performed under the subcontract;

(k) if the subcontract includes primary care, the subcontractor shall comply with PCP requirements in the MCO contract with HSD;

(l) the subcontractor shall comply with all applicable state and federal statutes, rules and regulations, including prohibitions against discrimination;

(m) the subcontract shall not prohibit a provider or other subcontractor from entering into a contractual relationship with another MCO;

(n) the subcontract shall allow providers to assist members to access the grievance process or to act to protect member interests; and

(o) the subcontract shall specify the time frame for submission of encounter data to the MCO.

(4) **Excluded providers:** The MCO shall not contract with any individual provider, or entity, or entity with an officer, director, agent, or manager who owns or has a controlling interest in the entity, who has been convicted of crimes specified in Section 1128 of the Social Security Act; has been excluded from participation in any other state's medicaid, medicare, or any other public or private health or health insurance program; has been assessed a civil penalty under the provision of Section 1128; or who has had a contractual relationship with an entity or individual convicted of a crime specified in Section 1128.

C. **Provider incentive plans:** The MCO shall ensure that direct or indirect incentives offered in the subcontract shall not serve as an inducement to reduce or limit medically necessary services to members.

[8.306.3.10 NMAC - N, 7-1-05; A, 4-16-07]

8.306.3.11 ORGANIZATIONAL REQUIREMENTS:

A. **Organizational structure:** The MCO shall provide the following information to HSD and updates, modifications, or amendments to HSD within 30 days:

(1) current organization charts or other written plans identifying organizational lines of accountability;

(2) articles of incorporation, bylaws, partnership agreements, or similar documents that describe the MCO's mission, organizational structure, board and committee composition, mechanisms to select officers and directors and board and public meeting schedules; and

(3) documents describing the MCO's relationship to parent-affiliated and related business entities including, but not limited to, subsidiaries, joint ventures or sister corporations.

B. **Policies and procedures:** The MCO shall establish and maintain written policies, procedures and job descriptions as required by HSD. The MCO shall establish, maintain and implement guidelines for developing, reviewing and

approving policies, procedures and job descriptions. The MCO shall provide MCO policies, procedures, and job descriptions for key personnel and guidelines for review to HSD on request. The MCO shall notify HSD when changes occur in key personnel.

(1) **Review of policies and procedures:** The MCO shall review the MCO's policies and procedures at least every two years, unless otherwise specified herein, to ensure that they reflect the MCO's current best industry practices. Job descriptions shall be reviewed to ensure that current employee duties reflect written requirements. Substantive modification or amendment to key positions shall be reviewed by HSD.

(2) **Distribution of information:** The MCO shall distribute to providers information necessary to ensure that providers meet all contract requirements.

(3) **Business requirements:** The MCO shall have the administrative, information and other systems in place necessary to fulfill the terms of the SCI managed care contract. Any change in identified key MCO personnel shall conform to the requirements of the SCI managed care contract.

(4) **Financial requirements:** The MCO shall meet the requirements of federal and state law with respect to solvency and performance guarantees for the duration of the SCI managed care contract. The MCO shall meet additional financial requirements specified in the SCI managed care contract.

(5) **Member services:** The MCO shall have a member services function that coordinates communication with members and acts as a member advocate. Member services shall include sufficient staff to assist members in resolving problems or making inquiries. The MCO's policies and procedures shall be made available on request to members or member representatives for review during normal business hours.

(6) **Consumer advisory board:** The MCO shall establish representation on its current medicaid managed care consumer advisory board that includes SCI. This representation may have regional representation of customers, family members, advocates and providers who participate in SCI. The MCO can also devise a method, approved by HSD/MAD, to elicit feedback from SCI consumers and address their needs, if formation of a separate SCI consumer advisory board is deemed impractical because of enrollment of less than 2,500 members.

(a) Consumer advisory board members shall serve to advise the MCO on issues concerning service delivery and quality of service, the member bill of rights and

member responsibilities, resolution of member grievances and the needs of groups represented by board member as they pertain to SCI.

(b) The MCO shall attend at least two statewide consumer-driven or hosted meetings per year, of the MCO's choosing, that focus on consumer issues and needs to ensure that member's concerns are heard and addressed.

(7) **Contract enforcement:** HSD shall enforce contractual and state and federal regulatory requirements specified in the scope of work of the contract. HSD may use the following types of sanctions for less than satisfactory or nonperformance of contract provisions:

(a) require plans of correction;

(b) impose directed plans of correction;

(c) impose civil or administrative monetary penalties and fines under the following guidelines:

(i) a maximum of \$25,000.00 for each of the following determinations: failure to provide service; misrepresentation or false statements to members, potential members, or health care providers; failure to comply with physician incentive plan requirements; and marketing violations;

(ii) a maximum of \$100,000.00 for each of the following determinations: discrimination or misrepresentation or false statements to HSD, or CMS;

(iii) a maximum of \$15,000.00 for each SCI member that HSD determines was not enrolled, or reenrolled, or enrollment was terminated because of a discriminatory practice; this is subject to an overall limit of \$100,000.00;

(iv) a maximum of \$25,000.00 or double the amount of the excess charges, whichever is greater, for premiums or charges in excess of the amount permitted under the SCI program; the state shall deduct from the penalty the amount of overcharge and return it to the affected enrollee; and

(d) rescind marketing consent;

(e) suspend new enrollment, including default enrollment after the effective date of the sanction;

(f) appoint a state monitor, the cost of which shall be borne by the MCO;

(g) deny payment of capitation rates;

(h) assess actual damages;

(i) assess liquidated damages;

(j) remove members with third party coverage from enrollment with the MCO;

(k) allow members to terminate enrollment;

(l) suspend or terminate MCO contract;

(m) apply other sanctions and remedies specified by HSD; and

(n) impose temporary management only if it finds, through on-site survey, enrollee complaints, or any other means that;

(i) there is continued behavior by the MCO as described under sub-paragraph (c) above including but not limited to behavior that is prohibited under specific federal law granting states appropriations for medicaid services, 42 USC Sections 1396b(m) or 1396u-2; or

(ii) there is substantial risk to member's health; or

(iii) the sanction is necessary to ensure the health of the MCO's members while improvement is made to remedy violations made under Subparagraph (c) above; or until there is orderly termination or reorganization of the MCO; and

(iv) there shall be no provision for hearing prior to the imposition of temporary management and HSD shall not terminate temporary management until it determines that the MCO can ensure that the sanctioned behavior will not re-occur.

[8.306.3.11 NMAC - N, 7-1-05; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.4 NMAC, Section 10, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to add newborn enrollment to special situations.

8.306.4.10 SPECIAL SITUATIONS:

A. Clients in third trimester of pregnancy: A woman in her third trimester of pregnancy at the time of enrollment, who has an established obstetrical provider, may continue that relationship. Refer to Paragraph ~~[(4) of Subsection H of 8.306.11.9]~~ (4) of Subsection I of 8.305.11.9 NMAC for special payment requirements.

B. Newborn enrollment: Refer to Paragraph (1) of Subsection A of 8.305.4.10 NMAC for requirements.

[8.306.4.10 NMAC - N, 7-1-05; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.5 NMAC, Section 9, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to change language in the subsections regarding selection period and member switch enrollment.

8.306.5.9 ENROLLMENT PROCESS:

A. Enrollment requirements: The managed care organization (MCO) shall provide an open enrollment period during which the MCO will enroll individuals in accordance with accepted MCO practice in the order in which they apply, up to the limits contained in the contract. The MCO shall not discriminate on the basis of health status or a need for health care services. The MCO shall not discriminate against individuals eligible to enroll on the basis of disability, race, color, national origin, or sexual orientation. The MCO shall not use any policy or practice that has the effect of discriminating on the basis of disability, race, color, national origin, or sexual orientation. All enrollments shall be voluntary and based on member or employer choice.

B. Member lock-in: Except as otherwise provided below, once a member in an employer group has enrolled in an MCO through his employer group, he may only transfer to another MCO, 1) during the employer enrollment period, that occurs when the employer contracts with another MCO; or 2) if he changes employers. A member enrolled individually may only transfer to another MCO when his eligibility is recertified or "for cause" as defined as follows: the following criteria shall be cause for transfer:

- (1) continuity of care issues;
- (2) family continuity;
- (3) administrative or data entry error in assigning a client to an MCO;
- (4) assignment of a member where travel for primary care exceeds community standards (90% of urban residents shall travel no further than 30 miles to see a PCP; 90% of rural residents shall travel no further than 45 miles to see a PCP; and 90% of frontier residents shall travel no further than 60 miles to see a PCP); urban counties are: Bernalillo, Los Alamos, Santa Fe and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel and Cibola; rural counties are those which are not listed as urban or frontier;
- (5) the member moves out of the MCO service area;
- (6) the MCO does not, because of moral or religious objections, cover the service the member seeks;
- (7) the member needs related services to be performed at the same time, not all related services can be provided by the PCP, and another provider determines that receiving the services separately would subject the member to unnecessary risk; and
- (8) other reasons, including but not limited to, poor quality of care, lack of access to services covered under the con-

tract, or lack of access to providers experienced in dealing with the member's health care needs; if applicable, the member shall be notified by the MCO, 60 days prior to the expiration of the member's lock-in period of the deadline for selecting a new MCO; members in an employer group will be notified of the employer enrollment period by the employer or the broker, if applicable; members who are not in an employer group will be notified of the expiration of their lock-in period by the MCO.

C. Selection period: As a condition of enrollment, the potential member has 30 days to send in the eligibility application and all documentation to the income support division (ISD) office after receiving the pre-enrollment (contact) letter from the MCO. After receiving a letter of eligibility from the ISD office, a new individual member shall complete enrollment with an MCO within a ~~[thirty]~~ 30 day period. If enrollment, including payment of applicable premium, if any, is not made within that timeframe, the member shall be considered to have voluntarily dropped the SCI insurance coverage, which means the individual, may not enroll with an SCI MCO for six months. An employer group has a specified time period, determined by the MCO and HSD, in which to complete enrollment and premium payment with an SCI MCO after all employees have received their letters of eligibility. Failure of the employer to complete the enrollment process within this time period will deem the employer to have voluntarily dropped insurance coverage and the employer will be ineligible to enroll with an SCI MCO for a twelve-month period; however, the individual employees are eligible to enroll immediately as individuals and will not be considered to have voluntarily dropped health insurance coverage.

D. Beginning date of enrollment: Enrollment begins the first day of the first full month following receipt of eligibility letter and MCO completion of enrollment including receipt of required premiums. However, if MCO receipt of premium payment occurs after the 25th day of the month and before the first full day of the following month, the enrollment begins on the first day of the second full month after MCO receipt of premium payments.

E. Member switch enrollment: A member enrolled as an individual and not as an employee enrolled through an employer group may request to be disenrolled from an MCO and switch to another MCO (if available) "for cause" at any time. The request shall be made in writing to HSD. HSD shall review the request and furnish a written response to the member and the MCO in a 30 day period. The following criteria shall be used to make a decision regarding a switch enrollment

request:

(1) continuity of care issues;
 (2) family continuity;
 (3) administrative or data entry error in enrolling a member with an MCO; ~~and~~

(4) travel for primary care exceeds community standards, (90% of urban residents shall travel no further than 30 miles to see a PCP; 90% of rural residents shall travel no further than 45 miles to see a PCP; and 90% of frontier residents shall travel no further than 60 miles to see a PCP); urban counties are: Bernalillo, Los Alamos, Santa Fe and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel and Cibola; rural counties are those which are not listed as urban or frontier;

(5) the member moves out of the MCO service area;

(6) the MCO does not, because of moral or religious objections, cover the service the member seeks;

(7) the member needs related services to be performed at the same time, not all related services can be provided by the PCP, and another provider determines that receiving the services separately would subject the member to unnecessary risk; and

(8) other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the member's health care needs; if applicable, the member shall be notified by the MCO, 60 days prior to the expiration of the member's lock-in period of the deadline for selecting a new MCO; members in an employer group will be notified of the employer enrollment period by the employer or the broker, if applicable; members who are not in an employer group will be notified of the expiration of their lock-in period by the MCO.

F. Disenrollment, MCO initiated: The MCO may request that a particular member be disenrolled. Other than for non-payment of premiums, member disenrollment from an MCO will be considered only in rare circumstances. Disenrollment requests shall be made in writing to HSD. The MCO shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The MCO shall submit a copy of the member's notification letter to HSD. If the disenrollment is granted, the MCO retains responsibility for the member's care until the member is enrolled with another SCI-contracted MCO. If the member is part of an employer group and the employer does not contract with another MCO, HSD may allow the member to

enroll with another MCO, but the member shall be responsible for the employer's premium share. The MCO shall assist with transition of care to the other MCO.

G. Conditions under which an MCO requests member disenrollment: The MCO may not seek to terminate enrollment because of an adverse change in the member's health. The MCO shall not request disenrollment because of an adverse change in the member's health status or because of the member's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from his special needs, except when his continued enrollment with the MCO seriously impairs the MCO's ability to furnish services to either this particular member or other members. The MCO shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The MCO shall submit a copy of the member's notification letter. If the disenrollment is granted, the MCO retains responsibility for the member's care until the member is enrolled with another MCO. The MCO shall assist with transition of care.

