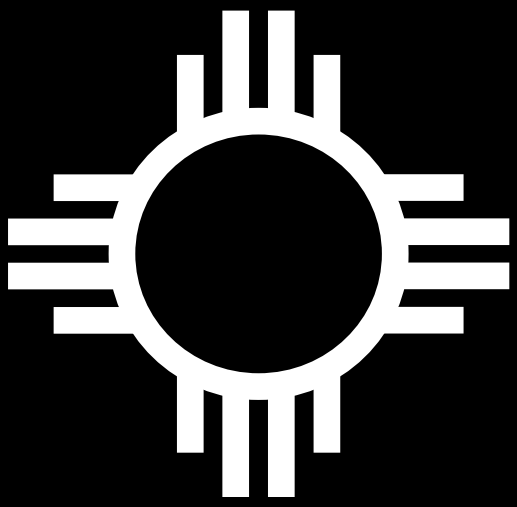
NEW MEXICO REGISTER



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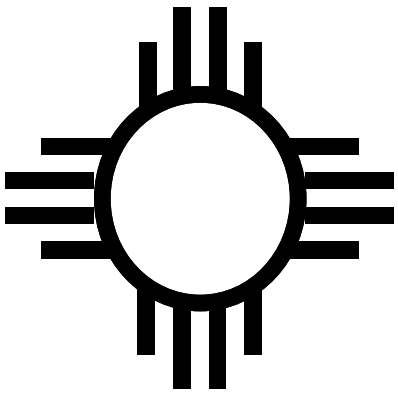

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2007

New Mexico Register

Volume XVIII, Number 12
June 29, 2007

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Effective Date and Validity of Rule Filings

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

A=*Amended*, E=*Emergency*, N=*New*, R=*Repealed*, Rn=*Renumbered*

Other Material Related to Administrative Law

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 AGING AND LONG-TERM SERVICES DEPARTMENT

NOTICE OF PUBLIC HEARING

The Aging and Long-Term Services Department, Brain Injury Services Fund, will hold a formal public hearing on July 30, 2007 from 1:30 p.m. to 3:30 p.m. in the Rio Grande Conference Room on the 2nd floor of the Toney Anaya Building located at 2550 Cerrillos Road, Santa Fe, New Mexico to receive public comments regarding proposed promulgation of rule 8.326.10 NMAC, governing the Traumatic Brain Injury Trust Fund Program.

The proposed rule may be obtained by contacting, Theresa Encinias at 505-476-4509. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on July 30, 2007. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Theresa Encinias, TBI Program Coordinator, Aging and Long-Term Services Department, 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Fax Number: 505-476-4805, email: Theresa.Encinias@state.nm.us.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact, Theresa Encinias at 505-476-4509. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

OPEN MEETING NOTICE

Chairman Eric Griego has announced the Industrial Training Board will convene board meetings for June 14, 2007 and June 15, 2007 as scheduled below. During the June 14, 2007 meeting, the Industrial Training Board will hold public comment to discuss and revise the JTIP policies (Title 5, Chapter 5, Part 50). During the June 15, 2007 regular meeting, the Industrial Training Board will review the Job Training Incentive Program's proposals and continue the policy discussion from the June 14, 2007 meeting.

RE: JTIP RETREAT
DATE: Thursday, June 14, 2007
TIME: 9:00am-12:00pm-Public Session
LOCATION: UNM Manufacturing Training & Technology Center (MTTC) Auditorium
800 Bradbury SE, Albuquerque, NM

AND

RE: JTIP MONTHLY BOARD MEETING
DATE: Friday, June 15, 2007
TIME: 9:00am-3:00pm
LOCATION: CNM Workforce Training Center-Room #103
5600 Eagle Rock Ave. NE
NW Corner of I-25 & Alameda
Albuquerque, NM

PHONE: To inquire, please call: (505) 827-0284

For additional information, including a meeting agenda, please contact Therese R. Varela at (505) 827-0323. If you are disabled and require assistance, auxiliary aids and services, (Voice & TDD), and/or alternate formats in order to further your participation, please contact Cynthia Jaramillo, ADA Coordinator at (505) 827-0248. These individuals are employees of New Mexico Economic Development Department, 1100 St. Francis Dr., Santa Fe, NM 87505-4147.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

FORESTRY DIVISION

NOTICE OF OPEN PUBLIC COMMENT on Amendments to the Commercial Timber Harvesting Requirements June 30 - August 15, 2007

The Energy, Minerals and Natural Resources Department (EMNRD) is reopening and extending the comment period on its proposal to amend 19.20.4.7 NMAC to include piñon and juniper species in the list of commercial species the Forestry Division regulates pursuant to 19.20.4 NMAC and NMSA 1978, Section 68-2-1 *et seq.*. You may obtain copies of the proposed rule amendment from the Forestry Division web site at http://www.nmforestry.com, or by contacting Kim Paul at (505) 476-3343 or kim.paul@state.nm.us.

All interested parties may submit relevant evidence, data, views and arguments, in writing. Anyone wishing to submit written comments may do so via email to kim.paul@state.nm.us or via mail to the State Forester, C/O Kim Paul, EMNRD, Forestry Division, P.O. Box 1948, Santa Fe, NM 87504. No statements will be accepted after the August 15, 2007.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULEMAKING NOTICE

On Wednesday, July 18, 2007, beginning at 9:00 a.m., at the University of New Mexico-Gallup Campus-Auditorium 248, 200 College Blvd., Gallup, NM 87301, and the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations; 2008 Habitat Stamp Program Projects; State Lands Access Easement; Mexican Wolf Interdiction Concept; Relationship between Elk and Wolf Demographics in the Blue Range Wolf Recovery Area; Prospective Mid-Cycle Adjustments to the Turkey Rule 19.31.16, NMAC and the Deer Rule 19.31.13, NMAC; Reservation of Two Elk Licenses for Non-profit Wish Granting Organization(s) under Section 17-3-13.5, NMSA, 1978; Oryx Hunting Prohibitions on White Sands Missile Range (19.31.12, NMAC); Proposed Shooting Preserve Application (19.35.3, NMAC), for the Blue Springs Hunting Preserve; General Public Comments; Closed Executive Session pursuant to Section 10-15-1(H), NMSA, 1978, to discuss litigation, personnel matters, acquisition of real property or water rights, and matters related to determination of sending "Notice of Commission Contemplated Action" per 19.30.8, NMAC; Notice of Commission Contemplated Action; Land Conservation Action on Lewis Ranch; Budget Status Review; Review of Hunt Application Fee and Administrative Costs; Approval of Joint Powers Agreement Continuing Use of Cimarron Canyon, Fenton Lake, and Clayton State as State Parks and Agreement for Continuing Recreational Use Controls at Ute Reservoir by State Parks.

The following rules are open for public comment and consideration for adoption by

the Commission:

* Presentation of Draft Rules (19.31.18, NMAC) regarding use of Big Game Enhancement Authorization Packages and (19.31.19, NMAC) Hunting and Fishing Authorizations for Governor's Special Events;
* Adoption of the 2007-2008 Upland Game Rule 19.31.5, NMAC, and Waterfowl Rule 19.31.6, NMAC;
* Providing for a Proper and Valid License to Assist Compliance of Game Laws (19.31.3, NMAC); and
* Establishing Rules for Exemption to Hunting by Spotlight or Artificial Light Prohibited (Section 17-2-31, NMSA, 1978).

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 PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

STATE OF NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

IN THE MATTER OF AMENDING 13.8.2 NMAC, RATE FILINGS BY INSURERS AND RATE SERVICE ORGANIZATIONS AND 13.8.3 NMAC CASUALTY, PROPERTY, TITLE AND VEHICLE INSURANCE POLICY FORMS
DOCKET NO. 07-00231-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 13.8.2 NMAC, Rate Filings By Insurers And Rate Service Organizations and 13.8.3 NMAC, Casualty, Property, Title And Vehicle Insurance Policy Forms. The Superintendent, being fully advised, **FINDS** and **CONCLUDES:**

1. On April 6, 2007 Governor Richardson signed Senate Bill 483 (2007 N.M. Laws, Ch. 367) into law effective July 1, 2007. Senate Bill 483 significantly changes filing requirements and enacts other new provisions in the Insurance Rate Regulation Law, Article 17 Chapter 59A NMSA 1978.

2. The Superintendent is proposing amendments to 13.8.2 NMAC and 13.8.3 NMAC to implement Senate Bill 483.

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, Insurance: Docket No. 07-0023-IN - Amending 13.8.2 NMAC, Rate Filings By Insurers And Rate Service Organizations and 13.8.3 NMAC, Casualty, Property, Title and Vehicle Insurance Policy Forms;

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, August 8, 2007** at 9:30 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, July 30, 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 alan.seeley@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 6th day of June 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

/s/

MORRIS J. CHAVEZ, Superintendent of Insurance

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC Section 15, effective 07-29-2007.

16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:

A. The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period ending on the last day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each year. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be postmarked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE; request an extension for completion of the required CPE; and shall provide a written plan of action to remediate the deficiency.

(a) The extension request and action plan shall accompany the renewal application.

(b) The provisions of the action plan shall be executed within 60 days of the expiration date of the license.

(c) The board reserves the right not to approve a plan of action or grant an extension.

(d) Although a plan of action may be approved immediately upon receipt, the board reserves the right to levy a fine at a later date for late CPE of $10.00 per day not to exceed $1,000.

(e) The board may waive this fine for good cause.

(f) If all CPE requirements are not met within 90 days beyond the expiration date of the license, the license shall be subject to cancellation.

(6) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(7) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the act and of these rules.

(8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months.

(a) The length of expiration shall be calculated from the date the license expired to the date the application for reinstatement was received by the board office.

(b) If the license was expired for less than one year, documented evidence of 40 hours of CPE earned within the 12 months immediately preceding the date of application for reinstatement must be provided.

(c) If the license was expired for longer than one year, for the purpose of determining the number of CPE hours required, the length of expiration shall be rounded down to the last full year if the partial year was less than six months and rounded up to the next full year if the partial year was more than six months.

B. Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status.

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Public means any private or public corporate or governmental entity or individual. An individual who holds an inactive certificate/license is prohibited from practicing public accounting and may only use the CPA-inactive designation if they are not offering accounting, tax, tax consulting, management advisory, or similar services either in New Mexico or in another state or country. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the act; public accountancy means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months.

(3) The effective date of this provision shall be January 1, 2007. An individual who holds an inactive certificate/license as of January 1, 2006 and expects to be subject to the provisions of this rule shall be permitted to obtain an active certificate/license between January 1, 2006 and December 31, 2006 provided they:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence

of 40 hours of CPE earned between January 1, 2005 and December 31, 2006 or complete 120 hours of CPE within the three-year period immediately prior to the date of application for active status, provided that the application is received by the board no later than December 31, 2006.

(4) An individual who obtains an active certificate/license during this transitional period of January 1, 2006 to December 31, 2006 shall not be subject to the provisions of sub-paragraph (b) of paragraph (2) above.

C. Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

D. Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted;

(d) one-half credit increments are permitted after the first credit has been earned in a given learning activity.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal 1 hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

(a) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(b) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(c) Firms having a system peer review at a location other than the firm's office shall be considered an off-site peer review and will be allowed up to 12 hours of CPE credits.

(d) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

[~~(14) For each 3-year reporting period, at least 24 of the hours reported shall be taken outside of the individual's firm, agency, company, organization or normal work setting in a public presentation environment, which is defined as a group program, classroom, live instructor setting in which at least 10 percent of the registered participants are not members, associates, clients, or employees of the firm, agency, company, organization or normal work environment.~~]

(14) Effective for CPE reporting periods ending on or after July 31, 2007, for each 3-year reporting period, at least 24 of the hours reported shall not include CPE sponsored by the licensee's firm, agency, company, or organization but may include all methods of CPE delivery, provided that each hour meets the standards specified in paragraphs (1) through (10) of this subsec-

tion.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

E. Programs not qualifying for CPE:

(1) CPA examination review or "cram" courses;

(2) industrial development, community enhancement, political study groups or similar courses, programs or seminars;

(3) courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

F. Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation and/or or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) An individual who has submitted a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum $250.00 fine and any other penalties deemed appropriate by the board as permitted by Section 20B of the act.

(7) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(8) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004; A, 07-30-2004; A, 12-30-2004; A, 04-29-2005; A, 12-30-2005; A, 05-15-2006; A, 07-29-2007]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.1 NMAC Section 7, effective 07-16-07.

16.5.1.7 DEFINITIONS:

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

C. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

D. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

E. "Jurisprudence exam" means the examination given over the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

F. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

G. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

H. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has reviewed their current medical history and for purposes of authorization, has examined that patient within the previous eleven months or will examine that patient within 30 days of giving authorization.

I. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

[~~K.~~] J. "CRDTS" means the central regional dental testing service, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicants competence to practice in New Mexico.]

[~~L.~~] K. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

[~~M.~~] L. [~~PBIS is the professional background information services~~] "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

[~~N.~~] M. [~~Non-dentist owner is~~] "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978.

[3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.4 NMAC Section 8, effective 07/16/07.

16.5.4.8 REQUIREMENTS FOR EMERGENCY LICENSURE:

A. Dentists, dental hygienists and dental assistants currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four (4) months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) licensing qualifications and documentation requirements 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC for dentists, 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC for dental hygienists and 16.5.33 NMAC for dental assistants;

(3) other required information and/or documentation will be the name and address of employer, copy of diploma, copy of current license in another state, or verification of licensure, copy of DEA license if applicable; a license will not be granted without a practice location; the board will query the national practitioners databank, American association of dental examiners and other state dental boards where the practitioner has ever held a license; if any or all of this information and/or documents are not available or destroyed in a disaster, an affidavit certifying this will be required.

B. The board may waive the following requirements for licensure:

(1) application fee;

(2) background check by a professional background information service[**s**]; and

(3) transcripts from an ADA accredited program.

C. The board may waive the specific forms required under the requirements for licensure if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Nothing in this section shall constitute a waiver of the requirements for licensure for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; and dental assistants as required in 16.5.33 NMAC.

E. Licenses issued under the emergency provision shall expire four (4) months, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made thirty (30) days prior to the date of expiration and may be renewed no more than once. The applicant must obtain a permanent or temporary license within eight (8) months of the issuance of the initial emergency license. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. The board will renew an emergency license for a period of four (4) months for the following renewal fees:

(1) dentists $100.00 emergency license renewal fee;

(2) dental hygienists 50.00 emergency license renewal fee;

(3) dental assistants 10.00 emergency license renewal fee.

F. Licensees issued a license under the emergency provision are subject to all provisions of the Dental Health Care Act, Article 5A and the rules and regulations, Title 16 Chapter 5, specifically the disciplinary proceedings NMSA 1978 Section 61-5A-21.

[16.5.4.8 NMAC - N, 04/17/06; A, 07/16/07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.5 NMAC Section 8, effective 07-16-07.

16.5.5.8 FEES:

A. All fees are non-refundable.

B. Application for licensure by examination fee is $500, which includes the initial licensing period.

C. Application for licensure by credential fee is $750, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of $100 to re-take the exam.

E. Triennial renewal fee for all dental licensees is $450.

(1) Impaired fee is $30 per triennial renewal period plus renewal fee.

(2) Late renewal fee of $100 after July 1 through September 1 plus renewal and impaired fees.

(3) Cumulative late fee of $10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

F. Triennial renewal fee for inactive license is $90.

G. Temporary license fees:

(1) forty-eight hour license, application fee of $50, license fee of $50;

(2) six month license, application fee of $100, license fee of $200;

(3) twelve month license, application fee of $100, license fee of $300.

H. Anesthesia permit fees:

(1) Nitrous oxide permit fee is $25;

(2) Conscious sedation I permit fee is $25;

(3) Conscious sedation II permit fee is $300;

(4) Deep sedation and general anesthesia permit fee is $300.

I. Reinstatement fee is $400.

J. Application for licensure for inactive status is $50.

K. Non-Dentist Owner fees.

(1) Application for licensure fee is $300, which includes the initial licensing period.

(2) Triennial renewal fee of $150.

(3) Late renewal fee of $100 after July 1 through September 1 plus renewal fee.

(4) Cumulative late fee of $10 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal and late fee.

[~~K~~] L. Administrative and duplication fees:

(1) duplicate license fee is $25;

(2) multiple copies of the statute or rules are $10 each;

(3) copy fees are $0.50 per page, with a minimum charge of $5.00;

[~~(5)~~] (4) list of current dental licensees is $250; an annual list of current licensees is available to the professional association upon request at no cost; and

[~~(6)~~] (5) mailing labels of current dental licensees is $300.

[10-21-70, 3-14-73, 4-11-81, 3-7-88, 4-12-92, 3-16-94, 5-31-95, 9-30-96, 12-15-97, 5-28-99, 8-16-99; 16.5.5.8 NMAC - Rn & A, 16 NMAC 5.5.8, 06-14-01; A, 5-31-02, A, 03-06-05; A, 04-17-06 A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.6 NMAC Section 8, 9 and 10, effective 07-16-07.

16.5.6.8 PREREQUISITE REQUIREMENTS FOR GENERAL PRACTICE LICENSE: Each applicant for a license to practice dentistry by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school

as defined in 61-5A-12,A;

B. successfully completed the dental national board examination as defined in 61-5A-12,A;

C. passed a WREB or CRDTS clinical examination; the results of the WREB or CRDTS exam are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB or CRDTS for examination, and

(2) WREB or CRDTS results must be sent directly to the board office; and

D. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office;

E. the board requires a level III background status report from ~~[PBIS]~~ a board designated professional background service for new graduates, and a level II background status report from [~~PBIS~~] a board designated professional background service for an applicant who has been in practice with experience; application for this service will be included with other application materials; the applicant will apply and pay fees directly to [~~PBIS~~] a board designated professional background service to initiate this service.

[3-14-73, 5-31-95, 9-30-96, 12-15-97; 16.5.6.8 NMAC - Rn & A, 16 NMAC 5.6.8, 06-14-01; A, 3-29-02, A, 07-16-07]

16.5.6.9 PREREQUISITE REQUIREMENTS FOR SPECIALTY LICENSE: Each applicant for a license to practice a dental specialty by examination must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12,A; and

B. a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12,D in one of the following specialty areas:

(1) dental public health,

(2) endodontics,

(3) oral and maxillofacial surgery,

(4) orthodontics and dento-facial orthopedics,

(5) oral pathology,

(6) pediatric dentistry,

(7) periodontology, or

(8) prosthodontics.

C. successfully completed the dental national board examination as defined in Section 61-5A-12,A;

D. passed a WREB or CRDTS specialty examination; the results of the WREB or CRDTS exam are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB or CRDTS for examination; and

(2) WREB or CRDTS results must be sent directly to the board office;

E. an applicant in any specialty defined above for which there is no WREB or CRDTS specialty examination may substitute diplomate status for the examination; and

F. completed the jurisprudence exam with a score of at least 75 percent; the applicant shall schedule the exam through the board office;

G. the board requires a level II background status report from [~~PBIS~~] a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to [~~PBIS~~] a board designated professional background service to initiate this service.

[3-16-94, 5-31-95, 12-15-97, 02-14-00; 16.5.6.9 NMAC - Rn & A, 16 NMAC 5.6.9, 06-14-01; A, 3-29-02; A, 07-16-07]

16.5.6.10 DOCUMENTATION REQUIREMENTS: Each applicant for a license by examination must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within 6 months; applications are valid for 1 year from the date of receipt;

B. official transcripts and/or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. copy of WREB or CRDTS score card or certificate from the appropriate specialty board;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental school within the past twelve months;

F. proof of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross;

G. repealed

H. the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse; and

I. the appropriate status report from [~~PBIS~~] a board designated professional background service must be received by the board office directly from [~~PBIS~~] a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

J. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

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

L. in addition to the documentation required above, an applicant for licensure in a specialty area must request official transcripts from the residency program and/or postgraduate training program to be sent directly to the board office from the accredited program.

[3-16-94, 5-31-95, 9-30-96, 12-15-97, 8-16-99; 16.5.6.10 NMAC - Rn & A, 16 NMAC 5.6.10, 06-14-01; A, 3-29-02; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.7 NMAC Section 9, 10 and 15, effective 07-16-07.

16.5.7.9 PREREQUISITE REQUIREMENTS FOR TEMPORARY LICENSURE: Each applicant for temporary licensure must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school or college as defined in 61-5A-12, A;

B. if the temporary license is for a practice specialty, the applicant must have obtained a postgraduate degree or certificate from an accredited dental college, school of dentistry or other residency program that is accredited by the American dental association commission on dental accreditation;

C. hold a valid license from another state or territory of the United States;

D. applicants requesting a six or twelve month temporary license must pass the jurisprudence exam with a score of at least a 75 percentile;

E. for those applying for a initial temporary license in public health dentistry or as a replacement practitioner, the board requires a level III background

status report from [~~PBIS~~] a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fee directly to [~~PBIS~~] a board designated professional background service to initiate this service; the license may be provisionally issued while awaiting the report from [~~PBIS~~] a board designated professional background service.
[3-14-73, 5-31-95; 16.5.7.9 NMAC - Rn & A, 16 NMAC 5.7.9, 12-14-00; A, 06-14-01; A, 07-16-07]

16.5.7.10 DOCUMENTATION REQUIREMENTS: Each applicant for a temporary license must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within 6 months. Applications are valid for 1 year from the date of receipt;

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

C. proof of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross; and

D. an affidavit from the New Mexico licensed dentist who is sponsoring the applicant attesting to the qualifications of the applicant and the activities the applicant will perform; applicants for temporary licensure in underserved areas and state institutions must:

(1) provide an affidavit from the administrative supervisor of the applicant's proposed employer organization as defined in Subsection C 16.5.7.8 NMAC attesting to supervision and oversight by a New Mexico licensed dentist, and bearing the signature of both; or

(2) provide an affidavit from the New Mexico department of health specifying supervision will by a licensed New Mexico dentist and bearing the signature of both, and

(3) report any changes in supervision or oversight of the temporary licensee to the board within (30) thirty days of the change;

(4) provide proof of acceptable liability insurance coverage;

E. in addition, applicants requesting temporary licensure in public health dentistry or as a replacement practitioner must submit the following:

(1) official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

(2) copy of national board examination certificate or score card;

(3) proof of having taken a course in infection control technique within the past twelve months;

(4) applicant shall authorize the drug enforcement administration (DEA) and American association of dental examiners clearinghouse to send verification of status directly to the board office;

(5) the board will obtain verification of applicant status from the national practitioners data bank; and

(6) a level III status report from [~~PBIS~~] a board designated professional background service must be received directly from [~~PBIS~~] a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board; the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public;

(7) in addition to the documentation required above, an applicant for temporary licensure in a specialty area must request official transcripts from the residency program and/or postgraduate training program to be sent directly to the board office from the accredited program.
[3-14-73, 5-31-95, 9-30-96; 16.5.7.10 NMAC - Rn, 16 NMAC 5.7.10, 12-14-00; A, 06-14-01; A, 3-29-02, A, 07-16-07]

16.5.7.15 CONVERSION OF TEMPORARY LICENSE TO LICENSE BY CREDENTIALS:

A. Following the completion of the requirements listed in Subsection C of 16.5.7.8 NMAC of these rules, the temporary licensee may complete an application for licensure by credentials.