H. Re-enrollment limitations: If a request for disenrollment is approved, the member shall not be re-enrolled with the requesting MCO for a period of time to be determined by HSD. The member and the requesting MCO shall be notified by HSD of the period of disenrollment. If a member has been disenrolled by all available contracted MCOs, HSD shall evaluate the member for termination from SCI.

I. Date of disenrollment: MCO enrollment shall terminate at the end of the month following the month in which HSD approval for disenrollment is granted. [8.306.5.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.7 NMAC, Section 11, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to add coverage of pregnancy termination as a service included in the SCI benefit package.

8.306.7.11 SERVICES INCLUDED IN THE SCI BENEFIT PACKAGE: The SCI benefit package includes provider and consultation services and supplies that are reasonably required to maintain good health and are provided by or under the direction of the member's PCP. The following lists covered services and provides additional information.

A. Provider services:

- (1) office visits;
- (2) home visits;
- (3) hospital and inpatient physical rehabilitation facility visits by physician;
- (4) inpatient and outpatient surgery (includes assistant surgeon's charges);
- (5) office procedures;
- (6) inpatient professional care services, including pathologists, radiologists and anesthesiologists;
- (7) allergy testing;
- (8) allergy injections;
- (9) antigen serum;
- (10) injections in accordance with accepted medical practice to treat acute conditions, which are customarily administered in a provider's office;

- (11) injections in accordance with acceptable medical practice used to treat chronic conditions, including, but not limited to, diseases such as rheumatoid arthritis, crohn's disease, and hepatitis C; and
- (12) routine and diagnostic x-rays and clinical laboratory tests.

B. Inpatient hospital services: The benefit package includes inpatient hospital services as detailed below.

- (1) Hospital admissions must have prior authorization and are to be provided under the direction of the member's PCP or a consulting provider to whom the member is referred by his PCP. Any service or procedure not outlined below requires a prior authorization.

- (2) Inpatient hospitalization coverage is limited to twenty-five (25) days per benefit year. This twenty-five (25)-day limitation is combined with home health services and inpatient physical rehabilitation.

- (3) Inpatient hospital services include:
 - (a) semi-private room and board accommodations, including general duty nursing care;

- (b) private room and board accommodations when medically necessary; prior authorization is required;

- (c) in-hospital therapeutic and support care, services, supplies and appliances, including care in specialized intensive and coronary care units;

- (d) use of all hospital facilities, including operating, delivery, recovery, and treatment rooms and equipment;

- (e) laboratory tests, x-rays, electrocardiograms (EKGs), electroencephalograms (EEGs), and other diagnostic tests performed in conjunction with a member's admission to a hospital;

- (f) anesthetics, oxygen, pharmaceuticals, medications, and other biological;

- (g) dressings, casts, and special equipment when supplied by the hospital for use in the hospital;

(h) inpatient meals and special diets;

(i) inpatient radiation therapy and/or inhalation therapy;

(j) rehabilitative services - physical, occupational, and speech therapy;

(k) administration of whole blood, blood plasma, and components;

(l) discharge planning and coordination of services; and

(m) maternity care.

C. Outpatient services:

The benefit package includes outpatient services performed in a hospital or other approved outpatient facility. Outpatient services:

(1) can reasonably be provided on an ambulatory basis;

(2) are preventive, diagnostic or treatment procedures provided under the direction of the member's PCP or a consulting provider to whom the member is referred by the PCP;

(3) require prior authorization, unless otherwise noted; and

(4) the following provides additional information on covered outpatient services and associated co-payments:

(a) surgeries, including use of operating, delivery, recovery, treatment rooms, equipment and supplies, including anesthesia, dressings and medications;

(b) radiation therapy and chemotherapy;

(c) magnetic resonance imaging (MRI);

(d) positron emission tomography (PET) tests;

(e) CT scan;

(f) holter monitors and cardiac event monitors;

(g) routine and diagnostic x-rays, clinical laboratory tests, electrocardiograms (EKGs), and electroencephalograms (EEGs);

(h) cardiovascular rehabilitation; and

(i) rehabilitative services - physical, occupational, and speech therapy; rehabilitative services for short-term physical, occupational, and speech therapies are covered; short-term therapy includes therapy services that produce significant and demonstrable improvement within a two-month period from the initial date of treatment; the member's PCP or other appropriate treating provider to whom the member has been referred shall determine in advance of rehabilitative services that these services can be expected to result in significant improvement in the member's physical condition within a period of two months; requests for rehabilitative services from therapists will not be approved; these services shall be requested by the ordering provider and require a prior authorization.

(i) Extension of short-

term therapy beyond the initial two months may be extended for one period of up to two months, contingent on the approval of the MCO's medical director, only if such services can be expected to result in continued significant improvement of the member's physical condition within the extension period. Expectation of significant improvement will be established if the member has complied fully with the instructions for care and has met all therapy goals for the preceding two-month period as documented in the therapy record.

(ii) Therapy services extending beyond the two-month period from the initial date of treatment are considered long-term therapy and are not covered under SCI. Long-term therapy includes treatment for chronic or incurable conditions for which rehabilitative services produce minimal or temporary change or relief. Chronic conditions include, but are not limited to, muscular dystrophy, cerebral palsy, developmental delay, myofascial pain disorders, arthritis, autism, and syndromes of chromosomal abnormalities.

D. Emergency and urgently needed health services:

The benefit package includes emergency and urgently needed health services. These services are available twenty-four (24) hours a day, seven (7) days a week. The benefit package includes inpatient and outpatient services meeting the definition of emergency services, which shall be provided without regard to prior authorization or the provider's contractual relationship with the MCO. If the services are needed immediately and the time necessary to transport the member to a network provider would mean risk of permanent damage to the member's health, emergency services shall be available through a facility or provider participating in the MCO/SE network or from a facility or provider not participating in the MCO/SE network. Either provider type shall be paid for the provision of services on a timely basis. Emergency services include services needed to evaluate and stabilize an emergency medical or behavioral condition. Post stabilization care services means covered services, related to an emergency medical or behavioral condition, that are provided after a member is stabilized in order to maintain the stabilized condition. This coverage may include improving or resolving the member's condition if either the MCO has authorized post-stabilization services in the facility in question, or there has been no authorization; and

(1) the hospital was unable to contact the MCO; or

(2) the hospital contacted the MCO but did not get instructions within an hour of the request; the following provides additional information on covered services and required co-payments.

(a) Emergency health services can be provided in or out of the service area. Coverage is provided for trauma services at an appropriately designated trauma center according to established emergency medical services triage and transportation protocols.

(i) Prior authorization is not required for emergency care.

(ii) Coverage for trauma services and all other emergency health services from non-participating providers will continue at least until the member is medically stable, does not require critical care, and can be safely transferred to another facility based on the judgment of the attending participating provider in consultation with the MCO. The MCO may transfer hospitalized members to the care of participating providers as soon as it is medically appropriate. Such members shall be stabilized and the transfer effected in accordance with federal law.

(iii) The member is responsible for charges for non-covered services.

(b) Use of an urgent care center, where available, in or out of the service area for treatment of sudden unexpected acute illness or injury that requires prompt medical attention to prevent jeopardy to the member if such services were not received immediately.

(i) A non-participating urgent care center may be used only if the member cannot reasonably access a participating provider.

(ii) Routine or follow-up medical treatment shall be provided by or through a participating provider.

E. Women's health services: The benefit package includes any gynecological examinations or care related to pregnancy, for primary and preventive obstetrics, and gynecological services required as a result of any gynecological examination or condition. Covered women's health services may be obtained from the member's PCP, or a participating women's health care provider or a consulting provider to whom the member has been referred by her PCP. The following lists covered services and provides additional information:

(1) office visits;

(2) low-dose mammography screening for detection of breast cancer;

(3) cytological screening to determine the presence of pre-cancerous or cancerous conditions or other health problems; and

(4) services related to the diagnosis, treatment and appropriate management of osteoporosis.

F. Prenatal and postpartum care: Prenatal care includes a minimum of one prenatal office visit per month during the first two trimesters of pregnancy;

two (2) office visits per month during the seventh and eighth months of pregnancy; and one (1) office visit per week during the ninth month until tremor as medically indicated, provided that coverage for each office visit shall include prenatal counseling and education.

(1) Following delivery of a newborn, a female member is entitled to either:

(a) post-partum care in the home consisting of up to three visits; or

(b) a minimum hospital stay of specified inpatient hours; the choice of either home care or inpatient care will be made based on discussion between the participating provider and the member.

(2) If post-partum home care is elected, the care shall be rendered in accordance with accepted maternal and neonatal physician assessments, and by a home care participating provider who is properly licensed, trained and experienced. A maximum of three home care visits are allowable.

(3) If inpatient care is elected, a mother and her newborn child in a health care facility will be entitled to a minimum stay of 48 hours following a vaginal delivery or 96 hours following a caesarian section.

(4) Non- hospital births - prior authorization is required.

G. Preventive health services: The benefit package includes preventive health services. Preventive health services are provided to a member when performed by or under the direction of the member's PCP or a participating provider to whom the member has been referred by his PCP, and are consistent with the MCO'S preventive health guidelines. The following lists covered services and provides additional information.

(1) Physical exams, including health appraisal exams, laboratory and radiological tests, hearing and vision screenings, and early detection procedures.

(2) Periodic tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or a fractionated cholesterol level.

(3) Periodic glaucoma eye tests for all persons thirty-five (35) years of age and older.

(4) Periodic stool examination for the presence of blood for all persons 40 years of age or older.

(5) Periodic mammograms for detection of breast cancer as follows: one low dose baseline mammogram for women ages 35 through 39, one low dose mammogram biennially for women ages 40 through 49 and one low dose mammogram annually for women over age 50.

(6) All members may receive an annual consultation to discuss lifestyle

behaviors that promote health and well-being. The consultation may include, but not be limited to:

(a) smoking control;

(b) nutrition and diet recommendations;

(c) exercise plans;

(d) lower back protection;

(e) immunization practices;

(f) breast self-examinations;

(g) testicular self-examinations;

or

(h) use of seat belts in motor vehicles.

(7) Adult immunizations in accordance with the recommendations of the advisory committee on immunization practices (ACIP).

(8) Periodic colon examination of thirty-five (35) to sixty (60) centimeters and/or barium enema for all persons forty-five (45) years of age or older.

(9) Voluntary family planning services.

(10) Insertion of contraceptive devices.

(11) Removal of contraceptive devices.

(12) Surgical sterilization.

(13) Pregnancy termination procedures: The benefit package includes services for the termination of pregnancy and pre or post-decision counseling or psychological services as detailed in 8.325.7 NMAC, *Pregnancy Termination Procedures*.

H. Dialysis: The benefit package includes dialysis services. Long-term hemodialysis and continuous ambulatory peritoneal dialysis (CAPD) is provided with a prior authorization and performed by or under the direction of the member's PCP or a consulting provider to whom the member has been referred by his PCP. The member shall advise the MCO of the date the treatment commenced.

I. Inpatient physical rehabilitation: The benefit package includes inpatient physical rehabilitation. The following lists covered services and provides additional information.

(1) Inpatient physical rehabilitation services require prior authorization, and services are to be provided under the direction of the member's PCP or a consulting provider to whom the member is referred by his PCP.

(2) Inpatient physical rehabilitation facility coverage is limited to twenty-five (25) days per benefit year. This twenty-five (25)-day limitation is combined with inpatient hospital and home health services.

J. Home health services/home intravenous services: The benefit package includes home health services, which are health services provided to a

member confined to his home due to physical illness. The following lists covered services and provides additional information.

(1) Home health services and home intravenous services are provided by a home health agency (HHA) at a member's home with a prior authorization and prescribed by the member's PCP or a consulting provider to whom the member is referred by his PCP.

(2) Home health services in lieu of hospitalization are limited to twenty-five (25) days per benefit year provided that a period of inpatient hospitalization coverage shall precede any home health care coverage or the PCP shall provide a statement indicating that inpatient hospitalization would be necessary in the absence of home health services. This twenty-five (25) day limitation is combined with inpatient hospitalization and inpatient physical rehabilitation.

(3) Services provided by a registered nurse or a licensed practical nurse; by physical, occupational, and respiratory therapists; speech pathologists; or by a home health aide are covered.

(4) Prescription supplies for the provision of home health services at the time of a home health visit are covered.

(5) Home intravenous services are covered.

(6) Tube feedings as the sole source of nutrition are covered.

K. Durable medical equipment, medical supplies, orthotic appliances and prosthetic devices: The benefit package includes durable medical equipment, medical supplies, orthotic appliances, and prosthetic devices. The following lists covered services and provides additional information.

(1) Prior authorization is required.

(2) Durable medical equipment, medical supplies, orthotic appliances and prosthetic devices with allowable charges of \$200 or more per item, including tax and any shipping charges are covered. Rental price cannot exceed purchase price.

(3) Durable medical equipment that requires a provider's prescription for purchase or rental is covered unless otherwise excluded.

(4) Medical supplies that require a provider's prescription for purchase are covered unless otherwise excluded.

(5) Orthotic appliances that require a provider's prescription for purchase are covered unless otherwise excluded.

(6) Prosthetic devices are covered only when they replace a limb or other part of the body after accidental or surgical removal and/or when the body's growth or atrophy necessitates replacement, unless

otherwise excluded.

(7) Breast prostheses and bras required in conjunction with reconstructive surgery are covered, except as limited.

(8) Repair or replacement of durable medical equipment, orthotic appliances and prosthetic devices due to normal wear and/or when necessitated by the body's growth or atrophy are covered.