B. Any additional licenses acquired during the time practicing under a temporary license must be reported on the application for licensure by credentials.

C. Any actions taken against the applicant's license in any other jurisdiction while licensed in New Mexico under a temporary license must be reported on the application for license by credentials.

D. Upon receipt of a complete application the board shall issue a New Mexico license by credentials unless there is any action pending against the temporary license. Then at the discretion of the board or it's agent, the temporary license may be extended until pending action is settled. If action is taken against the temporary license, conversion to a license by credentials will be halted and the temporary license will no longer be renewed.

E. Conversion of a temporary license to practice dentistry does not allow conversion of a temporary anesthesia permit into one lasting more than the initial 12 months. After the 12 month period, an additional permit requires successful completion of an additional anesthesia exam and a facilities inspection. See Subsection C of 16.5.15.15 NMAC.
[16.5.7.15 NMAC - N, 3-29-02; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.8 NMAC Section 8, 9 and 10, effective 07-16-07.

16.5.8.8 PREREQUISITE REQUIREMENTS FOR LICENSURE IN GENERAL PRACTICE: Each applicant for licensure as a general dentist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school as defined in 61-5A-12,A;

B. completed sixty (60) hours of approved continuing education during the past thirty-six (36) months in compliance with Section 16.5.1.15 NMAC of these rules;

C. passed the dental national board examination as defined in Section 61-5A-12,A;

D. passed the jurisprudence exam with a score of at least 75 percentile;

E. holds a valid license in good standing by clinical examination in another state or territory of the United States, or has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application;

F. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules;

G. the board requires a level II background status report from [~~PBIS~~] a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and

pay fees directly to [~~PBIS~~] a board designated professional background service to initiate this service.

[3-16-94, 8-15-95, 9-30-96, 1-1-99, 8-16-99; 16.5.8.8 NMAC - Rn & A, 16 NMAC 5.8.8, 12-14-00; A, 06-14-01; A, 07-16-07]

16.5.8.9 PREREQUISITE REQUIREMENTS FOR LICENSE IN SPECIALTY PRACTICE: Each applicant for a license to practice a dental specialty by credentials must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.

A. Graduated and received a diploma from an accredited dental school as defined in 61-5A-12,A.

B. Have a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12,D, in one of the specialty areas of dentistry recognized by the ADA.

C. Completed sixty (60) hours of continuing education during the past thirty-six (36) months in compliance with Section 16.5.1.15 NMAC of these rules.

D. Successfully completed the dental national board examination as defined in Section 61-5A-12,A.

E. Successfully completed an examination for diplomat status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dentofacial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomat status given by the American board of public health dentistry.

F. Completed the jurisprudence exam with a score of at least 75 percent.

G. Hold a valid license by examination in another state or territory of the United States;

H. The board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

I. The board requires a level II background status report from [~~PBIS~~] a board designated professional background service. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to [~~PBIS~~] a board designated professional background service to initiate this service.

[3-16-94, 8-15-95, 9-30-96, 8-16-99, 06-13-01; 16.5.8.9 NMAC - Rn, 16 NMAC 5.8.9, 12-14-00; A, 06-14-01; A, 07-16-07]

16.5.8.10 DOCUMENTATION REQUIREMENTS: Each applicant for licensure by credentials must submit the required fees and following documentation:

A. completed application signed and notarized with a passport quality photo taken within 6 months; applications are valid for 1 year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental school or college, to be sent directly to the board office from the accredited program;

C. copy of national board examination certificate or scorecard;

D. proof of having taken a course in infection control technique within the past twelve months;

E. proof of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross;

F. the board will obtain verification of applicant status from the national practitioners data bank and the American association of dental examiners clearinghouse;

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

H. a level II status report from [~~PBIS~~] a board designated professional background service must be received by the board office directly from [~~PBIS~~] a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board;

I. the board may deny, stipulate or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentist and Hygienist Act, these rules, or if t is determined that the applicant poses a threat to the welfare of the public;

J. proof of sixty (60) hours of continuing education during the thirty-six (36) months prior to licensure in compliance with Section 16.5.1.15 NMAC of these rules;

K. dentists employed in uniform service practice shall furnish:

(1) a copy of the most recent commissioned officers effectiveness report, or equivalent, issued by the uniformed service dental service, and

(2) a certified letter from the clinic commander attesting to past record and any actions taken on applicant's uniform service credentials;

L. applicants for specialty license must submit official transcripts from the residency program and/or postgraduate training program, sent directly to the board office from the accredited program;

M. certificate of diplomat status from the specialty board, if applicable, submitted directly to the board office; and

N. supplemental information may be requested by the board.

[3-16-94, 8-15-96, 9-30-96, 12-15-97, 1-1-99, 8-16-99, 2-14-00; 16.5.8.10 NMAC - Rn, 16 NMAC 5.8.10, 12-14-00; A, 06-14-01; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.9 NMAC Section 8 AND 10, effective 07-16-07.

16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER: To employ and contract for dental services, a non-dentist owner must apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board. Unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:

A. employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

B. enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico; or

C. the non-dentist owner licensee must follow the provisions of 16.5.16 NMAC. Failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as [~~outlined~~] defined in [~~the Dental Health Care Act 16.5.15.1 through 16.5.16.11 NMSA~~] 16.5.16 NMAC.

[16.5.9.8 NMAC - N, 03-06-05; A, 07-16-07]

16.5.9.10 DOCUMENTATION REQUIREMENTS: Each applicant for a non-dentist owner license must submit a completed application obtained from the board office with the required fees and the following documentation:

A. completed application signed and notarized [~~with a passport quality photo taken within 6 months of application.~~] by the individual that is the non-dentist owner or by the president of the parent corporation; applications are valid for one (1) year from the date of receipt;

B. the board requires a level II [~~PBIS~~] board designated professional background service report; the application for this service will be included application materials; the applicant will apply and pay fees directly to [~~PBIS~~] a board designated professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the [~~PBIS~~] board designated professional background service report [~~with~~] will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; [~~Verification of a professional license, active or inactive, in each state that license is or has been held must be sent directly to the board office from the other state boards. Verification must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.~~] in the case of any corporation entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporation in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

C. verification of licensure in all states where the non-dentist owner holds or has held a license, or other health care profession; verification must be sent directly to the office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form;

[~~C.~~] D. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public.

[16.5.9.10 NMAC - N, 03-06-05; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.10 NMAC Section 9, effective 07/16/07.

16.5.10.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dentistry and must comply with the requirements of 16.5.1.15 NMAC of these rules. The following courses are required for license renewal.

A. [~~CPR.~~] Proof of current certification in basic life support accepted by the American heart association or the American red cross.

B. Infection control. As further defined in 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period.

C. Education requirements: Any dentist holding enteral anxiolysis (minimal sedation), CSI, CSII, deep sedation and permit at large (AAL) are required to have a minimum of five hours of continuing education for the permit renewal (every six years) in medical emergencies, air way management, pharmacology, or anesthesia related topics.

[5/21/93...9/30/96; 16.5.10.9 NMAC - Rn & A, 16 NMAC 5.10.9, 04/17/06; A, 07/16/07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.12 NMAC Sections 10 and 11, effective 07-16-07.

16.5.12.10 REINSTATEMENT FROM RETIREMENT STATUS: A licensee whose license has been placed in retirement status may request reinstatement of the retired license within three years of the date of retirement as indicated in section 16.5.12.8 NMAC of this part. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement must include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

(1) twenty hours of approved continuing education courses related to the clinical practice of dentistry, per year of retirement; at least twenty of these hours must be in the twelve months previous to the request;

(2) proof of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross;

(3) proof of infection control course within the past twelve months; and

(4) sixty hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA), and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of retirement and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from retirement status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in retirement status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a retired license is not requested after three years of retirement, and if the licensee does not apply for inactive status, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.12.10 NMAC - Rn, 16.5.12.9 NMAC & A, 03-06-05; A, 04-17-06; A, 07-16-07]

16.5.12.11 REINSTATEMENT FROM INACTIVE STATUS: A licensee whose license has been placed in inactive status may request reinstatement to active license status within nine years of the date of inactivation as indicated in Section 16.5.12.8 NMAC of this part. Upon receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstate-

ment must include the reinstatement fee, the triennial renewal fee, impairment fee and proof of the following continuing education courses:

(1) twenty hours of approved continuing education courses related to the clinical practice of dentistry, per year of inactivation; at least twenty of these hours must be in the twelve months previous to the request;

(2) proof of current [~~CPR~~] basic life support certification accepted by the American heart association or the American red cross;

(3) proof of infection control course within the past twelve months;

(4) proof of medical emergency course during the past twelve months; and

(5) sixty hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of retirement request as well as any continuing education taken during the retirement period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

(1) drug enforcement administration (DEA); and

(2) American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of inactivation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license will be removed from inactive status and the previous license number reassigned. The reinstated license will expire as defined in 16.5.11 NMAC.

F. A dentist with a license in inactive status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of an inactive license is not requested after nine years of inactivation, application for a new license must be made by examination or credentials in order to practice dentistry in New Mexico or six years if the licensee signs affidavit foregoing three years for retirement as defined in Subsection E of 16.5.12.8 NMAC.

[16.5.12.11 NMAC - N, 03-06-05; A, 04-17-06; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.13 NMAC Section 9, effective 07/16/07.

16.5.13.9 REINSTATEMENT OF REVOKED LICENSE: Within one year of the revocation notice, the license may be reinstated by payment of renewal and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must re-apply as a new applicant and meet all requirements for initial licensure.

A. Applicants for reinstatement must provide verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[3/14/73, 5/31/95; 16.5.13.9 NMAC - Rn, 16 NMAC 5.13.9, 04/17/06; A, 07/16/07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.15 NMAC Section 7, 9, 10, 12, 15 and 16, effective 07-16-07.

16.5.15.7 DEFINITIONS:

A. "Conscious sedation" means a minimally depressed level of consciousness that retains the patients ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command. Conscious sedation is produced by a pharmacologic or non-pharmacologic method or combination thereof. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of [~~consiousness~~] consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would be considered to be in a deeper state of anesthesia than [~~consious~~] conscious sedation.

B. "Deep sedation" means a induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command. Deep sedation is produced by a pharmacologic or non- pharmacologic method or combination thereof.

C. "General anesthesia" means a induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command. General anesthesia is produced by a pharmacologic or non-pharmacologic method or combination thereof.

D. "Monitor" means to watch or check on.

E. "Nitrous oxide inhalation analgesia" means the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

F. "Prescribed administration" means the nitrous oxide is administered by a dental hygienist or dental assistant under the indirect supervision of the dentist with the dentist's authorization.

G. "Combination inhalation-enteral sedation (combined conscious sedation)" - conscious sedation using inhalation and enteral agents. Nitrous oxide/oxygen when used in combination with sedative agents may produce anxiolysis, conscious or deep sedation [~~of~~] or general anesthesia.

H. "Anxiolysis" the [~~demention~~] diminution or elimination or reduction of anxiety.

I. "Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa. (ie oral, rectal, sublingual)

[16.5.15.7 NMAC - Rp, 16.5.15.7 NMAC, 3-17-05; A, 07-16-07]

16.5.15.9 ANESTHESIA COMMITTEE:

A. Appointment: All members of the anesthesia committee serve at the pleasure of the board. The board chair will appoint members to serve on the anesthesia committee for 5 year terms beginning on July 1. Individuals for consideration may be nominated by the New Mexico dental

association, any local dental society, or the anesthesia committee.

B. Terms: Each member shall be appointed to serve a term of five years, however, the appointments shall be staggered so that no more than forty percent of the members will expire in any given year.

C. Reimbursement: The anesthesia committee examiners shall be paid one hundred dollars, in addition to mileage and per diem for exams outside of the community where they practice dentistry, upon the completion of each office anesthesia examination and evaluation.

D. Committee composition: The anesthesia committee shall consist of licensed dentists, including at least 1 board certified oral and maxillofacial surgeon, 1 general dentist, 1 dentist board member, 1 dentist not engaged in the use of sedation techniques, and when possible, representatives of other interested dental specialties. Each anesthesia committee member should be currently practicing some form of sedation and be currently qualified as an examiner, except the non-sedating dentist.

E. Duties: Establish policies and procedures for the evaluation of applications, inspections of facilities, and examination of applicants; make recommendations to the board in regard to each application; report to the board, as needed, at regularly scheduled board meetings the status of activities of the anesthesia committee; Inform the board of any licensee who fails to cooperate with the requirements for application, registration or renewal of permits; inspect facilities upon request of the board; and upon request, assist the board in the investigation of complaints concerning the administration of anesthesia or analgesia.

F. Designated examiners: The anesthesia committee chair may appoint a designated examiner with an anesthesia permit of an equal or greater level to perform evaluations on licensed dental applicants to serve at the pleasure of the NMBODHC chair. This designated examiner must be actively practicing his anesthesia level to be considered by the board.

[16.5.15.9 NMAC - Rp, 16.5.15.9 NMAC, 3-17-05; A, 07-16-07]

16.5.15.10 ADMINISTRATION OF NITROUS OXIDE OR ENTERAL ANXIOLYSIS (MINIMAL SEDATION) ANALGESIA:

A. NITROUS OXIDE:

(1) Registration required: Each licensed dentist who administers or supervises the prescribed administration of nitrous oxide inhalation analgesia shall be registered with the board. A registration form will be provided upon initial application or upon request, and contain information to verify the dentist, facility, and staff meet the requirements specified in Paragraph (2) of Subsection A of 16.5.15.10 NMAC. When the registration has been approved by the secretary-treasurer of the board the applicant will be sent a wall certificate which does not expire. Administration of nitrous oxide inhalation analgesia without registration is a violation of these rules and may result in disciplinary action against the licensee.

(2) Requirements for registration: Each licensed dentist who administers or prescribes administration of nitrous oxide inhalation analgesia shall meet the following requirements:

(a) completed a course of training leading to competency while a student in an accredited school of dentistry or through postgraduate training;

(b) have adequate equipment which includes fail-safe features and a 25% minimum oxygen flow and an effective scavenging system;

(c) each dentist and auxiliary personnel who monitors the use of, or administers nitrous oxide shall have current basic life support certification;

(d) all use of nitrous oxide inhalation analgesia shall be under the indirect supervision of a licensed dentist;

(e) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate; and

(f) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

B. ENTERAL ANXIOLYSIS (MINIMAL SEDATION):

(1) Each licensed dentist who holds a nonrestricted DEA license and who administers or supervises the administration of enteral anxiolytic medication shall be responsible for the following:

(a) completed a course of training while a student in an accredited school of dentistry or through postgraduate training;

(b) enteral shall be administered only in the office setting and patient shall be monitored;

(c) have adequate equipment to monitor patients vital signs;

(d) each dentist and auxiliary personnel who monitors shall have current basic life certification;

(e) all use of enteral medication shall be under the indirect supervision of a licensed dentist;

(f) the patient's record shall reflect evidence of appropriate monitoring of vital signs, including blood pressure, pulse, and respiratory rate during procedures and effect of medication;

(g) [~~permit holder~~] shall verify the patient has other means of transportation to be released from the office;

(h) administration of enteral anxiolytic medications in doses that do not exceed the normal therapeutic dosage recommended by the manufacturer in published literature and that are within the accepted scope of the practice and prescriptive authority of the dentist and does not produce oral conscious sedation and does not require the dentist to hold a conscious sedation I permit.

[16.5.15.10 NMAC - Rp, 16.5.15.10 NMAC, 3-17-05; A, 07-16-07]

16.5.15.12 PERMIT REQUIREMENTS:

A. Conscious sedation I:

(1) To administer enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) the dentist must satisfy one of the following criteria:

(a) must have completed training to the level of competency in enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) consistent with the that prescribed in part I and part III of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program, which affords comprehensive and appropriate training necessary to administer and manage enteral and/or combination inhalation-enteral conscious sedation (combined [~~conscious~~] conscious sedation) consistent with that prescribed in part II of the current ADA guidelines for teaching the comprehensive control of anxiety and pain in dentistry;

(c) current permit holders would be grand-fathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation, staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies.

(3) The dentist and auxiliary clinical personnel have current basic life support certification.

(4) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed.

(5) The following rules shall apply to the administration of enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) in the dental office.

(a) Administration of enteral and/or combination inhalation-enteral conscious sedation (combined conscious seda-

tion) by another duly qualified dentist, physician or CRNA requires the operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is duly licensed in New Mexico to provide anesthesia and be a member in good standing of the staff of an accredited New Mexico hospital in the community in which the anesthesia occurs. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering enteral and/or combination inhalation-enteral conscious sedation (combined conscious sedation) must document current successful completion of a basic life support (BLS) course.

(c) A dental facility shall be registered with the board as a conscious sedation I facility.

(d) The operating dentist must ensure that the anesthesia permit holder/provider provides for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of enteral and/or combined conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

B. Conscious sedation II:

(1) To administer parenteral conscious sedation the dentist must satisfy one of the following criteria:

(a) completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirements described in part III of the current ADA guidelines for teaching the [~~comphensive~~] comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program (e.g. general practice residency), which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation;

(c) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of conscious sedation in accordance with the current ADA [~~guidlelines~~] guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto.

(4) The dentist and auxiliary clinical personnel have current basic life support certification.

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring, recovery, discharge and documentation was performed in accordance with the current ADA guidelines for the use of [~~conceious~~] conscious sedation, deep sedation and general anesthesia for dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the anesthesia committee or designated examiner.

(7) The following requirements shall apply to the administration of [~~of~~] parenteral conscious sedation in the dental office.

(a) Administration of parenteral conscious sedation by another duly [~~qualified~~] qualified dentist, physician or CRNA requires the operating dentist and his/her [~~clinecial~~] clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is certified in advanced cardiac life support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering parenteral [~~conceious~~] conscious sedation must document current successful completion of:

(i) a basic life support (BLS) course;

(ii) advanced cardiac life support (ACLS) or an [~~appropritate~~] appropriate equivalent as approved by the anesthesia committee.

(c) A dental facility utilizing dentist, [~~physcian~~] physician or CRNA anesthetists shall be registered with the board as a conscious sedation II facility and the facility and staff shall be evaluated as such.

(d) The operating dentist must ensure that the anesthesia permit holder/provider is [~~responsilbe~~] responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists, if any, and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen.

C. Deep sedation/general anesthesia:

(1) To administer deep sedation/general [~~anesthesia~~] anesthesia, the dentist must satisfy one of the following criteria:

(a) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in part II of the current ADA guidelines for teaching and comprehensive control of anxiety and pain in dentistry;

(b) completion of an ADA accredited post-doctoral training program (e.g. oral and maxillofacial surgery), which affords comprehensive and appropriate training necessary to administer and manage deep sedation/general anesthesia, commensurate with these rules;

(c) current permit holders would be grandfathered by New Mexico laws in effect at the time of original issue of their permit.

(2) The dentist maintains a properly equipped facility for the administration of deep sedation or general anesthesia in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(3) The office is staffed with supervised clinical auxiliary personnel capable of handling procedures, problems and emergencies incident thereto.

(4) The dentist and auxiliary clinical personnel have current basic life support certification.

(5) The patient's record shall reflect that the pre-operative patient evaluation, pre-operative preparation, monitoring recovery, discharge and documentation was performed in accordance with the current ADA guidelines for the use of conscious sedation, deep sedation and general anesthesia for dentists.

(6) The dentist passes the examination and receives approval after facility inspection by the anesthesia committee or designated examiner.

(7) The following rules shall apply to the administration of deep sedation/general anesthesia in the dental office.

(a) Administration of deep sedation/general anesthesia by another duly qualified dentist, physician or CRNA requires the operating dentist and his/her clinical staff to maintain current expertise in basic life support (BLS). The operating dentist shall ensure that the acting anesthetist is certified in advanced cardiac life support (ACLS), is duly licensed in New Mexico to provide anesthesia and is a member in good standing of the staff of an accredited New Mexico hospital. The operating dentist shall be responsible for notifying the anesthesia committee of the New Mexico board of dental health care of all anesthetists used.

(b) A dentist administering deep sedation/general anesthesia must document current, successful completion of an

advanced cardiac life support (ACLS) course, or an [~~equialent~~] equivalent as approved by the anesthesia committee.

(c) A dental facility utilizing dentist, [~~physcian~~] physician or CRNA anesthetists shall be registered with the board as a deep sedation/general anesthesia facility and the facility and staff shall be evaluated as such.

(d) The operating dentist must ensure that the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility, and the treatment of emergencies associated with the administration of deep sedation and general anesthesia, including immediate access to pharmacologic antagonists and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. Advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available. Appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

D. Anesthesia permit at large: This permit allows the holder to provide anesthesia services to patients in dental offices on an out-patient basis. The holder of the "anesthesia permit at large" assumes all responsibility for the administration of the sedation or anesthesia in the dental office.

(1) To hold an "anesthesia permit at large" a dentist must meet the requirements of Subsection C of 16.5.12 NMAC deep sedation/general anesthesia.

(2) The holder of a "permit at large" may be evaluated and inspected by the anesthesia committee as deemed necessary to assure safety to the public.

(3) The holder of such a permit agrees to have available at all times all monitors, emergency equipment, and other necessary drugs and materials when administering conscious sedation, deep sedation , and general anesthesia.

(4) The permit holder will inform the board of all dental facilities where anesthesia services are to be provided and follow all other [~~procedrues~~] procedures as outlined in Subsection C of [~~16.5.12~~] 16.5.15.12 NMAC, deep sedation/general anesthesia.

[16.5.15.12 NMAC - Rp, 16.5.15.12 NMAC, 3-17-05; A, 07-16-07]

16.5.15.15 PERMIT APPLICATION PROCEDURE:

A. Applications may be obtained from the board office. The completed application, accompanied by the required permit fee as defined in 16.5.5 NMAC, is forwarded to the anesthesia committee for evaluation.

B. Temporary permits: The anesthesia committee evaluates the application and identifies any additional information required. If the application appears to be in order, the anesthesia committee may recommend the board issue a temporary permit. Temporary permits allow time to complete processing of the application, administer the examination and inspect the facility.