L. Ambulance services:

The benefit package includes emergency transport services identified below.

(1) When necessary to protect the life of the mother or infant, emergency transport includes transport for medically high-risk pregnant women with an impending delivery to the nearest tertiary care facility.

(2) The MCO will not pay more for air ambulance than it would have paid for transportation over the same distance by surface emergency medical transportation services unless the member's health condition renders the utilization of such surface services medically inappropriate.

(3) Emergency ground ambulance transportation to the nearest facility where emergency care and treatment can be rendered and when provided by a licensed ambulance service

(4) Emergency, trauma-related air ambulance transportation - prior authorization is required, when feasible.

M. Oral surgery:

The benefit package includes limited oral surgery benefits with prior authorization. The following lists covered services and provides additional information. General dental and oral surgery services with a prior authorization only in conjunction with:

(1) Accidental injury to sound natural teeth, the jawbones, or surrounding tissues, treatment for injury is covered when initial treatment for the injury is sought within seventy-two (72) hours of the injury. Teeth with crowns or restorations are not considered to be sound natural teeth. The injury shall be properly documented during the initial treatment. Services shall be completed within twelve (12) months of the date of injury. The MCO will require dental x-rays.

(2) Surgical procedures to correct non-dental, non-maxillo-mandibular physiologic conditions that produce demonstrable impairment of function are covered.

(3) Removal or biopsy, when pathological examination is required of tumors and cysts of the jaws, cheeks, lips, tongue, roof and floor of the mouth are covered.

(4) External incision and drainage of cellulitis; incision of infected accessory sinuses, salivary glands or ducts; and removal of stones from salivary ducts are covered.

(5) Surgical procedures to correct

accidental injuries of the jaws and facial bones, cheeks, lips, tongue, roof and floor of mouth are covered.

N. Reconstructive surgery: The benefit package includes reconstructive surgery as provided below.

(1) Reconstructive surgery from which an improvement in physiological function can be expected if performed for the correction of functional disorders - prior authorization is required. Functional disorder shall result from accidental injury or from congenital defects or disease.

(2) Prosthetic devices and reconstruction surgery of the affected breast or other breast to produce symmetry related to mastectomy. This coverage includes physical complications at all stages of mastectomy, including lymph edemas. A member is allowed at least forty-eight (48) hours of inpatient care following mastectomy and twenty four (24) hours of inpatient care following a lymph node dissection for the treatment of breast cancer.

O. Prescription drugs:

The benefit package includes all generic prescription drugs and brand name drugs included on the MCO'S preferred drug list (PDL). Exceptions to the PDL depend on MCO policy.

P. Diabetes treatment:

The benefit package includes diabetes treatment. The MCO will maintain an adequate PDL to provide resources to members with diabetes; and guarantee reimbursement or coverage for prescription drugs, insulin, supplies, equipment and appliances with a prior authorization described in this subsection within the limits of the MCO. The following lists covered services and provides additional information.

(1) Equipment, supplies and appliances to treat diabetes to include:

(a) blood glucose monitors, including those for the legally blind;

(b) test strips for blood glucose monitors;

(c) visual reading urine and ketone strips;

(d) lancets and lancet devices;

(e) insulin (limit two (2) vials per co-payment);

(f) injection aids, including those adaptable to meet the needs of the legally blind;

(g) syringes;

(h) prescriptive oral agents for controlling blood sugar levels;

(i) medically necessary podiatric appliances for prevention of foot complications associated with diabetes, including therapeutic molded or depth inlay shoes, functional orthotic appliances, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and

(j) glucagons emergency kits.

(2) Diabetes self-management training by a certified, registered or licensed health care professional with recent education in diabetes management, which is limited to:

(a) medically necessary visits upon the diagnosis of diabetes;

(b) visits following a provider diagnosis that represents a significant change in the member's symptoms or condition that warrants changes in the member's self-management;

(c) visits when re-education or refresher training is prescribed by a health care provider with prescribing authority; and

(d) medical nutrition therapy related to diabetes management.

Q. Behavioral health and substance abuse services: The benefit package includes behavioral health and substance abuse services. Inpatient behavioral health services are limited to twenty-five (25) days per benefit year with prior authorization.

(1) Behavioral health service:

(a) Outpatient office visits for mental health evaluation and treatment; injectable forms of haloperidol or fluphenazine are included in the office visit co-payment. Prior authorization is required for over seven (7) visits.

(b) Inpatient mental health services provided in a psychiatric hospital or an acute care general hospital - *prior authorization is required.*

(2) Substance abuse service:

(a) outpatient substance abuse including visits, detoxification and intensive outpatient care limited to forty two (42) days per benefit year; and

(b) inpatient substance abuse detoxification - *prior authorization is required.*

R. Annual limits on out-of-pocket expenditures: Out-of-pocket charges for all participants will be limited to 5 percent of maximum gross family income per benefit year. Pharmacy out-of-pocket charges for all participants will be limited to \$12 per month.

S. Limitations on coverage: The benefit package is limited to \$100,000 in benefits payable per member per benefit year.

T. Pregnancy termination procedures: The MCO shall provide coverage of pregnancy termination as allowed per 42 CFR 457.475. A certification from the provider must be provided to the MCO. Medically necessary pregnancy terminations which do not meet the requirements of 42 CFR 457.475 are excluded from the capitation payment made to the MCO and shall be reimbursed solely from state funds pursuant to the provisions of 8.325.7 NMAC.

[8.306.7.11 NMAC - N, 7-1-05; A, 4-16-07]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.306.11 NMAC, Section 9, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to add language stating that rates are considered confidential.

8.306.11.9 REIMBURSEMENT:

A. MCO and HSD shall comply with 8.305.11.9 NMAC, *Reimbursement for Managed Care* for the SCI program. Rates negotiated between HSD and the MCO are considered confidential.

B. **Payment of premiums:** In addition to capitation payments from HSD, the MCO shall receive premium payments as specified by HSD. Premiums will be paid as follows:

(1) **employer premium** amount determined by department; and

(2) **employee or individual premium** determined by department based on the federal poverty limits as follows: 0-100% per month, 101-150% per month, 151-200% per month,

C. **Premium timeframes:** Initial premiums are due to the MCO immediately upon enrollment and prior to the 1st day of the month before coverage begins. An employer group or individual member can only receive coverage when the premium has been paid. Capitation payments will not be paid unless verification of premium payment through the roster is received. If payment is not current within that timeframe, the employer group or individual member will not be covered for the next month and will not be able to enroll in an SCI MCO for a period of twelve months for an employer group or six months for an individual member.

D. **Responsibility for premium payment:** For members in an employer group, the employer shall be responsible for ensuring payment of the employer and employee share (if any) of premiums. For individuals who are not affiliated with an employer group, the individual or an entity paying on behalf of an individual shall be responsible for payment of both the employer and individual premium amount (if any). If a member who is part of an employer group has met the cost-sharing maximum, as verified by the MCO, HSD shall be responsible for payment of the member's; but not the employer's share of premiums. For individual members not in an employer group who have met the cost-sharing maximum, HSD shall be responsible for the member's share of the premium.

The member will continue to be responsible for the employer's share of the premium.

[8.306.11.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.306.12 NMAC, Sections 12, 13, 15 and 16, which will be effective on April 16, 2007. The Medical Assistance Division amended the sections regarding appeals, expedited resolution of appeals, provider grievance process, and other related processes.

8.306.12.12 APPEALS: An appeal is a request for review by the MCO of an MCO action.

A. Action is defined as:

(1) the denial or limited authorization of a requested service, including the type or level of service;

(2) the reduction, suspension, or termination of a previously authorized service;

(3) the denial, in whole or in part, of payment for a service;

(4) the failure of the MCO to provide services in a timely manner, as defined by HSD; or

(5) the failure of the MCO to complete the authorization request in a timely manner as defined in 42 CFR Section 438.408.

B. **Notice of MCO action:** The MCO shall mail a notice of action to the member and/or provider within 10 days of the date of an action except for denial of claims which may result in member financial liability which requires immediate notification. The notice must contain but not be limited to the following:

(1) the action the MCO has taken or intends to take;

(2) the reasons for the action;

(3) the member's or the provider's right to file an appeal of the MCO action through the MCO;

(4) the member's right to request an HSD fair hearing and what the process would be;

(5) the procedures for exercising the rights specified;

(6) the circumstances under which expedited resolution of an appeal is available and how to request it; and

(7) the member's right to have benefits continue pending resolution of an appeal, how to request the continuation of benefits, and the circumstances under which the member may be required to pay the costs of continuing these benefits.

C. A member may file an appeal of an MCO action within 90 calendar

days of receiving the MCO's notice of action. The legal guardian of the member for incapacitated adults, a representative of the member as designated in writing to the MCO, or a provider acting on behalf of the member with the member's written consent, have the right to file an appeal of an action on behalf of the member. The MCO/SE shall consider the member, representative or estate representative of a deceased member as parties to the appeal.

D. The MCO has [~~thirty~~ (30)] 30 calendar days from the date the oral or written appeal is received by the MCO to resolve the appeal.

E. The MCO shall have a process in place that assures that an oral inquiry from a member seeking to appeal an action is treated as an appeal (to establish the earliest possible filing date for the appeal). An oral appeal must be followed by a written appeal within 10 calendar days that is signed by the member. The MCO will make best efforts to assist members as needed with the written appeal.

F. Within five [~~(5)]~~ working days of receipt of the appeal, the MCO shall provide the grievant with written notice that the appeal has been received and the expected date of its resolution. The MCO shall confirm in writing receipt of oral appeals, unless the member or the provider requests an expedited resolution.

[~~G. The MCO has thirty (30) calendar days from the date the oral or written appeal is received by the MCO to resolve the appeal.~~]

[~~H. G.~~ G. The MCO may extend the [~~thirty~~] 30 day timeframe by 14 calendar days if the member requests the extension, or the MCO demonstrates to HSD that there is need for additional information, and the extension is in the member's interest. For any extension not requested by the member, the MCO must give the member written notice of the extension and the reason for the extension within two [(2)] working days of the decision to extend the timeframe.

[~~I. H.~~ H. The MCO shall provide the member and/or the member's representative a reasonable opportunity to present evidence, and allegations of the fact or law, in person as well as in writing.

[~~J. I.~~ I. The MCO shall provide the member and/or the representative the opportunity, before and during the appeals process, to examine the member's case file, including medical or clinical records, and any other documents and records considered during the appeals process. The MCO shall include as parties to the appeal the member and his or her representative, or the legal representative of a deceased member's estate.

[~~K. J.~~ J. For all appeals, the MCO shall provide written notice within the

~~thirty~~ 30 calendar day timeframe of the appeal resolution to the member or the provider, if the provider filed the appeal.

(1) The written notice of the appeal resolution must include, but not be limited to, the following information:

(a) the result(s) of the appeal resolution; and

(b) the date it was completed.

(2) The written notice of the appeal resolution for appeals not resolved wholly in favor of the member must include, but not be limited to, the following information:

(a) the right to request an HSD fair hearing and how to do so;

(b) the right to request receipt of benefits while the hearing is pending, and how to make the request; and

(c) that the member may be held liable for the cost of those benefits if the hearing decision upholds the MCO's action.

~~[-]~~ K. The MCO may continue benefits while the appeal and/or the HSD fair hearing process is pending.

(1) The MCO must continue the member's benefits if all of the following are met:

(a) ~~[the member or the provider files a timely appeal of the MCO action (within 10 days of the date the MCO mails the notice of action)]~~ the member or the provider files a timely appeal of the MCO/SE action and/or asks for a fair hearing within 13 days from the date on the MCO/SE notice of action;

(b) the appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(c) the services were ordered by an authorized provider;

(d) the time period covered by the original authorization has not expired; and

(e) the member requests extension of the benefits.

(2) The MCO shall provide benefits until one of the following occurs:

(a) the member withdraws the appeal;

(b) ~~ten~~ 10 days have passed since the date the MCO mailed the resolution letter, providing the resolution of the appeal was against the member and the member has taken no further action;

(c) HSD issues a hearing decision adverse to the member; and

(d) the time period or service limits of a previously authorized service has expired.

(3) If the final resolution of the appeal is adverse to the member, that is, the MCO's/SE's action is upheld, the MCO may recover the cost of the services furnished to the member while the appeal was pending to the extent that services were furnished solely because of the requirements of this section, and in accordance with the pol-

icy in 42 CFR Section 431.230(b).

(4) If the MCO or HSD reverses a decision to deny, limit, or delay services, and these services were not furnished while the appeal was pending, the MCO must authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires.

(5) If the MCO or HSD reverses a decision to deny, limit or delay services and the member received the disputed services while the appeal was pending, the MCO must pay for these services.

(6) If HSD reverses a decision to deny eligibility, the potential member can enroll with the MCO, but there will be no retroactive enrollment or benefit coverage under such circumstances.

[8.306.12.12 NMAC - N, 7-1-05; A, 4-16-07]

8.306.12.13 EXPEDITED RESOLUTION OF APPEALS: An expedited resolution of an appeal is an expedited review by the MCO of an MCO action.

A. The MCO shall establish and maintain an expedited review process for appeals when the MCO determines that taking the time for a standard resolution could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function. Such a determination is based on:

(1) a request from the member;

(2) a provider's support of the member's request;

(3) a provider's request on behalf of the member; or

(4) the MCO's independent determination.