(1) A dentist having a valid temporary dental license may apply for a CSI, CSII and deep sedation temporary anesthesia permit not to exceed the term of the first temporary license. After receipt of proper documentation, and at the discretion of the anesthesia committee or anesthesia designator, the application may be approved by the board at the next regular scheduled meeting.

[~~(1)~~] (2) The temporary permit shall not be valid for more than 12 months.

[~~(2)~~] (3) The permit application fee includes the cost of the temporary permit and the initial permit.

[~~(3)~~] (4) A temporary permit shall be revoked by the board on the following grounds:

(a) the applicant fails the anesthesia committee's examination;

(b) the applicant is found to be practicing outside the recognized standard of care in regard to administration of anesthesia;

(c) or the applicant fails to cooperate with the timely scheduling of the examination and facility inspection.

C. Examination/evaluation: The anesthesia committee will schedule the examination and facility inspection, when required, with the applicant. The anesthesia committee uses the American association of oral and maxillofacial surgeons office anesthesia evaluation manual as a guide for the examinations. Incomplete applications will be returned by the anesthesia committee to the board office with a clear indication of the deficient areas.

D. Final approval: After final evaluation of the application and examination results, the anesthesia committee recommends final action on the application to the board. The board makes the final determination on approval of the permit. If an application is denied for failure to meet the requirements of 16.5.15.10 NMAC of this part, the areas of non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.15 NMAC - Rp, 16.5.15.15 NMAC, 3-17-05; A, 07-16-07]

16.5.15.16 PERMIT EXPIRATION AND RENEWAL:

A. Expiration: Anesthesia permits are issued for six years from the last day of the month in which the initial permit was issued.

B. Renewal: Renewal applications will be sent to each dentist prior to the expiration date of the anesthesia permit. The completed application, along with the required fee must be returned to the board office prior to permit expiration. The permit renewal application will be forwarded to the anesthesia committee, which will schedule a re-examination for holders of conscious sedation II and general anesthesia permits.

C. Education requirements: Any holders of any permit level holding CSI, CSII, deep sedation and AAL are required to have a minimum of five hours of continuing education for the permit renewal for every six years in medical emergencies, air way management, pharmacology, or anesthesia related topics.

[~~C.~~] D. New facility evaluation: A dentist who holds a conscious sedation II or general anesthesia permit and who relocates his practice requires a new permit based on re-examination. The permit fee will be charged and the new permit will be issued in accordance with Subsection B or C of 16.5.15.12 NMAC.

[~~D.~~] E. Re-examination/evaluation: The board may require a re-examination or a re-evaluation of the credentials, facilities, equipment, personnel, and procedures of a permit holder to determine if the dentist is currently qualified to administer anesthesia. The board or its agents shall notify the dentist to be re-examined or re-evaluated 180 days in advance of permit expiration. The notification will indicate the content and format of the examination/evaluation.

[~~E.~~] F. Permit Expiration: Failure of a dentist to renew his license and permit, or to schedule a required office re-evaluation within thirty days of receipt of the notification, or failure on the part of the licensee to successfully complete the examination/evaluation, will cause the permit to expire.

G. Verification of continuing education: The board will select renewal application for verification of continuing education. Audit requests will be included with the renewal notice and those selected individuals will be asked to submit proof of compliance with the continuing education requirements. Continuing education records may be audited by the board at any time. The records identified in Subsection F of 16.5.1.15 NMAC are considered acceptable forms of documentation. Continuing education records must be maintained for one year following the renewal cycle in which they are earned. Additionally and at renewal time, holders of any permit level may be requested to demonstrate competency in maintenance of airway patency to the anesthesia committee, it's designated examiner or the board either on a "board

approved" simulator, or other device as may be acceptable to the board. There may be an announced audit of any permit holder by the anesthesia committee or by the board designated examiner during the permitted time for the purpose of demonstrating airway management and airway competency, either on the board designated model or other device approved by the board.

[16.5.15.16 NMAC - Rp, 16.5.15.16 NMAC, 3-17-05; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.16 NMAC Section 10 and 11, effective 07-16-07.

16.5.16.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action:

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

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

(2) failure to refer a patient, after emergency treatment, to his regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copies of that patient's records and x-rays;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience;

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply with the following advertising guidelines:

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

(b) shall include in the advertisement the dentist's name, address and telephone number;

(c) shall not advertise a practice specialty in a false, fraudulent or misleading manner; and

(d) shall not include a specialty in any advertisement unless the dentist has completed an ADA accredited residency program in the specialty advertised or is licensed by the board to practice the specialty;

(7) failure to use appropriate infection control techniques and sterilization procedures;

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

(9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;

(10) prescribe, dispense or administer drugs outside the scope of dental practice;

(11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;

(12) sexual misconduct;

(13) breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American dental association;

(14) the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;

(15) employing abusive billing practices;

(16) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(17) violation of any order of the board, including any probation order;

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

(19) failure to report to the board the surrender of a license to practice in another state or surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(20) negligent supervision of a dental hygienist or dental assistant;

(21) cheating on an examination for licensure; or

(22) failure to comply with the terms of a signed collaborative practice agreement;

(23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care under part 17 of these rules;

(24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(25) failure to make available to patients a method to contact the treating dentist or other licensed dentist or emergency agency, when the dentist is not available for patient emergencies[~~.~~];

(26) conviction of either a misdemeanor (exclusive of traffic tickets) or a felony punishable by incarceration.

[9-13-69, 10-21-70, 4-11-81, 3-9-89, 3-11-89,10-16-92, 5-31-95, 6-4-96, 2-14-00; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12-14-00; A, 07-16-07]

16.5.16.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the board is authorized to issue [~~pre-Notice of Contemplated Action~~] notice of contemplated investigative subpoenas and to employ experts with regard to pending investigations.

[5-31-95; 16.5.16.11 NMAC - Rn, 16 NMAC 5.16.11, 12-14-00; A, 07-16-07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.32 NMAC Section 8, effective 07/16/07.

16.5.32.8 FEES:

A. all fees are non-refundable;

B. application fee: $25.00;

C. examination fee not to exceed $100 per exam;

D. triennial renewal fee: $45.00;

E. late penalty fee: $25.00;

F. duplicate certificate fee: $10.00;

G. list of current certificate holders: [~~$100~~] $250; an annual list of current certificate holders is available to the professional association upon request at no cost;

H. labels of current certificate holders: [~~$150~~] $300;

I. reinstatement fee: $15.00; and

J. DXTR rental fee, per day: $15.00.

[9/7/84, 3/7/88, 4/12/92, 5/31/95, 9/30/96; 16.5.32.8 NMAC - Rn, 16 NMAC 5.32.8, 04/17/06; A, 07/16/07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.33 NMAC Sections 8, 9 and 12, effective 07-16-07.

16.5.33.8 REQUIREMENTS:

A. A licensee shall not allow dental assistants to perform oral radiography under any level of supervision that are not certified or in authorized training by the New Mexico board of dental health care (NMBODHC);

B. A licensee shall not allow dental assistants to perform coronal polishing, topical fluoride application, or application of pit and fissure sealants under general supervision without certification by the NMBODHC;

C. Dental assistants who perform oral radiography under any level of supervision are required to be certified by the NMBODHC. Dental assistants who perform coronal polishing, application of topical fluoride or, application of pit and fissure sealants both intra and extra oral radiography under general supervision are required to be certified by the NMBODHC except those enrolled in a recognized dental assisting program and complying with the following:

(1) have completed the didactic portion of the radiography curriculum;

(2) are exposing radiograph with supervision of a licensee or an assistant certified in radiography; and

(3) if exposing x-rays on a human must have a written prescription from a dentist.

D. Expanded function certification offered by the NMBODHC is distinct from certification offered by DANB. DANB certification gives the individual the right to use the initials C.D.A after their name, but does not qualify the individual to perform expanded functions without being certified by the NMBODHC.

[9-7-84...9-30-96; 16.5.33.8 NMAC - Rn, 16 NMAC 5.33.8, 12-14-00; A, 3-29-02; A, 9-30-02; A, 12-30-02; A, 03-06-05; A, 07-16-07]

16.5.33.9 EDUCATION AND EXAMINATION REQUIREMENTS FOR DENTAL RADIOGRAPHY:

A. Education Requirements:

(1) study by independent preparation or in a training course on radiation health and safety within the past 36 months; and

(2) have assisted with and/or observed five (5) cases of full mouth intra oral radiographic series or five (5) extra oral radiographs if applying for a limited certificate.

B. Examination Requirements:

(1) Pass the NMBODHC or DANB written examination on radiation health and safety. Evidence of successful completion shall be posted in the dental office or dental assisting school and will serve as a training permit for six months from the date of examination.

(2) Pass the technique test demonstrating proficiency in the exposure of a full-mouth intra oral radiographic series or panoramic film as established by the NMBODHC.

(3) If an applicant chooses to provide only a panoramic film the certificate holder is limited to taking only extra oral films.

(4) The technique test will be taken on a phantom or human patient. The applicant shall expose a full mouth intra oral radiographic series of radiographs, or a panoramic film, develop, mount, and label the films. The exam must be done independently and submitted to the NMBODHC office with an affidavit signed by the dentist, dental hygienist, or dental assistant certified in radiography attesting to the independent exam. The radiographs must be of diagnostic quality and will be graded by at least two board or committee members and serve as the technique test required for certification.

(5) Pass the take home jurisprudence examination.

C. Exemptions:

(1) A dental hygiene student enrolled in an accredited school of dental hygiene who having passed a curriculum in dental radiography, may be granted a certificate to expose radiographs without an examination.

(2) A dental assistant certified to perform dental radiography in another state with requirements not less stringent than those in New Mexico may be certified based on credentials.

[9-7-84, 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.9 NMAC - Rn & A, 16 NMAC 5.33.9, 12-14-00; 16.3.33.9 NMAC - A, 2-28-02; A, 12-30-02; A, 03-06-05; A, 07-16-07]

16.5.33.12 REQUIRED DOCUMENTATION: Each applicant for an expanded function dental assistant certificate must submit to the NMBODHC or its agent the required fees and following documentation.

A. Completed application with a passport quality photo taken within 6 months affixed to the application and the completed jurisprudence take home exam. Applications are valid for 1 year from the date of receipt;

B. Dental Radiography:

(1) proof of passing the NMBODHC or DANB written examination on radiation health and safety;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in radiography verifying the applicant has:

(a) assisted with and/or observed five (5) cases of full-mouth intra oral radiographic series or five (5) panoramic films if applying for a limited certification; and

(b) that upon reaching competency, the applicant independently exposed the radiographs submitted for technique examination;

(3) the completed full mouth intra oral radiographic series or a panoramic film as required for the technique exam described in 16.5.33.9 of these rules;

C. Rubber cup coronal polishing and application of topical fluoride:

(1) proof of passing the NMBODHC or DANB written examination for rubber cup coronal polishing and application of topical fluoride;

(2) an affidavit from a supervising dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing and topical fluoride application that the applicant has:

(a) assisted with and/or observed five (5) cases of rubber cup coronal polishing on adults and/or children and five (5) applications of topical fluoride on children; and

(b) while being personally observed by a dentist, dental hygienist, or dental assistant certified in rubber cup coronal polishing, application of topical fluoride provided rubber cup coronal polishing on five (5) adults and/or children; and, provide applications of topical fluoride five (5) children.

D. Pit and Fissure Sealants:

(1) Proof of passing the NMBODHC approved examination on application of pit and fissure sealants.

(2) An affidavit from a supervising dentist or dental hygienist verifying that the applicant has:

(a) assisted with and/or observed placement of twelve (12) pit and fissure sealants; and

(b) while being personally observed by a dentist or dental hygienist, the applicant successfully place pit and fissure sealants on six (6) patients.

(3) Proof of 2080 hours of chair side dental assisting experience within two years immediately prior to application for certification.

(4) The completed jurisprudence exam.

[9-30-96, 1-1-98, 2-14-00; 16.5.33.12 NMAC - Rn, 16 NMAC 5.33.12, 12-14-00; 16.5.33.12 NMAC - Rn, 16.5.33.13 NMAC & A, 12-30-02; A, 07-16-/07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.36 NMAC Section 9, effective 07/16/07.

16.5.36.9 COURSES REQUIRED: Continuing education coursework must contribute directly to the practice of dental assisting. The following courses are required for license renewal:

A. three hours of radiographic technique or safety and protection;

B. as further defined in [~~Section 16 of Part 1~~] 16.5.1.16 NMAC, a course in infection control techniques and sterilization procedures per renewal period; and

C. [~~CPR.~~] proof of current certification in basic life support accepted by the American heart association or the American red cross; dental assistants who provide prescribed administration of nitrous oxide, or who monitor the use of any analgesia or anesthesia shall have current basic life support certification.

[8/11/89, 5/21/93, 5/31/95, 9/30/96; 16.5.36.9 NMAC - Rn & A, 16 NMAC 5.36.9, 04/17/06; A, 07/16/07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.37 NMAC Section 9, effective 07/16/07.

16.5.37.9 REINSTATEMENT OF REVOKED CERTIFICATE: Within one year of the revocation notice, the certificate may be reinstated by payment of renewal, late and reinstatement fees, compliance with continuing education for the previous renewal cycle and for the year of the revocation. Applicants for reinstatement after one year of revocation must reapply as a new applicant and meet all requirements for initial certification.

A. Applicants for reinstatement must provide verification of licensure in all states where the applicant holds or has held a license to practice dental assisting, or other health care profession within the previous year. Verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form.

B. Upon receipt of a completed reinstatement of revoked license application, including all documentation and fees, the secretary-treasurer or delegate of the board, will review and may approve the application. The board may formally accept the approval of the application at the next scheduled meeting.

[5/31/95, 9/30/96, 1/1/99; 16.5.37.9 NMAC - Rn, 16 NMAC 5.37.9, 04/17/06; A, 07/16/07]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.40 NMAC Sections 10 and 11, effective 07/16/07.

16.5.40.10 GUIDELINES: The board shall define the following as guidelines for disciplinary action: "unprofessional conduct" means, but is not limited to because of enumeration:

A. performing, or holding oneself out as able to perform, professional services beyond the scope of ones certification and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument, device or material in a manner that is not in accordance with the customary standards and practices of dental assisting;

B. sexual misconduct;

C. failure to use appropriate infection control techniques and sterilization procedures;

D. fraud, deceit or misrepresentation in any renewal or reinstatement application;

E. cheating on an examination for expanded function certification;

F. performing any procedure which requires certification unless so certified; and

G. injudicious administration of any drug or medicine[~~.~~];

H. conviction of either a misdemeanor (exclusive of traffic tickets) or a felony punishable by incarceration.

[10/16/92, 8/15/95, 9/30/96; 16.5.40.10 NMAC - Rn, 16 NMAC 5.40.10, 04/17/06; A, 07/16/07]

16.5.40.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the board is authorized to issue [~~pre-~~] notice of contemplated action investigative subpoenas and to employ experts with regard to pending investigations.

[8/15/95; 16.5.40.11 NMAC - Rn, 16 NMAC 5.40.11, 04/17/06; A, 07/16/07]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

FORESTRY DIVISION

This is an amendment to 19.20.4 NMAC, Sections 5 through 10 and 12 through 15. The effective date is 6/29/2007.

19.20.4.5 EFFECTIVE DATE: January 1, 2002, unless a [~~different~~] later date is cited at the end of a section.

[19.20.4.5 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.6 OBJECTIVE: [~~The objective of this part~~] 19.20.4 NMAC's objective is to require appropriate harvesting practices of commercial forest species be conducted in a manner that supports forest practices that [~~to~~] assist in forest fire prevention and suppression and the control of forest pests, and [~~to~~] maintain and enhance forest health to ensure the continued economic benefits of forests and forest resources to New Mexico.

[19.20.4.6 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.7 DEFINITIONS:

A. **"**Act" means the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25.

B. "Alternate practice" means a forest practice standard used in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC. [~~A~~] The applicant may request to use an alternate practice [~~may be made~~] in the harvest permit application or [~~requested later by the permittee~~] at a later time. [~~and~~] The alternate practice is not effective until [~~approved by the division in writing~~] the division provides written approval.

C. "Applicant" [~~is~~] means the owner.

D. "Basal area" means the cross sectional area of the stem at diameter at breast height or at diameter at root collar of all trees in a stand, generally expressed as square units per unit area (*e.g.* square feet per acre).

[~~D~~] E. "Cessation of harvest activities" means absence of [~~any~~] harvesting within a cutting unit for six consecutive days.

[~~E~~] F. "Closed road" means a road constructed for the harvest that will be closed upon the harvest's completion.

[F] G. "Commercial forest species" means:

[~~SCIENTIFIC NAME~~ ~~COMMON NAME~~

~~Abies concolor~~ ~~white fir~~

~~Abies lasiocarpa~~ ~~corkbark fir/subalpine fir~~

~~Picea engelmannii~~ ~~Engelmann spruce~~

~~Picea pungens~~ ~~Colorado blue spruce~~

~~Pinus aristata~~ ~~bristlecone pine~~

~~Pinus ponderosa~~ ~~ponderosa pine~~

~~Pinus flexilis~~ ~~limber pine~~

~~Pinus strobiformis~~ ~~southwestern white pine~~

~~Populus tremuloides~~ ~~quaking aspen~~

~~Pseudotsuga menziesii~~ ~~Douglas-fir~~]

SCIENTIFIC NAME	COMMON NAME
Abies concolor	white fir
Abies lasiocarpa	subalpine fir
Abies lasiocarpa var. arizonica	corkbark fir
Cupressus arizonica	Arizona cypress
Picea engelmannii	Engelmann spruce
Picea pungens	Colorado blue spruce
Pinus aristata	bristlecone pine
Pinus arizonica	Arizona pine
Pinus engelmannii	Apache pine
Pinus flexilis	limber pine
Pinus leiophylla	Chihuahuan pine
Pinus ponderosa	ponderosa pine
Pinus strobiformis	southwestern white pine
Populus tremuloides	quaking aspen
Pseudotsuga menziesii	Douglas-fir
Quercus spp.	oak species when in tree form or when harvested with other commercial forest species

[G] H. "Construction project" includes clearing of right of ways for utilities, pipelines, fences or roads, except for roads facilitating harvesting of commercial forest species; clearing for construction of residences or businesses with an approved building permit; or clearing related to the development of other regulated industries such as mining or landfills.

[H] I. "Continuing violation" means that a permittee or responsible person or entity has received a notice of deficient condition and has failed to take corrective action.

[I] J. "Contract harvester" means [~~any~~] a person or entity, other than the owner or [~~his~~] the owner's direct employees, harvesting commercial forest species.

[J] K. "Contractor" means a person or entity that the applicant or permittee has reached an agreement with to harvest or purchase commercial forest species.

[K] L. "Cutting unit" means an area within the forest harvest practice plan not exceeding 300 forested acres. The designation of each unit is based on the topography of the area to be harvested, the number of persons to be engaged in the harvest, transportation, climate and other relevant factors. [~~Any~~] The applicant shall divide an area larger than 300 forested acres [~~should be divided~~] into two or more cutting units, unless the division determines that a larger area is appropriate because of the topography, equipment or the harvest's objectives [~~of the harvest~~] and number of persons to be participating in harvest activities.

[L] M. "Damaged trees" means trees over three feet in height not intended for harvest that, as a result of the harvest, are damaged or knocked down to the extent that mortality or serious deterioration is likely to occur or partially pushed over so as to result in permanent lean or visible damage to the root system.

[M] N. "Deficient condition" means [~~any~~] a harvest activity not in conformance with the act, [~~this part~~] 19.20.4 NMAC or a harvest permit. It also means the failure to have statements of understanding for each person or entity conducting major harvest activities.

O. "Diameter at breast height" means the tree's outside bark diameter measured at four and one half feet above the forest floor on the tree's uphill side. For the purposes of determining breast height, the forest floor includes the duff layer that may be present, but does not include unincorporated woody debris that may rise above the ground line.

P. "Diameter at root collar" means the diameter of the tree's trunk measured outside the bark at ground level.

[N] Q. "District forester" [~~is~~] means the supervisory forester of one of the six district offices located in Bernalillo, Capitan, Chama, Cimarron, Las Vegas and Socorro.

[O] R. "Division" means the [~~forestry division of the~~] New Mexico energy, minerals and natural resources department, forestry division or forestry division personnel.

[P] S. "Erosion control measure"[~~is~~] means a method of reducing soil erosion including seeding, using mulch or slash for ground cover, reducing slope of roads and skid trails, installing water bars, crowning roads, outsloping roads, dipping roads with lateral relief ditches, culverts and avoidance of excessive slopes.

[Q] T. "Evidence of ownership" means a deed or other document, recorded with the county clerk in the county where the commercial forest species are located, containing a property description [~~of the property~~] included in the harvest permit application evidencing ownership of the land surface [~~of the land~~] or the right to control the land including harvesting commercial forest species, or a timber deed including the commercial forest species subject to the harvest permit application. [~~All documents must be recorded with the county clerk in the county where the commercial forest species are located.~~] Evidence of ownership does not include commercial forest species purchased through a contract, purchase agreement or similar document that indicates that [~~ownership of~~] the commercial forest [~~species~~] species' own-

ership will transfer after the trees are harvested.

[R] U. **"**Excessive slope" means a slope of more than 40 percent over a ground distance of 80 yards or more.

V. "Felling equipment" means equipment used to sever the tree stem from its stump such as chainsaws, feller-bunchers and harvesters.

W. "Firewood" means any part or portion of a tree that has been cut and removed from its original location and is to be used for heating or cooking in an open pit, grill, fireplace or stove. Firewood does not mean wood that is used in biomass facilities to create electricity or thermal heat or wood that is used to create ethanol.

X. "Forest" means an area of at least one acre with at least 10 percent tree crown cover.

[S] Y. "Gully erosion" means erosion caused by water accumulating in narrow channels and removing the soil from the channel to depths of one foot or more and that carries sediment downstream.

[T] Z. "Harvest or harvesting" means [~~any and all~~] activities related to removing a commercial forest species or its products from [~~its natural state~~] the property where the activities are occurring, including [~~, but not limited to~~]: constructing haul roads and skid trails; cutting and severing, [~~or~~] pushing over, plucking, chipping or masticating standing trees; skidding or [~~removal of~~] removing trees to landings; transporting [~~harvest~~] the tree or wood products from the cutting site or landing; installing erosion control measures; or supervising or directing such activities. Harvest or harvesting does not mean digging commercial forest species that are planted and cultivated for balled and burlap stock, landscaping or live Christmas trees; or removal by any means during maintenance, renovation or removal of a windbreak.

[U] AA. "Harvest permit" means the harvest permit application, the forest harvest practice plan and the harvest permit approval letter.