B. The MCO shall ensure that the expedited review process is convenient and efficient for the member.

C. The MCO shall resolve the appeal within three ~~[-]~~ working days of receipt of the request for an expedited appeal, if the request meets the definition of expedited. In addition to written resolution notice, the MCO/SE shall also make reasonable efforts to provide and document oral notice.

D. The MCO may extend the timeframe by up to 14 calendar days if the member requests the extension, or the MCO demonstrates to HSD that there is need for additional information and the extension is in the member's interest. For any extension not requested by the member, the MCO shall give the member written notice of the reason for the delay.

E. The MCO shall ensure that punitive action is not taken against a member or a provider who requests an expedited resolution or supports a member's expedited appeal.

F. The MCO shall provide expedited resolution if the request meets the

definition of an expedited appeal in response to an oral or written request from the member or provider on behalf of the member.

G. The MCO shall inform the member of the limited time available to present evidence and allegations in fact or law.

H. If the MCO denies a request for an expedited resolution of an appeal, it shall:

(1) transfer the appeal to the ~~thirty (30) day~~ 30 day timeframe for standard resolution, in which the 30-day period begins on the date the MCO received the request;

(2) make reasonable efforts to give the member prompt oral notice of the denial, and follow up with a written notice within two ~~[-]~~ calendar days; and

(3) inform the member in the written notice of the right to file an appeal and/or request an HSD fair hearing if the member is dissatisfied with the MCO's decision to deny an expedited resolution.

I. The MCO shall document in writing all oral requests for expedited resolution and shall maintain the documentation in the case file.

[8.306.12.13 NMAC - N, 7-1-05; A, 4-16-07]

8.306.12.15 OTHER RELATED MCO PROCESSES:

A. **Information about grievance system to providers and subcontractors:** The MCO must provide information specified in 42 CFR Section, 438.10(g)(1) about the grievance system to all providers and subcontractors at the time they enter into a contract.

B. **Grievance and/or appeal files:**

(1) All grievance and/or appeal files shall be maintained in a secure and designated area and be accessible to HSD, upon request, for review. Grievance and/or appeal files shall be retained for ~~six (6)~~ 10 years following the final decision by the MCO, HSD, if applicable, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later.

(2) The MCO will have procedures for assuring that files contain sufficient information to identify the grievance and/or appeal, the date it was received, the nature of the grievance and/or appeal, notice to the member of receipt of the grievance and/or appeal, all correspondence between the MCO and the member, the date the grievance and/or appeal is resolved, the resolution, and notices of final decision to the member and all other pertinent information.

(3) Documentation regarding the grievance shall be made available to the member, if requested.

[8.306.12.15 NMAC - N, 7-1-05; A, 4-16-07]

8.306.12.16 MCO PROVIDER GRIEVANCE AND APPEAL PROCESS:

The MCO shall establish and maintain written policies and procedures for the filing of provider grievances and appeals. A provider shall have the right to file a grievance or an appeal with the MCO regarding utilization management decisions and/or provider payment issues. [Grievances] Provider grievances or appeals shall be resolved within 30 calendar days. If the grievance or appeal is not resolved with 30 days, the MCO/SE shall request a 14 day extension from the provider. If the provider requests the extension, the extension shall be approved by the MCO/SE. A provider may not file a grievance or an appeal on behalf of a member without written designation by the member as the member's representative. See 8.306.12.13 NMAC for special rules for certain expedited service authorizations. [8.306.12.16 NMAC - N, 7-1-05; A, 4-16-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.352.2 NMAC, Sections 16 and 17, which will be effective on April 16, 2007. The Medical Assistance Division amended the section to change language in the subsections regarding selection period and member switch enrollment.

8.352.2.16 CONTINUATION OF BENEFITS PURSUANT TO TIMELY APPEAL OF HEARING DECISION:

A. Continuation of benefits may be provided to recipients who request a hearing within 13 days of the notice. The notice will include information on the rights to continued benefits and on the recipient's responsibility for repayment if the hearing decision is not in the recipient's favor.

B. Repayment responsibility:

(1) When a recipient appeals an issue of medicaid eligibility as described in [manual section ISD 970] 8.100.970 NMAC, Fair Hearings, has requested continued benefits pursuant to timely appeal, and the hearing decision upholds HSD's or the involved contractor's proposed action, the overpayment amounts will be calculated as follows:

(a) Fee-for-service month: The medicaid paid amount (paid claims amount) is owed to HSD.

(b) SALUD! enrolled month: HSD is owed the capitation amount plus the

medicaid paid claim amount for any carved-out services.

(2) When a recipient appeals a termination, modification, reduction, or suspension of a service as described in this part, and has requested benefit continuation pursuant to timely appeal, and the hearing decision upholds HSD or the contractor's proposed action, the amount owed by the recipient will be calculated as follows: HSD will be owed the medicaid reimbursable amount for the period of time that the service was continued in the interim period pending the hearing decision, for fee-for-service and SALUD! enrolled recipients when the service at issue is covered under medicaid fee-for-service. The MCO will be owed and is responsible to collect the medicaid reimbursable amount for the period of time that the service was continued in the interim period pending the hearing decision when the service was provided by the MCO. Collections by the MCO must be used for medicaid Salud! program purposes.

C. For SCI clients only: Continuation of benefits may be provided to recipients who request a hearing within 13 days of the notice. The notice will include information about the rights to continued benefits and about the recipient's responsibility for repayment if the hearing decision is not in the recipient's favor. If the SCI client has met his claim benefit maximums (dollars or bed days or prescriptions for the month) or has not paid premiums or paid premiums late, he will not have continuation of benefits when requesting a hearing within 13 days of the notice.

[1-1-00; 8.352.2.16 NMAC - Rn, 8 NMAC 4.MAD.977 & A, 7-1-01; A, 4-16-07]

8.352.2.17 IMPLEMENTATION OF DECISION:

The medical assistance division director's final decision is binding on all issues that have been the subject of a hearing as to that recipient unless stayed by court order. HSD is responsible for making sure that decisions are carried out.

A. **Decision favorable to HSD or the involved MCO:** If assistance or benefits have been continued while the hearing decision was pending, and the decision is favorable to HSD or the involved MCO, HSD or the involved MCO will take action to file an overpayment claim to the recipient for the service(s) received while the hearing decision was pending. A request for a hearing concerning the overpayment claim is limited to alleged computation errors. The hearing decision serves as advance notice for the resulting benefit termination, modification, reduction, or suspension. If the hearing decision is that the recipient received benefits to which it was not entitled, HSD or the MCO as described in 8.352.2.16 NMAC, will start collection

proceedings.

B. **Decision favorable to recipient:** When a fair hearing decision is favorable to the recipient, HSD or the involved MCO will authorize the services and coverage approved in the fair hearing decision. If the individual is found to be eligible for SCI, the client can enroll with the MCO, but there will be no retroactive enrollment or benefit coverage under such circumstances.

[1-1-00; 8.352.2.17 NMAC - Rn, 8 NMAC 4.MAD.978 & A, 7-1-01; A, 4-16-07]

NEW MEXICO BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 32 WAIVER PROVISIONS

16.19.32.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy.
[16.19.32.1 NMAC - N, 04/30/07]

16.19.32.2 SCOPE: Any person or business pursuant to 26-1-17 of the New Mexico Drug, Device and Cosmetic Act, 30-31-12(A), (B) of the Controlled Substance Act, and 61-11-9, 61-11-11, 61-11-11.1, 61-11-14(A), (B) of the Pharmacy Act.
[16.19.32.2 NMAC - N, 04/30/07]

16.19.32.3 STATUTORY AUTHORITY: Section 26-1-18(A) NMSA 1978 authorizes the board to promulgate regulations for the efficient enforcement of the New Mexico Drug, Device and Cosmetic Act (26-1-1 NMSA 1978). The board shall conform the regulations promulgated under the New Mexico Drug, Device and Cosmetic Act, insofar as practical, with regulations promulgated under the federal act as defined in Section 26-1-2 NMSA 1978. Section 30-31-11 NMSA 1978 authorizes the board to promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 61-11-6(A)(1) NMSA 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Section 61-11B-3 NMSA 1978 authorizes the board to adopt regulations to carry out the provisions of the Pharmacist Prescriptive Authority Act. Section 30-31B-6 NMSA 1978 authorizes the board to promulgate regulations and charge reasonable fees relating to the licensing and control of the manufacture, possession, transfer and transportation of drug precursors.

[16.19.32.3 NMAC - N, 04/30/07]

16.19.32.4 DURATION:
Permanent

[16.19.32.4 NMAC - N, 04/30/07]

16.19.32.5 EFFECTIVE DATE:
April 30, 2007, unless a later date is cited in the history note at the end of a section.

[16.19.32.5 NMAC - N, 04/30/07]

16.19.32.6 OBJECTIVE: This regulation established guidelines to waive provisions of the New Mexico board of pharmacy regulations as authorized by law.

[16.19.32.6 NMAC - N, 04/30/07]

16.19.32.7 DEFINITIONS: "Waive/waivers" means to refrain from pressing or enforcing compliance with certain regulations for the specified period of time provided the health, safety, or welfare of patients and staff are not in danger. Waivers are issued at the sole discretion of the New Mexico board of pharmacy.

[16.19.32.7 NMAC - N, 04/30/07]

16.19.32.8 PROVISIONS FOR ENTITY SEEKING TO OBTAIN A WAIVER:

A. Petition for a waiver must be submitted to the board of pharmacy. Waivers granted by the board are limited to use by the party and business specified in the waiver document and other limitations set forth. Such petitions shall include:

- (1) name of party;
- (2) address of the business;
- (3) type of business;
- (4) reason for waiver request, including each affected New Mexico administrative code citation;
- (5) supporting documents;
- (6) the expected public benefit as a result of the waiver, and;
- (7) other information requested by the board as deemed necessary.

B. Any licensed facility granted a waiver must publicly display the "waiver" in proximity to the facility's current registration.

C. Waivers granted: the board shall include in any waiver granted:

- (1) date granted;
- (2) name and license number of person or facility;
- (3) type of license;
- (4) specific regulation(s) waived;
- (5) duration of the waiver; and
- (6) any alternative requirements imposed by the board.

D. All waivers will be subject to review and reconsideration.

[16.19.32.8 NMAC - N, 04/30/07]

History of 16.19.32 NMAC:
[RESERVED]

**NEW MEXICO BOARD OF
LICENSURE FOR
PROFESSIONAL
ENGINEERS AND
PROFESSIONAL
SURVEYORS**

Effective 05/01/2007, the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors repeals 12.8.2 NMAC, Minimum Standards for Surveying in New Mexico (filed 8-15-2000).

**NEW MEXICO BOARD OF
LICENSURE FOR
PROFESSIONAL
ENGINEERS AND
PROFESSIONAL
SURVEYORS**

**TITLE 12 TRADE, COM-
MERCE AND BANKING
CHAPTER 8 TRADE PRACTICES
AND REGULATIONS
PART 2 MINIMUM STAND-
ARDS FOR SURVEYING IN NEW
MEXICO**

12.8.2.1 ISSUING AGENCY:
New Mexico Board of Licensure for Professional Engineers and Professional Surveyors, 4001 Office Court Drive, Suite 903, Santa Fe, NM 87507, telephone no. (505) 827-7561.

[12.8.2.1 NMAC - Rp, 12.8.2.1 NMAC, 5/01/2007]

12.8.2.2 SCOPE: Provisions for Part 2 apply to licensed professional surveyors engaging in the practice of surveying and to licensed professional engineers who are authorized by the Engineering and Surveying Practice Act.

[12.8.2.2 NMAC - Rp, 12.8.2.2 NMAC, 5/01/2007]

12.8.2.3 STATUTORY AUTHORITY: NMSA 1978, Section 61-23-10 (D) prescribes that "the professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all individuals licensed pursuant to the Engineering and Surveying Practice Act."

[12.8.2.3 NMAC - Rp, 12.8.2.3 NMAC, 5/01/2007]

12.8.2.4 DURATION:
Permanent.

[12.8.2.4 NMAC - Rp, 12.8.2.4 NMAC, 5/01/2007]

12.8.2.5 EFFECTIVE DATE:
5/01/2007, unless a later date is cited at the end of a section.

[12.8.2.5 NMAC - Rp, 12.8.2.5 NMAC, 5/01/2007]

12.8.2.6 OBJECTIVE: The objective of Part 2 is to define the types of surveying, and establish minimum requirements to govern the performance of surveying and other survey-related services by registered professional surveyors in New Mexico.

[12.8.2.6 NMAC - Rp, 12.8.2.6 NMAC, 5/01/2007]

12.8.2.7 DEFINITIONS:

A. Types of Surveying.

(1) Boundary surveying is the determination, description, portraying, measuring or monumentation of the boundaries of a tract of land. Other types of surveying, except as indicated, are not boundary surveying.

(2) Improvement location reporting is the preparation of a report which complies with all of the requirements and limitations of an improvement location report as set forth in 12.8.2.10 NMAC, and which is issued to a title, abstract or escrow company or a lending institution for their exclusive use in determining such things as insurability or value of a tract of land.

(3) Topographic surveying is the measurement and portrayal of the configuration of the ground and/or the location and description of objects thereon. It can include the plotting and description of property boundary monuments and property lines on a topographic map provided:

(a) only existing monuments found at the time of the survey are shown, and no boundary monuments are set;

(b) the following words are prominently shown on the topographic map: THIS IS NOT A BOUNDARY SURVEY, APPARENT PROPERTY CORNERS AND PROPERTY LINES ARE SHOWN FOR INFORMATION ONLY. BOUNDARY DATA SHOWN IS FROM PREVIOUS SURVEY REFERENCED HEREON.

(4) Easement surveying is the description, portrayal, or monumentation of easement(s) only.

(5) Right of way surveying is the boundary surveying of right of way for acquisition or for locating existing right of way.

(6) Condominium surveying - when performing or preparing a survey that falls under the Condominium Act (Article 7B), the survey requirements (Article 47-7B-9 or subsequent amendments) of said act shall be the standards to which the survey shall be held.

(7) Preparation of legal descriptions - the preparation of legal descriptions

is a form of surveying and, other than the citing of a lot or parcel for reference or identification purposes of a duly recorded plat, must be performed by a licensed professional surveyor.

(8) An ALTA/ACSM survey is a boundary survey. Therefore, a plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The filed survey can be a separate plat and need not include all the detail of the ALTA/ACSM Survey but only the improvements affecting the boundary (See Subsection J of 12.8.2.9 NMAC).

(9) Control surveying is the establishment of horizontal and vertical controls which will be the basis for all geospatial data used for design including construction staking surveys, surveys to layout horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods, construction surveys of engineering and architectural public works projects.

(10) Unclassified surveying is surveying not defined above.

B. Dimensions means the direction, expressed either as a bearing or an azimuth, and the length of a survey line.

C. Easement means a right that the public, a person or an entity holds in the land of another.

D. Monument means an object intended to mark a property boundary or a point of reference.

E. Surveyor means a professional surveyor licensed under the Engineering and Surveying Practice Act.

F. Tract or lot means a parcel of land in separate ownership or a leasehold or set off for separate ownership or a leasehold.

G. Supplemental surveying work means surveying work performed in order to densify, augment and enhance previously performed surveying work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system.

H. GPS is global positioning system.

I. Classes of surveys.

(1) Urban means a survey within or adjoining a municipality or a survey, regardless of location, of land zoned for or intended for use for multifamily, commercial or industrial purposes.

(2) Suburban means a survey, which is not an Urban survey, of land zoned for or intended for use for residential pur-

poses.

(3) Rural means a survey, which is neither an Urban nor Suburban survey.

(4) Positional error means the error inherent in setting or measuring from a monument and is added to the error expressed as a ratio for a closed traverse. [12.8.2.7 NMAC - Rp, 12.8.2.7 NMAC, 5/01/2007]

12.8.2.8 REQUIREMENTS:

Whenever a professional surveyor or a professional engineer undertakes any surveying as authorized in the Engineering and Surveying Practice Act, the licensee shall determine which type of surveying activity is being conducted from the definitions in Subsection A of 12.8.2.7 NMAC shall then conform to the requirements set forth in 12.8.2.9 NMAC through 12.8.2.14 NMAC for that type of surveying and must also comply with accuracy standards in 12.8.2.16 NMAC when applicable. If the surveying is not defined, then the surveyor shall conform to the requirements for unclassified surveying set forth in 12.8.2.15 NMAC.

[12.8.2.8 NMAC - Rp, 12.8.2.8 NMAC, 5/01/2007]

12.8.2.9 B O U N D A R Y SURVEYING: When performing a boundary survey, the surveyor shall be responsible for accomplishing all of the following.

A. Obtain copies of relevant documents necessary to perform the survey and when available a copy of the title search for the tract being surveyed.

B. Review all recorded plats and all plats known to and available to the surveyor that are germane to the tract being surveyed.

C. Make a site visit and inspect the subject property and look for evidence of existing monuments and for evidence of possession and usage.

D. Determine the relative location on the ground of all found existing monuments which pertain to the survey using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC.

E. Tag found monuments which are accepted by the surveyor and pertain to the boundary being surveyed with a metal tag, bearing the surveyor's license number, attached to the monument with a metal wire or strap; monuments set by a government agency which are clearly identified by their markings need not be tagged.

F. Set new monuments in conformance with 12.8.2.17 NMAC at all corners of the tract being surveyed using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC, unless a permanent monument already

exists.

G. Follow the rules and procedures, except for the accuracy and monumentation standards, in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions available at www.blm.gov/az/cadastral/manual/manindex.htm*) prepared by the United States bureau of land management, if the tract being surveyed pertains to the United States survey of public lands in any way including the following:

(1) is a section or an aliquot part of a section;

(2) is a small holding claim, private claim, land grant, mining claim or any other tract described in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*);

(3) has a boundary which is a boundary of a tract described in Subsection G of 12.8.2.9 NMAC, paragraphs (1) or (2) above;

(4) prior surveys and physical evidence within and adjacent to the section being surveyed should be carefully considered as evidence of original corner locations.

H. Never move, remove nor obscure an existing monument unless it is first properly referenced and all dimensions necessary to preserve its location are reported on a recorded plat.

I. Updating a prior survey - If an existing survey is updated for any reason, the surveyor shall comply with the minimum standards in effect at the time of the update unless the update is only to correct a minor scrivener's error. If the update is solely to bring the survey into compliance with the minimum standards and the location of the boundary has not changed, remonumentation is not required unless the original monumentation was not in compliance with the minimum standards in effect at the time the original survey was performed.

J. Prepare a plat of the survey, unless the survey is only the remonumentation of corners of a tract, shown on a recorded plat, where some of the existing corners of the tract are recovered, whose measured dimensions on the ground are reasonably close to the record dimensions. A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that field measurements are significantly different from record dimensions. The plat may contain as many sheets as required, which meet the size and material requirements of the state statute and shall contain at least the following:

(1) the name, address and registration number of the surveyor responsible for the survey;

(2) a certificate followed by the dated signature and seal of the surveyor responsible for the survey stating that the surveyor conducted an actual survey on the ground and is responsible for the survey and that the survey and plat meet the minimum standards for surveying in New Mexico; only one surveyor's signature and seal shall appear on a plat; and the following model certification is considered to be an example of the minimum that the surveyor should certify to:

I, _____ (surveyor's name) _____, New Mexico Professional Surveyor No. (surveyors' license number), do hereby certify that this Boundary Survey Plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Surveying in New Mexico; and that it is true and correct to the best of my knowledge and belief. I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this instrument is a Boundary Survey Plat of an existing tract or tracts.

(Surveyor's Name) _____ PS
No. _____ Date _____

(3) a title which shall include the county in which the survey is located and at least the following:

(a) the lot, block or tract number and subdivision or district name if the survey is within a subdivision or conservancy district;

(b) the city, grant, small holding, mining or private claim, or similar area in which the survey is located;

(c) if neither subparagraph (a) nor (b) applies, then the section(s), township(s) and range(s) in which the survey is located; if the survey is not within a section, then the projected section(s) shall be stated and designated as such if required by the county clerk;

(4) a north arrow, equivalent scale and graphic scale for each sheet of the main drawing;

(5) a description of all monuments found or set including the size and material and all pertinent information stamped or printed on any cap or tag; a found monument which the surveyor has rejected as a true property corner shall be designated as such;

(6) the basis of bearings used in the survey which shall be based upon a procedure such as a solar observation or geodetic control stations or a line shown on a prior recorded document and defined on the ground by existing monuments; the use of

assumed bearings is prohibited;

(7) a description of all documents used to determine the boundaries and to prepare the plat of survey; the recording information shall be stated; if the document is not of record, all information used from the document shall be shown on the plat;

(8) the boundary being surveyed including the dimensions as measured on the ground and the record dimensions unless the two are equivalent in which case it shall be so stated; all dimensions which pertain to the determination of the tract boundaries, and a tie to a suitable, permanent, existing monument;

(9) all dimensions which pertain to the restoration of a lost or obliterated corner or the subdividing of a section under Subsection G of 12.8.2.9 NMAC;

(10) the location and description of any evidence of a boundary or line of occupation including such things as a fence, building, hedge, wall or the remains thereof which is on a boundary or close enough to a boundary to be confused with the boundary;

(11) the location and description of all easements known or disclosed to the surveyor which cross, adjoin or serve a surveyed tract together with the recording data for the document that created the easement and the location and description of any visible structures which encroach upon said easement;

(12) the radius, central angle, length and chord dimensions for all curves;

(13) the lot number, tract number, other designation or the apparent owner of all adjoining tracts with the recording data of the last recorded plat;

(14) [reserved];

(15) the location and description of any evidence of use by a nonowner of the surveyed tract including such things as a road, trail, path, pipeline or utility which crosses a boundary of the tract;

(16) a letter or number providing a unique designation of each surveyed tract on a plat with more than one tract;

(17) [reserved];

(18) access easement; if the surveyed tract is not contiguous to a public right-of-way, any access easement of record which is known to the surveyor shall be described on the plat and its location shall be determined; if no easement is known to the surveyor, a note prominently shown shall disclose that fact;

(19) the area of each surveyed tract.

K. Record the plat prepared under Subsection J of 12.8.2.9 NMAC with the county clerk of the county or counties in which the survey is located. A plat of survey must be recorded only if it is a survey of a parcel for which no previously recorded plat exists or, in the case of remonumentation, the surveyor finds that

field measurements are significantly different from record dimensions. The plat shall be recorded within sixty days of completion. A plat which requires the approval of a government agency is complete upon final approval. Any other plat is complete when the surveyor signs or seals it.

[12.8.2.9 NMAC - Rp, 12.8.2.9 NMAC, 5/01/2007]

12.8.2.10 IMPROVEMENT LOCATION REPORT:

A. Improvement location reporting is the preparation of an improvement location report which is a narrative report, which may be accompanied by a sketch, and which is issued only to a title, abstract or escrow company or a lending institution for their exclusive use in determining such things as insurability or value of a tract of land; it shall not be represented by the surveyor as being a property boundary survey.

B. If the report contains a sketch, the sketch shall contain the following words which are printed as large and as prominently as any other words upon the sketch: "This report is not for use by a property owner for any purpose. This is not a boundary survey and may not be sufficient for the survey exception from an owner's title policy. It may or may not reveal encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate boundary survey."

[12.8.2.10 NMAC - Rp, 12.8.2.10 NMAC, 5/01/2007]

12.8.2.11 TOPOGRAPHIC SURVEYING:

On topographic surveys with contour lines, the vertical accuracy of 90% of the points tested shall be within one half of the contour interval, unless otherwise stated on the survey.

[12.8.2.11 NMAC - Rp, 12.8.2.11 NMAC, 5/01/2007]

12.8.2.12 EASEMENT SURVEYING:

A. When performing easement surveying, the surveyor shall use procedures in any field measurements which achieve the minimum accuracy standards in 12.8.2.16 NMAC.

B. If the easement does not run parallel to a boundary of the tract in which it is located, then the surveyor shall prepare a plat which shows the dimensions of the easement and conforms with Paragraphs (1), (2), (3), (4), (5) and (6) of Subsection J of 12.8.2.9 NMAC, and complies with one of the following:

(1) shows ties to record monuments at the beginning and ending of the easement and at least at every mile along the easement, or

(2) shows the coordinates of the beginning, ending and all angle points in accordance with the New Mexico coordinate system and shows the grid bearing and ground distance between said points, or

(3) shows ties to existing corners of a subdivision in which the easement is located.

C. These field procedures and subsequent plat preparation or legal description must be conducted under the responsible charge of a professional surveyor.

[12.8.2.12 NMAC - Rp, 12.8.2.12 NMAC, 5/01/2007]

12.8.2.13 RIGHT OF WAY SURVEYING: When performing right of way surveying, the surveyor shall do all of the following.

A. Obtain a copy of the last recorded deed for the tract(s) affected by the existing or contemplated right of way and obtain copies of all existing right of way maps and conveyance documents available.

B. Obtain a copy of all recorded plats and all plats and maps known to be available to the surveyor for the tract(s) affected by the existing or contemplated right of way.

C. Make a diligent search on the ground, including the use of a metal detector, for all existing monuments, which pertain to the property boundaries intersecting the public highway right of way corridor being surveyed.

D. Determine the relative location on the ground of all found existing monuments, which pertain to the survey using procedures, which achieve the minimum accuracy standards in 12.8.2.16 NMAC.

E. Tag all found and accepted monuments, which pertain to the survey, with a metal tag, bearing the surveyor's registration number, attached to the monument with a metal wire or strap.

F. Set new monuments conforming to 12.8.2.17 NMAC on the right of way limit lines at all changes in direction and at all points where property lines intersect, using procedures which achieve the minimum accuracy standards in 12.8.2.16 NMAC, unless a permanent monument exists; when monumenting existing right of way limit lines, monuments at intersecting property lines need not be set.

G. Follow the rules and procedures, except for the accuracy and monumentation standards, in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*) prepared by the United States bureau of land management, if the tract being surveyed pertains to the United

States survey of public lands in any way including the following:

(1) is a section or an aliquot part of a section;

(2) is a small holding claim, private claim, land grant, mining claim or any other tract described in the manual of instructions for the survey of the public lands of the United States (*manual of surveying instructions*);

(3) has a boundary which is a boundary of a tract described in Subsection G of 12.8.2.13 NMAC, paragraphs (1) or (2) above.