[V] BB. "Intermittent watercourse" means a stream or reach of stream, as shown on a United States geological survey 1:24000 scale topographic map or as otherwise identified on the property by the division or the owner, that [~~has a defined stream channel, that flows~~] contains water only at certain times of the year, such as when it receives flow from springs, melting snow or [~~localized~~] precipitation.

[W] CC. "Lake" means an inland body of freshwater, but does not include stock ponds or windmills.

[X] DD. "Landowner" means [~~any~~] a person or entity, or [~~his~~] the person or entity's agent, owning or having a right to control the surface of the land where the commercial forest species to be harvested are located.

[Y] EE. "Lateral yarding distance" means the maximum distance perpendicular to each side of a cable within which a log can be attached for yarding.

[Z] FF. "Leave trees" means those trees to be left in the cutting unit after the harvest is completed.

[AA] GG. "Long butting" means the cutting of a portion of the main stem that does not meet the utilization standards provided in Subsection H of 19.20.4.9 NMAC.

HH. "Lop and scatter" means a hand method of removing the upward-extending branches from tops of felled trees to keep slash low to the ground, to increase the decomposition rate, to lower the fire hazard or as a pretreatment prior to burning.

[BB] II. "Major harvest activity" means felling trees; skidding or yarding; and construction of roads, skid trails and landings.

JJ. "Mineral soil" means the portion of the soil immediately below the litter and duff layers.

[CC] KK. "Multiple cutting unit permit" means a harvest permit for an area with two or more designated cutting units.

LL. "Municipal lands" means the territory a municipality has incorporated or annexed pursuant to NMSA 1978, Sections 3-2-1 *et seq*., Sections 3-3-1 *et seq*. or Sections 3-7-1 *et seq*.

[DD. ~~"Non-forest-type area" means an area of at least one acre with less than 10 percent tree crown cover.~~]

MM. "Noxious weed" means a plant species that is not indigenous to New Mexico and that has been targeted pursuant to the Noxious Weed Management Act, NMSA 1978, Section 76-7D-1 *et seq.* for management or control because of its negative impact on the economy or the environment.

[EE] NN."Owner" means the landowner, unless there is a timber deed owner who owns the commercial forest species that are the subject of the harvest permit application. Then the timber deed owner is the owner.

[FF] OO."Perennial watercourse" means a stream or river, or reach of a stream or river, as shown on a United States geological survey 1:24000 scale topographic map or as otherwise identified on the property where the harvest will occur by the division or the owner, that [~~has a defined stream channel or river bed, that flows~~] contains water continuously throughout the years in all years; its upper surface, generally, is lower than the water table of the region adjoining the stream or river.

[GG] PP."Permittee" means [~~any~~] an owner [~~issued a harvest permit by the division~~] to whom the division issues a harvest permit.

[HH] QQ. "Personal delivery" means delivery to the individual personally; or if the individual is absent, delivery to a person residing at the individual's usual residence who is over the age of 15 years.

[II] RR. "Public road" means a highway or road open for public motor vehicle access including federal highways, state highways, state roads, county roads and United States forest service roads.

[JJ] SS. "Pre-commercial thinning" means thinning that is made as an investment in the future growth of a stand of trees where the owner does not sell or exchange for service the [~~felled~~] utilized trees [~~are not sold~~].

[KK] TT. **"**Responsible person or entity" [~~is any~~] means a person, partnership, corporation, association or other entity, other than the owner, required to sign a statement of understanding or, when Subsection A of 19.20.4.8 NMAC does not require a harvest permit, that have an active role in major harvest activities or a management role that may impact the harvest.

[LL] UU."Rill erosion" means erosion that cuts a number of small channels less than one foot in depth into the soil by water moving over and concentrating in low places in the soil surface.

[MM] VV. "Rub tree" means a tree used as a pivot in cable yarding or on skid trails to protect the remaining trees during extraction.

[NN] WW. "Silviculture" [~~is~~] means the theory and practice of controlling forest establishment, composition, growth or harvesting.

[OO] XX. "Skid trail" means a path built for log skidding or caused by [~~the use of skidding equipment~~] skidding equipment's use.

[PP] YY **"**Slash" means [~~all~~] branches, boughs or pieces of a tree's main stem severed[~~, chipped,~~] or damaged as a result of the harvest.

[QQ] ZZ. "State forester" [~~is~~] means the director of the [~~forestry division of the~~] energy, minerals and natural resources department, forestry division or [~~his~~] the state forester's designee.

[RR] AAA. "Statement of understanding" means the statement that [~~all~~] persons, partnerships, corporations, associations or other entities that have an active role in major harvest activities or a management role that may impact the har-

vest [~~must~~] shall sign verifying that they are aware that they must comply with the act, [~~this part~~] 19.20.4 NMAC and the harvest permit. A supervisor of a business entity conducting harvest activities may sign a statement of understanding accepting responsibility for the entity's employees [~~of the entity~~] performing major harvest activities.

[~~SS~~] BBB. "Streamside management area" means the area near a lake, perennial or intermittent watercourse or a wetland designated for special protection in the forest harvest practice plan.

[~~TT~~] CCC. "Timber deed owner" means the owner of a timber deed recorded with the county clerk in the county where the commercial forest species are located. It does not include a person, corporation, partnership or other entity that has agreed to purchase commercial forest species through a contract, purchase agreement or similar document with title to be transferred after the trees are harvested.

DDD. "Tree" means a woody perennial plant usually having a single main stem generally with few or no branches on its lower part; however, species such Gambel oak (quercus gambelii) and one seed juniper (juniperus monosperma) may be multi-stemmed and species such as fir (abies), spruce (picea) and juniper (juniperus) may have many branches on the stem's lower part.

[~~UU~~] EEE. "Utilization" means the removal of trees, tree stems or portions of trees from areas within the harvest permit boundaries.

[~~VV~~] FFF. "Water bar" means a drainage structure such as a ditch, mounded earth or staked log installed [~~on~~] across the entire width of a road or skid trail at an approximate 30-degree downslope angle that diverts water runoff into adjacent undisturbed areas.

[~~WW~~] GGG. "Wetland" means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico.

[~~XX~~] HHH. "Working days" means Monday through Friday, excluding state holidays.

[19.20.4.7 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.8 HARVEST PERMITS:

A. ACTIVITIES REQUIRING HARVEST PERMITS: An owner [~~must~~] shall obtain a harvest permit before [~~any~~] harvest activities, except those listed in Subsection B of 19.20.4.8 NMAC, are conducted in the following circumstances:

(1) harvests [~~by an owner~~] in an area of 25 acres or more of forest, or a combination of areas totaling 25 acres or more of forest in [~~any~~] a calendar year if the harvest sites are on the same or adjacent property; or

(2) harvests [~~by an owner~~] in an area of less than 25 acres of forest in one calendar year if:

(a) the owner has been convicted of a criminal violation associated with harvest activities within the previous three years; or

(b) the owner is contracting with or employing a person or entity on the harvest that has been convicted of a criminal violation associated with harvest activities within the previous three years.

B. ACTIVITIES NOT REQUIRING HARVEST PERMITS: [~~Harvest permits are not required~~] Owners are not required to obtain a harvest permit for:

(1) cutting firewood for personal use;

(2) cutting firewood for sale in compliance with 19.20.4.9 NMAC on up to 75 acres of forest in a calendar year or a combination of areas totaling up to 75 acres or more of forest in a calendar year if the harvest sites are on the same or adjacent property;

(3) cutting Christmas trees;

(4) pre-commercial thinning conducted in compliance with 19.20.4.9 NMAC;

(5) harvest activities related to construction projects such as pipeline or powerline installation or maintenance, construction [~~when~~] pursuant to a building permit [~~is issued~~], fence building or construction of roads unrelated to harvest activities;

(6) [~~or~~] clearing for defensible space within [~~one hundred~~] 100 feet of a building;

(7) harvests for wildland urban interface projects or hazardous fuel reduction projects if conducted pursuant to a contract with the energy, minerals and natural resources department that requires compliance with 19.20.4.9 NMAC;

(8) harvests conducted under a division funded or administered landowner assistance program in compliance with 19.20.4.9 NMAC; or

(9) rangeland or meadow restoration performed according to a conservation plan reviewed by a soil and water conservation district and conducted in compliance with 19.20.4.9 NMAC where the owner does not sell or exchange for services the trees that are harvested during the restoration or the resulting wood products.

C. APPLICATION FOR HARVEST PERMIT:

(1) An owner [~~must~~] shall file an application for a harvest permit in the district office in the district where the harvest will take place for approval at least 30 calendar days before the proposed harvest is to start. [~~Harvest activities may begin~~] The owner may begin harvest activities when the division issues the harvest permit and the permittee or responsible person or entity gives appropriate notification [~~is given~~].

(2) The harvest permit application [~~must~~] shall include the following, if applicable:

(a) the owner's name;

(b) a legal description of the land where the harvest will occur;

(c) sale name [~~of the sale~~];

(d) evidence of ownership;

(e) the owner's mailing address (if the commercial forest species to be harvested are owned under a timber deed, the harvest permit application [~~must~~] shall include names and mailing addresses of both the timber deed owner and the landowner);

(f) the owner's e-mail address, if available (if the commercial forest species to be harvested are owned under a timber deed, the harvest permit application shall include e-mail addresses of both the timber deed owner and the landowner);

[**~~(f)~~**] **(g)** the names, [~~and~~] mailing addresses and, if available, e-mail addresses of persons or entities that will directly manage the harvest;

[**~~(g)~~**] **(h)** the time schedule for harvesting (*i.e.* beginning and ending dates);

[**~~(h)~~**] **(i)** if the commercial forest species to be harvested are owned under a timber deed, the timber deed owner [~~must~~] shall consult with the landowner about the land management goals and objectives included in the forest harvest practice plan; the landowner [~~must~~] shall approve [~~any~~] roads constructed for the harvest that will not be closed at the end of the harvest;

[**~~(i)~~**] **(j)** statements of understanding;

[**~~(j)~~**] **(k)** a forest harvest practice plan; and

[**~~(k)~~**] **(l)** the owner's signature and the date of application.

D. FOREST HARVEST PRACTICE PLAN: The forest harvest practice plan [~~must~~] shall include the following information:

(1) Harvest Description: The harvest description shall include the following:

(a) a description of the current stand condition including types of tree species, any insect and disease occurrence and the stocking level (*e.g.*, an estimate of trees per acre or square feet of basal area and average diameter [~~of the trees~~] at breast height or diameter at root collar, or green tons per acre, as applicable);

(b) the owner's land management

goals and harvest objectives [~~for the harvest~~] such as forest management, forest production, [~~elk~~] wildlife habitat, dwarf mistletoe control, improved forage for wildlife or livestock or type conversion; the division [~~will~~] shall consider a forest harvest practice plan inadequate unless it contains a silviculturally sound method of achieving the described land management goals and objectives that complies with the act and [~~this part~~] 19.20.4 NMAC;

(c) the harvest permit boundaries and cutting units to be established as shown on a United States geological survey topographic map [~~of no smaller scale~~] with a scale no larger than 1:24000 (*e.g.*, 7.5 minute quadrangle);

(d) the access route to and from the harvest permit area to a public road;

(e) identification of [~~any~~] excessive slopes located within the cutting unit;

(f) identification of [~~any~~] lakes, perennial or intermittent watercourses or wetlands located within the cutting unit on a United States geological survey topographic map [~~of no smaller scale~~] with a scale no larger than 1:24000;

(g) a description of the proposed harvest method such as seed tree, shelterwood, single tree or group selection or patchcut;

(h) a description of the equipment [~~to be used~~] the permittee or responsible person or entity will use during the harvest such as chainsaw, feller-buncher, skidder, [~~or~~] delimber, plucker, forwarder or chipper;

(i) the residual stand condition including types of tree species and an estimate of trees per acre and the trees' average diameter [~~of the trees~~] at breast height, or, if applicable, diameter at root collar; if the harvest method is a patchcut a description of the size of the area to be harvested, by length and width, and the [~~height of the adjacent stand must be included~~] adjacent stand's height; and

(j) a description of the regeneration method such as natural regeneration, natural seeding or vegetative reproduction, or artificial regeneration, planting, reasonably calculated to ensure adequate forest regeneration if [~~this~~] forest regeneration is the land management objective; if artificial regeneration is to be used the description shall include: when the planting will occur, the tree species to be planted, the seed source of the seedlings, the number of seedlings to be planted per acre, the method of seedling protection and site preparation.