H. Whenever a tract of land is to be severed by right of way acquisition, the surveyor shall locate property lines that intersect the right of way limits. The surveyor shall use all available documents, field data, including parol evidence and land title information to determine the length, location and bearing of the severed property line relative to the right of way limits. This includes surveying as many additional parcel boundaries as necessary which connect to the property lines intersecting the right of way in order to accurately locate the property lines affected by the contemplated right of way.

I. [Reserved]

J. Prepare a plat of survey, containing as many sheets as required, and which contains at least the following:

(1) the name, address, and registration number of the surveyor responsible for the survey;

(2) a certificate followed by the signature and seal of the surveyor responsible for the survey and stating that the survey and plat meet the minimum standards for surveying in New Mexico;

(3) a title which shall include at least the following:

(a) the project number.

(b) the project's control number (PCN) of the project (if applicable);

(4) the section(s), township(s), range(s), grant or reservation, municipality, and county(s) in which the project is located;

(5) a north arrow, equivalent scale, graphic scale, date of the fieldwork and a location/vicinity map showing where the project is located;

(6) a description of all monuments found or set; a found monument, which the surveyor rejected as a property corner, shall be designated as such;

(7) the basis of bearing used in the survey which shall be a procedure such as solar observation or a line shown on a plat and defined on the ground by existing monuments;

(8) a description of all documents used to determine the boundary of any tract surveyed and to prepare the plat of survey;

the recording information shall be stated; if the document is not of record, all information used from the document shall be shown on the plat;

(9) the pertinent boundaries of the tract abutting the right of way being surveyed including the dimensions as measured on the ground and the record dimensions unless the two are equivalent;

(10) the location and description of any evidence of a boundary line or occupation including such things as a fence, building hedge, wall or the remains thereof which is on a boundary or close enough to a boundary to be confused with the boundary;

(11) all dimensions which pertain to the restoration of a lost corner or the subdivision of a section under Subsection G of 12.8.2.13 NMAC;

(12) the location of permanent improvements lying in close proximity to the new right of way limit line and which may be affected by the contemplated acquisition of land for public use;

(13) the radius, central angle, length and the chord bearing and dimension for all curves;

(14) the lot number, tract number, other designation or the apparent owner of all adjoining tracts with the recording data of the last recorded plat;

(15) the name of the owner of the parcel from which right of way is being acquired;

(16) the location and description of all easements known or disclosed to the surveyor which cross, or adjoin the right of way;

(17) a letter/number or combined letter and number designation of each parcel acquired for right of way.

K. Record the plat prepared under Subsection J of 12.8.2.13 NMAC with the county clerk of the county or counties in which the project is located. The plat shall be recorded within sixty days of completion. The plat is considered complete when the surveyor signs and seals it. For the New Mexico department of transportation (NMDOT) right of way surveys, the plat(s) may carry multiple surveyor certifications, if necessary, in order to reflect specific areas of individual responsibility when the scope, duration, or complexity of a NMDOT right of way project so requires. Certifications of all other right of way surveys shall carry a single signature and seal of the surveyor responsible for the survey. [12.8.2.13 NMAC - Rp, 12.8.2.13 NMAC, 5/01/2007]

12.8.2.14 CONTROL SURVEYING REPORTING: Whenever a professional surveyor undertakes control surveying as defined in 12.8.2.7 NMAC, the licensee shall prepare a control survey

report which will contain the following information as appropriate to work being performed.

A. A listing of the final adjusted coordinates and elevations for all points within the control network along with a complete description of all monuments established or recovered.

B. A complete description of the horizontal and vertical datum used including the basis of bearings (GPS, plat etc.) if the coordinate system is not based on a published datum.

C. A complete description of the state plane and/or UTM zone used, if appropriate.

D. Units used for coordinates and elevations.

E. Description of monument(s) used to constrain the control network including the reference coordinates and elevations used for said monument(s).

F. If the final adjusted coordinates are based on a modified (ground datum) state plane coordinate system, a complete description of the method(s) used to generate the modified coordinates shall be included in the report.

G. A brief description detailing the field methods and equipment used to conduct the control survey.

H. The date when the control monuments were set, the date when the control monuments were positionally observed, and the date of the final network adjustment.

I. The geospatial positional accuracy shall be reported pursuant to the accuracy classifications contained within Subsection C of 12.8.2.16 NMAC. The surveyor shall report both the geospatial positional accuracy and the estimated network accuracy as defined in Subsection C of 12.8.2.16 NMAC and will report the geospatial positional accuracy separately for horizontal and vertical components.

J. A certificate followed by the dated signature and seal of the surveyor responsible for the control survey stating that the surveyor conducted an actual survey on the ground and is responsible for the survey along with a statement of accuracy pursuant to the accuracy standards contained within 12.8.2.16 NMAC. The following model certification is considered to be an example of the minimum that the surveyor should certify to:

I, (surveyor's name), New Mexico Professional Surveyor No. (surveyor's license number), do hereby certify that this Control Survey Report was prepared by me or under my direct supervision based on an actual survey on the ground as described herein; that I am responsible for this survey; and that the survey and report meets the minimum standards for surveying in New Mexico.

[12.8.2.14 NMAC - N, 5/01/2007]

12.8.2.15 UNCLASSIFIED SURVEYING: When a surveyor does surveying of a type not described in these standards, the surveyor shall do all that is necessary to fully determine and report all information which is relevant to the project. The scope of the project may be stated and limited. The surveyor shall not prepare or sign a document, which could mislead or misinform. If a surveyor issues a plat with the surveyor's signature and seal, which was not required by these minimum standards, the plat shall comply with the applicable portions of Subsection J of 12. 8.2.9 NMAC.

[12.8.2.15 NMAC - Rp, 12.8.2.14 NMAC, 5/01/2007]

12.8.2.16 ACCURACY:

A. Topographic map accuracy standards.

(1) Horizontal accuracy - For maps compiled at scales larger than 1:20,000, not more than 10 percent of the points tested shall be in error by more than 1/30 inch, measured at the compiled scale. For maps compiled at scales of 1:20,000 or smaller, not more than 10 percent of the points tested shall be in error by more than 1/50 inch, measured at the compiled scale. These limits of accuracy shall apply in all cases to positions of well-defined points only. Well-defined points are those that are easily visible or recoverable on the ground, such as the following: monuments or markers, such as benchmarks, property boundary monuments; intersections of roads, railroads, etc.; corners of large buildings or structures (or center points of small buildings). In general what is well defined will be determined by what is plottable on the scale of the map within 1/100 inch. Thus while the intersection of two roads or property lines meeting at right angles would come within a sensible interpretation, identification of the intersection of such lines meeting at an acute angle would obviously not be practicable within 1/100 inch. Similarly, features not identifiable upon the ground within close limits are not to be considered as test points within the limits quoted, even though their positions may be scaled closely upon the map. This class would include timberlines, soil boundaries, etc.

(2) Vertical accuracy - As applied to contour maps on all publication scales, shall be such that not more than 10 percent of the elevations tested shall be in error more than one-half the contour interval.

(3) Accuracy test guidelines - When testing a topographic map for compliance with Paragraphs (1) and (2) of Subsection A of 12.8.2.16 NMAC, a minimum of 20 check points evenly distributed throughout the topographic map shall be tested. Horizontal accuracy shall be tested by comparing the planimetric coordinates of the well-defined points in the mapping with coordinates of the same points from an independent source of higher accuracy. Vertical accuracy shall be tested by comparing the elevations in the mapping with elevations of the same points as determined from an independent source of higher accuracy.

(4) Accuracy reporting - If testing by an independent source of higher accuracy has not or cannot be followed, the final topographic map shall contain the following statement: "This map has been produced according to procedures that have been demonstrated to produce data that meets or exceeds the *minimum standards* for a topographic map compiled at a scale of (insert map scale here) with a contour interval of (insert contour interval here)." If testing by an independent source of higher accuracy has been conducted pursuant to the guidelines contained herein, the final topographic map shall contain the following statement: "This map has been tested from an independent source of higher accuracy and meets the *Minimum Standards* for a topographic map compiled at a scale of (insert map scale here) with a contour interval of (insert contour interval here)."

(5) Alteration of original mapping (scale): When the presentation scale of a map is other than that of the compilation scale, that fact shall be stated in the legend. "This map is an enlargement of a 1:2,400 map" or "This map is a reduction of a 1"=200' map."

B. Boundary surveying, easement surveying and right-of-way surveying accuracy standards. The surveyor shall determine the class of a survey using the definitions in Paragraphs (1) through (3) of Subsection I of 12.8.2.7 NMAC, and achieve the accuracy specified for the class of survey. It is the responsibility of the surveyor to select the appropriate procedures and equipment to obtain the accuracy required by the minimum field accuracy standards below for boundary surveying, easement surveying and right-of-way surveying:

	Urban	Suburban	Rural
Unadjusted Closure			
(Traverse)	1 part in 15,000	1 part in 10,000	1 part in 7,500
Positional Error	0.05 ft.	0.10 ft.	0.25 ft.
Location of Improvements			
	0.15 ft.	0.25 ft.	1.0 ft.

C. Geospatial positional accuracy standards for control surveys. The geospatial positional accuracy for control surveys shall be as follows:

(1) horizontal control networks using GPS relative positioning techniques - the horizontal positional accuracy shall be reported in terms of relative positioning accuracy according to the order classifications contained within the geometric geodetic accuracy standards and specifications for using GPS relative positioning techniques, version 5.0 dated August 1, 1989, federal geodetic control committee;

(2) horizontal control networks using conventional field traversing techniques - the horizontal positional accuracy shall be reported in terms of distance accuracy according to the order classifications contained within the standards and specifications for geodetic control networks dated September, 1984, federal geodetic control committee;

(3) vertical control networks - the vertical positional accuracy shall be reported in terms of elevation difference accuracy according to the order classifications contained within the standards and specifications for geodetic control networks dated September, 1984, federal geodetic control committee;

(4) the estimated network accuracy is a statement disclosing the order (and class, if appropriate) of the published monument or monuments used to constrain the final network adjustment and is intended to inform the end user of how well the data may fit with an established geodetic datum. [12.8.2.16 NMAC - Rp, 12.8.2.15 NMAC, 5/01/2007]

12.8.2.17 MONUMENTS:

A. Except as prescribed in Subsections B and C of 12.8.2.16 NMAC, monuments set by the surveyor shall be ferrous metal, at least one-half inch in diameter and at least sixteen inches long. They shall bear a metal or plastic cap stamped with the surveyor's registration number.

B. Corners which fall upon a hard surface shall be monumented with a chiseled cross or a nail in a disk or tag bearing the surveyor's registration number.

C. When a corner is located at a place where it is not practical to set a monument or a monument at the corner is likely to be destroyed, at least one reference monument shall be set and dimensioned on the plat such that the location of the corner can be reestablished.

D. Monuments for the exterior corners of a subdivision shall be set by the surveyor who certified the plat of the subdivision prior to recordation of the subdivision plat. It is the responsibility of the subdivider to ensure that interior corners of

a subdivision are set within thirty (30) days of completion of the construction of infrastructure improvements but within one (1) year after recordation of the subdivision plat. The board of licensure may elect to extend the time period upon the showing of good cause. The surveyor certifying the subdivision plat shall be responsible for notifying the subdivider by either including a statement regarding this responsibility in the executed contract for services or by letter sent certified mail, return receipt requested. The requirements of this section are met if any surveyor stakes the interior corners of the subdivision. If the subdivision is developed in phases, the interior corners of each phase may be staked by separate surveyors, provided the above stated time limits are met or extended by decision of the board of licensure. Under this section, it is the responsibility of each surveyor who stakes the interior corners of a subdivision to record an affidavit with the county clerk. Said affidavit shall be signed and sealed by the surveyor and shall contain at least the following: subdivision name as shown on the recorded plat, all recording information, name of subdivider, type of monuments set and, if the surveyor is staking a phase of the subdivision, the limits of responsibility. If the surveyor is required to record a plat of survey under the requirements of Subsection J of 12.8.2.9 NMAC, the affidavit may be included on said plat.

E. A surveyor shall perpetuate monuments established by the public land survey system which the surveyor finds in need of rehabilitation or replacement. A description of the monument as found and as restored or referenced and all available dimensions to other monuments shall be reported on a recorded plat. Said plat may be a boundary survey plat. If circumstances do not require a boundary survey plat, a plat depicting only the rehabilitated or replaced monuments will satisfy the requirements of this section.

[12.8.2.17 NMAC - Rp, 12.8.2.16 NMAC, 5/01/2007]

12.8.2.18 GENERAL:

A. Authority. These rules are authorized by the Engineering and Surveying Practice Act.

B. Penalties. The New Mexico board of licensure for professional engineers and professional surveyors may take those actions prescribed in the Engineering and Surveying Practice Act against any surveyor who has been found in violation of these standards, or against non-licensed practitioners.

C. Disclaimers. Any disclaimer by a surveyor purporting to disavow compliance with any of these standards is prohibited.

D. Certifications.

Professional surveyors should be prepared to certify to those things required in the execution of their duties and those mandated by law or rule. They should be cautious, however, in certifying only to conditions and facts falling within their areas of competency. Certification language that goes beyond the obligations prescribed by law and the responsibilities assumed by the surveyor in the normal course of boundary surveying should be carefully considered by the surveyor before signing and sealing any document.

E. Interpretation. The words "offers surveying services to the public" as used in Paragraph B of Section 61-23-27 (10), NMSA 1978, includes the certification by a surveyor of a plat or map which may be used by the public.

F. Advisory Opinions. The surveying committee of the board of licensure may issue its opinion explaining the application of these standards to a specific situation.

[12.8.2.18 NMAC - Rp, 12.8.2.17 NMAC, 5/01/2007]

NEW MEXICO PUBLIC REGULATION COMMISSION

Repealer: The New Mexico Public Regulation repeals its NMPSC Rule 420, "Energy Conservation Programs For Electric and Gas Utilities" (filed 06-30-1988). Effective date of Repeal: April 16, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES

CHAPTER 7 ENERGY CONSERVATION

PART 3 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES

17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[17.7.3.1 NMAC - N, 4-16-07]

17.7.3.2 SCOPE: This rule applies to all electric utilities subject to the commission's jurisdiction over integrated resource planning.

A. Impact on Other Rules. Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.

B. Severability. If any part or application of this rule is held invalid, the remainder of its application shall not be affected.

[17.7.3.2 NMAC - N, 4-16-07]

17.7.3.3 STATUTORY

AUTHORITY: This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-15; the Public Utility Act, NMSA 1978, Section 62-3-1 et seq.; and the Efficient Use of Energy Act, NMSA 1978, Section 62-17-1 et seq.

[17.7.3.3 NMAC - N, 4-16-07]

17.7.3.4 DURATION:

Permanent.

[17.7.3.4 NMAC - N, 4-16-07]

17.7.3.5 EFFECTIVE DATE: April 16, 2007, unless a later date is cited at the end of a section.

[17.7.3.5 NMAC - N, 4-16-07]

17.7.3.6 OBJECTIVE: The purpose of this rule is to set forth the commission's requirements for the preparation, filing, review and acceptance of integrated resource plans by public utilities supplying electric service in New Mexico in order to identify the most cost effective portfolio of resources to supply the energy needs of customers. For resources whose costs and service quality are equivalent, the utility should prefer resources that minimize environmental impacts.

[17.7.3.6 NMAC - N, 4-16-07]

17.7.3.7 DEFINITIONS:

When used in this rule, unless otherwise specified the following definitions will apply:

A. availability factor means the ratio of the time a generating facility is available to produce energy at its rated capacity, to the total amount of time in the period being measured;

B. capacity factor means the ratio of the net energy produced by a generating facility during a given time period, to the amount of net energy that could have been produced if the facility operated continuously at full capacity during that same time period;

C. demand-side resources means energy efficiency and load management, as those terms are defined in the Efficient Use of Energy Act;

D. energy efficiency means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of electricity without reducing the amount or quality of energy services;

E. heat rate means the ratio of energy inputs used by a generating facility expressed in BTUs (British thermal units), to the energy output of that facility expressed in kilowatt-hours;

F. integrated resource plan (IRP) means a public utility's plan to meet New Mexico jurisdictional retail customers' existing and future demand in accordance with this rule;

G. load forecasting means the prediction of the demand for electricity over the planning period for the utility;

H. load management means measures or programs that target equipment or devices to decrease peak electricity demand or shift demand from peak to off-peak periods;

I. most cost effective resource portfolio means those supply-side resources and demand-side resources that minimize the net present value of revenue requirements proposed by the utility to meet electric system demand during the planning period consistent with reliability and risk considerations;

J. planning period means the future period for which a utility develops its IRP; for purposes of this rule, the planning period is 20 years;

K. public utility or utility has the same meaning as in the Public Utility Act, except that it does not include a distribution cooperative utility, as defined in the Efficient Use of Energy Act;

L. renewable energy means electrical energy generated by means of a low or zero emissions generation technology with substantial long-term production potential and generated by use of renewable energy resources that may include solar, wind, hydropower, geothermal, fuel cells that are not fossil fueled and biomass resources; biomass resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass; renewable energy does not include fossil fuel or nuclear energy.

[17.7.3.7 NMAC - N, 4-16-07]

17.7.3.8 GENERAL PROVISIONS: The commission adopts this rule in order to fulfill the requirements of NMSA 1978, Section 62-17-10.

[17.7.3.8 NMAC - N, 4-16-07]

17.7.3.9 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES: Public utilities supplying electric service to customers shall file an IRP, along with an action plan, with the commission every three years.

A. Initial Filings. Utilities

with greater than 200,000 New Mexico retail customers shall file 15 months after the effective date of this rule. Utilities with less than 200,000 New Mexico retail customers shall file 27 months after the effective date of this rule. An original and fourteen copies of the IRP shall be filed with the commission.

B. Contents of IRP for Electric Utilities. The IRP submitted by an electric utility shall contain the utility's New Mexico jurisdictional:

(1) description of existing electric supply-side and demand-side resources;

(2) current load forecast as described in this rule;

(3) load and resources table;

(4) identification of resource options;

(5) determination of the most cost effective resource portfolio and alternative portfolios;

(6) description of public advisory process;

(7) action plan; and

(8) other information that the utility finds may aid the commission in reviewing the utility's planning processes.

C. Description of Existing Resources. The utility's description of its existing resources used to serve its jurisdictional retail load at the time the IRP is filed shall include:

(1) name(s) and location(s) of utility-owned generation facilities;

(2) rated capacity of utility-owned generation facilities;

(3) fuel type, heat rates, annual capacity factors and availability factors projected for utility-owned generation facilities over the planning period;

(4) cost information, including capital costs, fixed and variable operating and maintenance costs, fuel costs, and purchased power costs;

(5) existing generation facilities' expected retirement dates;

(6) amount of capacity obtained or to be obtained through existing purchased power contracts or agreements relied upon by the utility, including the fuel type, if known, and contract duration;

(7) estimated in-service dates for utility-owned generation facilities for which a certificate of public convenience and necessity (CCN) has been granted but which are not in-service;

(8) amount of capacity and, if applicable, energy, provided annually to the utility pursuant to wheeling agreements and the duration of such wheeling agreements;

(9) description of existing demand-side resources, including (1) demand-side resources deployed at the time the IRP is filed; and (2) demand-side resources approved by the commission, but not yet deployed at the time the IRP is filed;

information provided concerning existing demand-side resources shall include, at a minimum, the expected remaining useful life of each demand-side resource and the energy savings and reductions in peak demand, as appropriate, made by the demand-side resource;

(10) reserve margin and reserve reliability requirements (e.g. FERC, power pool, etc.) with which the utility must comply and the methodology used to calculate its reserve margin;

(11) existing transmission capabilities:

(a) the utility shall report its existing, and under-construction, transmission facilities of 115 kV and above, including associated switching stations and terminal facilities; the utility shall specifically identify the location and extent of transfer capability limitations on its transmission network that may affect the future siting of supply-side resources;

(b) the utility shall describe all transmission planning or coordination groups to which it is a party, including state and regional transmission groups, transmission companies, and coordinating councils with which the utility may be associated;

(12) environmental impacts of existing supply-side resources:

(a) the utility shall provide the percentage of kilowatt-hours generated by each fuel used by the utility on its existing system, for the latest year for which such information is available;

(b) to the extent feasible, for each existing supply-side resource on its system, the utility shall present emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury;

(c) to the extent feasible, for each existing supply-side resource on its system, the utility shall present the water consumption rate.

D. Current Load Forecast.

(1) The utility shall provide a load forecast for each year of the planning period; the load forecast shall incorporate the following information and projections:

(a) annual sales of energy and coincident peak demand on a system-wide basis, by customer class, and disaggregated among Commission jurisdictional sales, FERC jurisdictional sales, and sales subject to the jurisdiction of other states;

(b) annual coincident peak system losses and the allocation of such losses to the transmission and distribution components of the system;

(c) weather normalization adjustments;

(d) assumptions for economic and demographic factors relied on in load forecasting;

(e) expected capacity and energy impacts of existing and proposed demand-side resources; and

(f) typical historic day or week load patterns on a system-wide basis for each major customer class.

(2) The utility shall develop base-case, high-growth and low-growth forecasts, or an alternative forecast that provides an assessment of uncertainty (e.g., probabilistic techniques).

(3) Required Detail.

(a) The utility shall explain how the demand-side savings attributable to actions other than the utility-sponsored demand-side resources for each major customer class are accounted for in the utility's load forecast and the effect, as appropriate, on its load forecast of the utility-sponsored demand-side resources on each major customer class.

(b) The utility shall compare the annual forecast of coincident peak demand and energy sales made by the utility to the actual coincident peak demand and energy sales experienced by the utility for the four years preceding the year in which the plan under consideration is filed. In addition, the utility shall compare the annual forecast in its most recently filed resource plan to the annual forecast in the current resource plan. In its initial IRP filing, the utility shall provide information demonstrating how well its forecasts during the preceding four years predicted demand.

(c) The utility shall explain and document the assumptions, methodologies, and any other inputs upon which it relied to develop its load forecast.

E. Load and Resources Table. The utility shall provide a load and resources table of its existing loads and resources at the time of its IRP filing. The load and resources table, to the extent practical, shall contain the appropriate components from the load forecast. Resources shall include:

(1) utility-owned generation;

(2) existing and future contracted-for purchased power including qualifying facility purchases;

(3) purchases through net metering programs, as appropriate;

(4) demand-side resources, as appropriate; and

(5) other resources relied upon by the utility, such as pooling, wheeling, or coordination agreements effective at the time the plan is filed.

F. Identification of Resource Options.

(1) In identifying additional resource options, the utility shall consider all feasible supply-side and demand-side resources. The utility shall describe in its plan those resources it evaluated for selec-

tion to its portfolio and the assumptions and methodologies used in evaluating its resource options, including, as applicable: life expectancy of the resources, the recognition of whether the resource is replacing/adding capacity or energy, dispatchability, lead-time requirements, flexibility and efficiency of the resource.

(2) For supply-side resource options, the utility shall identify the assumptions actually used for capital costs, fixed and variable operating and maintenance costs, fuel costs forecast by year, and purchased power demand and energy charges forecast by year, fuel type, heat rates, annual capacity factors, availability factors and, to the extent feasible, emission rates (expressed in pounds emitted per kilowatt-hour generated) of criteria pollutants as well as carbon dioxide and mercury.

(3) The utility shall describe its existing rates and tariffs that incorporate load management or load shifting concepts. The utility shall also describe how changes in rate design might assist in meeting, delaying or avoiding the need for new capacity.

G. Determination of the Most Cost Effective Resource Portfolio and Alternative Portfolios.

(1) To identify the most cost-effective resource portfolio, utilities shall evaluate all feasible supply and demand-side resource options on a consistent and comparable basis, and take into consideration risk and uncertainty (including but not limited to financial, competitive, reliability, operational, fuel supply, price volatility and anticipated environmental regulation). The utility shall evaluate the cost of each resource through its projected life with a life-cycle or similar analysis. The utility shall also consider and describe ways to mitigate ratepayer risk.

(2) Each electric utility shall discuss how the following factors were considered in, or affected, the development of resource portfolios:

(a) load management and energy efficiency requirements;

(b) renewable energy portfolio requirements;

(c) existing and anticipated environmental laws and regulations, and, if determined by the commission, the standardized cost of carbon emissions;

(d) transmission constraints; and

(e) system reliability and planning reserve margin requirements.

(3) Alternative portfolios. In addition to the detailed description of what the utility determines to be the most cost-effective resource portfolio, the utility shall develop a reasonable number of alternative portfolios by altering risk assumptions and other parameters developed by the utility

and the public advisory process.

H. Public Advisory Process. Public input is critical to the development and implementation of integrated resource planning in New Mexico. A utility shall incorporate a public advisory process in the development of its IRP. At least one year prior to the filing date of its IRP, a utility shall initiate a public advisory process to develop its IRP. The purpose of this process shall be to receive public input, solicit public commentary concerning resource planning and related resource acquisition issues. This process shall be administered as follows.

(1) The utility shall initiate the process by providing notice at least 30 days prior to the first scheduled meeting to the commission, interveners in its most recent general rate case, and participants in its most recent renewable energy, energy efficiency and IRP proceedings; the utility shall at the same time, also publish this notice in a newspaper of general circulation in every county which it serves and in the utility's billing inserts; this notice shall consist of:

(a) a brief description of the IRP process;

(b) time, date and location of the first meeting;

(c) a statement that interested individuals should notify the utility of their interest in participating in the process, and

(d) utility contact information.

(2) Upon receipt of the initial notice, the commission may designate a facilitator to assist the participants with dispute resolution.

(3) The utility or its designee shall chair the public participation process, schedule meetings, and develop agendas for these meetings. With adequate notice to the utility, participants shall be allowed to place items on the agenda of public participation process meetings.

(4) Meetings held as part of the public participation process shall be noticed and scheduled on a regular basis and shall be open to members of the public who shall be heard and their input considered as part of the public participation process. Upon request, the utility shall provide an executive summary containing a non-technical description of its most recent IRP.

(5) The purposes of the public participation process are for the utility to provide information to, and receive and consider input from, the public regarding the development of its IRP. Topics to be discussed as part of the public participation process include, but are not limited to, the utility's load forecast; evaluation of existing supply- and demand-side resources; the assessment of need for additional resources; identification of resource options; modeling and risk assumptions and the cost and general attributes of potential additional

resources; and development of the most cost-effective portfolio of resources for the utility's IRP.

(6) In its initial IRP advisory process, the utility and participants shall explore a procedure to coordinate the IRP process with renewable energy procurement plans and energy efficiency and load management program proposals. Any proposed procedure shall be designed to conserve commission, participant and utility resources and shall indicate what, if any, variances may be needed to effectuate the proposed procedure.

I. Action Plan.

(1) The utility's action plan shall detail the specific actions the utility will take to implement the integrated resource plan spanning a four-year period following the filing of the utility's IRP. The action plan will include a status report of the specific actions contained in the previous action plan.

(2) An action plan does not replace or supplant any requirements for applications for approval of resource additions set forth in New Mexico law or commission regulations.

[17.7.3.9 NMAC - N, 4-16-07]

17.7.3.10 OBLIGATION TO NOTIFY OF MATERIAL CHANGES AND UPDATE ACTION PLAN:

The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's IRP had those events been recognized when the IRP was developed. As part of this notification, the utility shall explain how this event(s) has changed the action plan.

[17.7.3.10 NMAC - N, 4-16-07]

17.7.3.11 CONFIDENTIALITY OF INFORMATION:

The utility may submit any portions of its IRP under seal to the extent the utility deems specific information to be confidential. The utility shall seek a protective order under Subsection B of 17.1.2.8 NMAC for those portions of its IRP it considers confidential, and the utility shall have the burden of proving its right to such protection. Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of two (2) years, after which time it shall become public unless the utility seeks and obtains further protection from the commission. Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order.

[17.7.3.11 NMAC - N, 4-16-07]

17.7.3.12 COMMISSION

REVIEW, ACCEPTANCE AND ACTION:

A. Compliance Review. The commission will review the utility's proposed IRP for compliance with the procedures and objectives set forth herein. The commission may accept the proposed IRP as compliant with this rule without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. Protests must be filed within thirty (30) days of the filing of the proposed IRP. If the commission has not acted within forty-five (45) days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule. If the commission determines the proposed IRP does not comply with the requirements of this rule, the commission will identify the deficiencies and return it to the utility with instructions for re-filing.

B. Use in Resource Acquisition Proceedings. In a proceeding concerning a utility's request for a CCN for a new utility resource, or in other proceedings concerning a utility's resource acquisition, the utility shall present evidence that the requested resource is consistent with the commission-accepted utility IRP unless material changes, as described in Section 17.7.3.10 of this rule, have occurred that would warrant a different utility course of action. Evidence that the resource is consistent with the IRP, and that there have not been material changes that would warrant a different course of action by the utility, will constitute prima facie evidence that the resource type, but not the particular resource being proposed, is required by the public convenience and necessity.

[17.7.3.12 NMAC - N, 4-16-07]

17.7.3.13 ADDITIONAL INVESTIGATIONS AND INFORMATION:

The commission may conduct an investigation of any matters pertaining to a public utility's IRP where it deems appropriate and may require additional information to be filed.

[17.7.3.13 NMAC - N, 4-16-07]

17.7.3.14 EXEMPTIONS:

A. Motion for Exemption from Rule. Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

B. Multi-State Resource Planning: The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning

requirements.

[17.7.3.14 NMAC - N, 4-16-07]

17.7.3.15 VARIANCES AND AMENDMENTS: A utility may file a request for a variance from the requirements of this rule. Such application shall describe the situation which necessitates the variance; set out the effect of complying with this rule on the utility and its customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.7.3.15 NMAC - N, 4-16-07]

HISTORY of 17.7.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

Public Service Commission, NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities, filed 06-30-1988.

History of Repealed Material: NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) repealed 4-16-07.

Other History:

Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4-16-07.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**

**TITLE 17 PUBLIC UTILITIES
AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSER-
VATION
PART 4 INTEGRATED
RESOURCE PLANS FOR GAS UTILI-
TIES**

17.7.4.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[17.7.4.1 NMAC - N, 4-16-07]

17.7.4.2 SCOPE: This rule

applies to all gas utilities subject to the commission's jurisdiction over integrated resource planning.

A. Supplement to Other Rules: Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.

B. Severability. If any part or application of this rule is held invalid, the remainder or its application shall not be affected.

[17.7.4.2 NMAC - N, 4-16-07]

17.7.4.3 STATUTORY AUTHORITY: This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-15; the Public Utility Act, NMSA 1978, Section 62-3-1 et seq.; and the Efficient Use of Energy Act, NMSA 1978, Section 62-17-1 et seq.

[17.7.4.3 NMAC - N, 4-16-07]

17.7.4.4 DURATION: Permanent.

[17.7.4.4 NMAC - N, 4-16-07]

17.7.4.5 EFFECTIVE DATE: April 16, 2007, unless a later date is cited at the end of a section.

[17.7.4.5 NMAC - N, 4-16-07]

17.7.4.6 OBJECTIVE: The purpose of this rule is to set forth the commission's requirements for the preparation, filing, review and acceptance of New Mexico retail integrated resource plans by public utilities supplying retail natural gas service in New Mexico.

[17.7.4.6 NMAC - N, 4-16-07]

17.7.4.7 DEFINITIONS: Unless otherwise specified, the following definitions will apply when used in this rule:

A. energy efficiency means measures, including energy conservation measures, or programs that target consumer behavior, equipment or devices to result in a decrease in consumption of natural gas without reducing the amount or quality of energy services;

B. integrated resource plan (IRP) means a public utility's plan to meet New Mexico jurisdictional retail customers existing and future demand, which for natural gas utilities incorporates the evaluation of supply- and demand-side options that create a reliable resource mix to accommodate customer demand;

C. load and resources table means an accounting and comparison of a utility's firm gas supplies with its peak customer obligations and reserve require-

ments for each year of the planning period;

D. load management means measures or programs that target equipment or devices to result in decreased peak demand or shifting demand from peak to off-peak periods;

E. load forecasting means the prediction of the demand for an energy commodity over each of the succeeding four to ten years for the utility's New Mexico jurisdictional utility system;

F. planning period means the future period for which a utility develops its IRP; for purposes of this rule, the planning period is four to ten years and begins the year the utility files its plan with the commission;

G. public advisory process means the process through which a public utility provides information to interested parties and receives input from interested parties during the development of its IRP;

H. resources means supply-side resources, energy efficiency or renewable resources used to meet utility system requirements.

I. supply side resource means a resource that can provide natural gas supplies to the natural gas utility's transmission and distribution pipeline systems; supply side resources include utility owned generating facilities, and capacity purchased from other utilities and non utilities.

[17.7.4.7 NMAC - N, 4-16-07]

17.7.4.8 GENERAL PROVISIONS: The commission adopts this rule in order to fulfill the requirements of NMSA 1978, Section 62-17-10.

[17.7.4.8 NMAC - N, 4-16-07]

17.7.4.9 IRP FOR NATURAL GAS UTILITIES: Public utilities supplying natural gas service to customers shall file an initial IRP with the commission within twelve months of the effective date of this rule and every four years thereafter.

[17.7.4.9 NMAC - N, 4-16-07]

17.7.4.10 CONTENTS OF THE GAS UTILITY IRP: The contents of the IRP submitted by a utility providing natural gas retail service in New Mexico shall contain the utility's jurisdictional:

A. current load forecast;
B. description of existing portfolio of resources;

C. summary of foreseeable resource needs for the planning period;

D. anticipated resources to be added during the planning period and the evaluation of various options that could reasonably be added to the utility's resource portfolio;

E. description of the pub-

lic advisory process; and

F. other information that may aid the commission in reviewing the utility's planning processes.

[17.7.4.10 NMAC - N, 4-16-07]

17.7.4.11 EVALUATION OF NATURAL GAS RESOURCES:

The utility shall evaluate, as appropriate, renewable energy, energy efficiency, load management and conventional supply-side resources on a consistent and comparable basis and take into consideration risk and uncertainty of energy supply, price volatility and costs of anticipated environmental regulations in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. The evaluation shall be based on a present-value analysis of revenue requirements and shall include discussion of any economic, risk, environmental, and reliability analyses.

[17.7.4.11 NMAC - N, 4-16-07]

17.7.4.12 PUBLIC ADVISORY PROCESS:

A. At least one year prior to the filing date of its IRP, a utility shall initiate a public advisory process to develop its IRP. The utility shall initiate the process by providing notice at least 30 days prior to the first scheduled meeting to the commission, interveners in its most recent general rate case, and participants in its most recent energy efficiency and IRP proceedings. The utility shall at the same time, also publish this notice in a newspaper of general circulation in every county in which it serves and in the utility's billing inserts. This notice shall consist of:

(1) a brief description of the IRP process;

(2) time, date and location of the first meeting;

(3) a statement that interested individuals should notify the utility of their interest in participating in the process, and

(4) utility contact information.

B. Meetings held as part of the public participation process shall be noticed and scheduled on a regular basis and shall be open to members of the public who shall be heard and their input considered as part of the public participation process. Upon request, the utility shall provide an executive summary containing a non-technical description of its most recent IRP.

C. The purposes of the public participation process are for the utility to provide information to, and receive and consider input from, the public regarding the development of its IRP. Topics to be discussed as part of the public participation process include, but are not limited to, the utility's load forecast; evaluation of existing supply- and demand-side resources; the

assessment of need for additional resources; identification of resource options; modeling and risk assumptions and the cost and general attributes of potential additional resources; and development of the most cost-effective portfolio of resources for the utility's IRP.

D. In its initial IRP advisory process, the utility and participants shall explore a procedure to coordinate the IRP process with energy efficiency and load management program proposals. Any proposed procedure shall be designed to conserve commission, participant and utility resources and shall indicate what, if any, variances may be needed to effectuate the proposed procedure.

[17.7.4.12 NMAC - N, 4-16-07]

17.7.4.13 CONFIDENTIALITY OF INFORMATION:

The utility may submit under seal any portions of its IRP that reveals its contracted portfolio, its major suppliers, transportation volumes, or its contract pricing, on a contract-by-contract basis, to the extent the utility deems specific information to be confidential. The utility also may seek a protective order under Subsection B of 17.1.2.8 NMAC for other portions of its IRP it considers confidential, but the utility shall have the burden of proving its right to such protection. Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of two (2) years, after which time it shall become public unless the utility seeks and obtains further protection from the commission. Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order.

[17.7.4.13 NMAC - N, 4-16-07]

17.7.4.14 NOTICE OF MATERIAL CHANGES:

The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility's IRP had those events been recognized when the IRP was developed.

[17.7.4.14 NMAC - N, 4-16-07]

17.7.4.15 COMMISSION REVIEW, ACCEPTANCE AND ACTION:

A. Compliance Review. The commission will review the utility's proposed IRP for compliance with the procedures and objectives set forth herein. The commission may accept the proposed IRP as compliant with this rule without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. Protests

must be filed within thirty (30) days of the filing of the proposed IRP. If the commission has not acted within forty-five (45) days after the filing of the proposed IRP, that IRP is deemed accepted as compliant with this rule. If the commission determines the proposed IRP does not comply with the requirements of this rule, the commission will identify the deficiencies and return it to the utility with instructions for re-filing.

B. Use in Resource Acquisition Proceedings. In a proceeding concerning a utility's request for a CCN for a new utility resource, or in other proceedings concerning a utility's resource acquisition, the utility shall present evidence that the requested resource is consistent with the commission-accepted utility IRP unless material changes, as described in Section 17.7.4.14 of this rule, have occurred that would warrant a different utility course of action. Evidence that the resource is consistent with the IRP, and that there have not been material changes that would warrant a different course of action by the utility, will constitute prima facie evidence that the resource-type, but not the particular resource being proposed, is required by the public convenience and necessity.

[17.7.4.15 NMAC - N, 4-16-07]

17.7.4.16 ADDITIONAL INVESTIGATIONS AND INFORMATION:

The commission may conduct an investigation of any matters pertaining to a public utility's IRP where it deems appropriate and may require additional information to be filed.

[17.7.4.16 NMAC - N, 4-16-07]

17.7.4.17 EXEMPTIONS:

A. Motion for Exemption from Rule. Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

B. Multi-State Resource Planning. The commission shall take into account a public utility's resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements.

[17.7.4.17 NMAC - N, 4-16-07]

17.7.4.18 VARIANCES AND AMENDMENTS:

A utility may file a request for a variance from the requirements of this rule or to amend its IRP filing to reflect substantially changed circumstances. Such application shall describe the situation which necessitates the variance; set out the effect of complying with this rule on the

utility and its customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result that the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.
[17.7.4.18 NMAC - N, 4-16-07]

HISTORY of 17.7.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

Public Service Commission, NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities, filed 06-30-1988.

History of Repealed Material: NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) repealed 4-16-07.

Other History:

Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 06-30-1988) was renumbered, reformatted and replaced by 17.7.4 NMAC, Integrated Resource Plans for Gas Utilities, effective 4-16-07.

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**HISTORICAL RECORDS
ADVISORY BOARDCommission of Public Records
New Mexico State Records Center &
Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505**NOTICE OF REGULAR MEETING**

A regular meeting of the New Mexico Historical Records Advisory Board has been scheduled for Wednesday, May 9, 2007 from 9:00 A.M to 12:00 P.M. The meeting will be held in the Commission Room of the State Records Center and Archives, which is an accessible facility, located at 1209 Camino Carlos Rey, Santa Fe, NM 87507. 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 Gail Packard at the State Records Center and Archives at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact Gail Packard at 505-476-7956 at the State Records Center and Archives for documents. A copy of the proposed agenda may be obtained at the State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87507.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
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