(2) Erosion Management: Description of the erosion management measures that [~~will be taken~~] the permittee or responsible person or entity will take to comply with Subsection D of 19.20.4.9 NMAC.

(3) Skid Trails: Description of how the permittee or responsible person or entity will treat skid trails and landings [~~will be treated~~] to control erosion and comply with Subsection E of 19.20.4.9 NMAC.

(4) Roads: Description of road location, road erosion control measures and post-harvest maintenance or closure. The description shall contain sufficient detail to indicate compliance with Subsection F of 19.20.4.9 NMAC. If a road will be closed after harvest, the description [~~must~~] shall identify the closure method and erosion control measures.

(5) Streamside Management Area: Description of the streamside management area designating the area to be included and describing the measures that [~~will be taken~~] the permittee or responsible person or entity will take to comply with Subsection G of 19.20.4.9 NMAC. If an existing road is located within a streamside management area, the applicant shall include a description of the road's location [~~shall be included~~].

(6) Slash Treatment: Description of the means of treating slash, such as [~~chipping,~~] lop and scattering or pile burning, to comply with Subsection I of 19.20.4.9 NMAC.

(7) Fire: Description of the precautions [~~that will be taken~~] the permittee or responsible persons or entities will take during the harvest and the modifications to harvesting operations [~~to be taken~~] they will take during periods of high, very high and extreme fire danger. Description of how the permittee or responsible person or entity will react to [~~any~~] a fire caused by harvest activities including the equipment that the permittee or responsible person or entity will locate on the harvest site and use if a fire starts and notice to local fire departments and the division. Additionally, if [~~the slash will be burned~~] the permittee or responsible persons or entities will burn slash, a description of whether [~~the slash will be broadcast or pile burned~~] they will broadcast or pile burn the slash and the precautions that [~~will be taken~~] they will take when the burning occurs. Precautions shall include obtaining [~~any~~] necessary permits for burning and notifying the local governments and fire departments prior to burning.

(8) Excessive Slopes: Description of how the permittee or responsible person or entity will meet forest harvest practices standards [~~will be met~~] on [~~any~~] excessive slopes.

E. HARVEST PERMIT ISSUANCE OR DENIAL:

(1) Within 30 calendar days after receipt of the harvest permit application, the division shall either:

(a) issue a harvest permit approval letter including such conditions or recommendations as the division may deem necessary provided the harvest permit application contains the information required by Subsections C and D of 19.20.4.8 NMAC, the applicant has submitted the statements of understanding [~~have been submitted~~] and the planned harvest is expected to comply with the act and [~~this part~~] 19.20.4 NMAC; or

(b) deny the harvest permit application in writing for [~~any of~~] the following reasons:

(i) the harvest permit application does not contain the information required by Subsections C and D of 19.20.4.8 NMAC;

(ii) the applicant is not the owner or the holder of a power of attorney or other authority sufficient to make decisions affecting the commercial forest species subject to the harvest permit application;

(iii) a material misrepresentation or false statement is included in the harvest permit application;

(iv) the proposed harvest would not comply with the act or [~~this part~~] 19.20.4 NMAC; or

(v) the applicant or contractor currently has a continuing violation.

(2) If the division denies the harvest permit application, the applicant may provide additional information to complete the harvest permit application or revise the harvest permit application to comply with the forest harvest practices standards. The applicant shall submit the additional information or revisions for reconsideration. If the division finds that the additional information or revisions correct the defects in the harvest permit application it shall issue the harvest permit. The division shall either issue the harvest permit or uphold the denial of the harvest permit application within 30 calendar days after receiving the additional information or revisions.

(3) When the division issues a harvest permit [~~is issued~~] to a timber deed owner, the division shall provide a copy of the harvest permit to the landowner by first class mail or personal delivery.

F. STATEMENTS OF UNDERSTANDING:

(1) [~~Any~~] A person, partnership, corporation, association or other entity that has an active role in major harvest activities or a management role that may impact the harvest [~~must~~] shall sign a statement of understanding in a form provided and developed by the division. This includes the owner, the owner's direct employees [~~of the owner~~], consultants involved in the harvest, contract harvesters and [~~any~~] other contractors or subcontractors.

(2) Anyone who must sign the harvest permit application or a statement of

understanding shall comply with the act, [~~this part~~] 19.20.4 NMAC and the harvest permit. A supervisor of a business entity may sign a statement of understanding for the [~~employees of the business entity~~] business entity's employees if the supervisor accepts responsibility for the employees' actions [~~of the employees~~]. Failure to keep statements of understanding current with the participation of new personnel or entities may result in violations or permit revocation.

(3) The statement of understanding [~~will be a from provided by the division~~] shall be a division-provided form that includes:

(a) information identifying the person signing the statement such as name; birth date; social security, federal tax identification number or driver's license number; address and telephone number and, if applicable, [~~his~~] the person's authority to sign for a partnership, corporation, association or other entity; [~~his~~] the person's own employees; or the partnership, corporation, association or other entity's employees;

(b) the signature of the person signing the statement and date; and

(c) a statement that the person is aware that [~~he~~] the person must comply with the act, 19.20.4 NMAC and the harvest permit and [~~will~~] shall be accountable as provided for in 19.20.4 NMAC for such compliance and acknowledges that [~~he~~] the person has read and understands the requirements of 19.20.4 NMAC and the harvest permit; if a person is signing on behalf of partnership, corporation, association or other entity, a statement that the entity is aware that it must comply with the act, 19.20.4 NMAC and the harvest permit and [~~will~~] shall be accountable as provided for in 19.20.4 NMAC for such compliance; if a person is signing on behalf of [~~his~~] the person's employees or a partnership, corporation, association or other entity's employees, a statement that the person is aware that [~~he~~] the person is accepting responsibility for [~~his~~] the person's own employees or the entity's employees and [~~will~~] shall be accountable for the employees' compliance with 19.20.4 NMAC and the harvest permit.

G. PERMIT REVISIONS:

(1) The division may order revision of a harvest permit if it appears, after inspection, that the land management goals and objectives are not being met, if deficient conditions are occurring or if there are mistakes in the harvest permit.

(2) The owner may request revision of the harvest permit if there are mistakes in the harvest permit, ownership will change or other conditions make changes appropriate. The owner shall revise the permit during the harvest as needed to keep it current with operations.

(3) The owner may request the division revise the harvest permit [~~be revised~~] to include additional acreage if the acreage is located in an area that is adjacent to or in close proximity to the area included in the current harvest permit, the land management goals and objectives and the proposed harvest operation are similar to those in the current harvest permit, the cover type is the same as the cover type in the current harvest permit and the same roads will be used to access the harvest area.

(4) The division shall approve or deny the owner's request for revision of the harvest permit within 30 calendar days after the request's receipt [~~of the request~~].

H. HARVEST PERMIT EXTENSIONS: When unforeseen circumstances beyond the permittee's control prevent completion of the harvest or a portion of the harvest activities as required by [~~this part~~] 19.20.4 NMAC within the time limits provided in the harvest permit, the division may, upon the permittee's written request, grant in writing additional time for completion of the harvest not to exceed one year. The division may grant no more than [~~two~~] three such extensions [~~may be granted~~].

I. NOTIFICATIONS: A permittee or responsible person or entity shall inform the division prior to or, in no case later than 48 hours following the event, either by telephone, in person or in writing of the following actions taken under the harvest permit:

(1) commencement or completion of major harvest activities in [~~any~~] a cutting unit; or

(2) when a unit is complete and the permittee is requesting the unit be closed.

[19.20.4.8 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.9 FOREST HARVEST PRACTICES STANDARDS:

A. APPLICABILITY: The forest harvest practices standards apply to [~~all~~] harvests of commercial forest species, regardless of the acreage, except for activities [~~that do not require a harvest permit as provided by~~] listed in Subsection B of 19.20.4.8 NMAC that do not specifically require compliance with 19.20.4.9 NMAC.

B. MULTIPLE CUTTING UNITS: Unless [~~approved by the division in writing, no~~] the division provides written approval, the owner, permittee or responsible person or entity shall not commence harvesting under a multiple cutting unit harvest permit [~~shall commence~~] in a third cutting unit unless [~~all~~] they have completed forest harvest practices standards, except for burning of slash piles, [~~have been completed~~] on at least one of the previous two active units.

C. MARKING:

(1) The division may require the permittee to mark the cutting unit boundary [~~to be marked~~] with flagging or tree marking paint if needed to meet the [~~requirements of the forest harvest practice plan~~] forest harvest practice plan's requirements.

(2) The division may require the permittee to mark leave trees or the trees to be cut with tree marking paint if needed to meet the land management goals and objectives in the forest harvest practice plan, particularly if the harvest method is group or single tree selection.

D. EROSION MANAGEMENT:

(1) The owner, permittee or responsible person or entity shall implement erosion control measures [~~shall be implemented~~] to minimize channelized flow erosion such as rill and gully erosion.

(2) Erosion Control Measures:

(a) Time Limit: The owner, permittee or responsible person or entity shall install erosion control measures [~~shall be installed~~] as soon as practical but no later than 30 calendar days after the cessation of major harvest activities within the cutting unit.

(b) Placement: The owner, permittee or responsible person or entity shall place water bars or other erosion control measures [~~shall be placed~~] on closed roads and skid trails with mineral soil exposed by harvest activities. The owner, permittee or responsible person or entity shall place water bars [~~shall be placed~~] at the locations or intervals and at the height and width necessary to minimize erosion considering grade, sidehill drainage, soil texture and structure, vegetation and other pertinent factors.

PERCENT GRADE MINIMUM INTERVALS FOR WATER BARS

PERCENT GRADE	MINIMUM INTERVAL
0.0 — 4.9	150 feet
5.0 — 9.9	130 feet
10.0 — 14.9	75 feet
15.0 — 40.0	50 feet

The division may require additional water bars if the minimum intervals will not sufficiently minimize erosion. The division may require fewer water bars if a combination of soil properties, depth of duff layer or amount of slash or other cover will minimize erosion.

(3) Seeding:

(a) Time Limit: After cessation of major harvest activities within [~~any~~] a cutting unit and at the time best calculated to produce maximum germination, but in no event later than 180 calendar days following the cessation of major harvest activities within [~~any~~] a cut-

ting unit, the owner, permittee or responsible person or entity shall seed [~~all~~] closed roads, skid trails, landings and [~~any~~] areas of mineral soil exposed by harvest activities within the cutting unit [~~shall be seeded~~], unless the division has approved other erosion control measures. Appropriate site preparation shall take place prior to seeding. For example, soil preparation would be needed prior to seeding a hard packed road that is to be closed upon completion of harvesting.

(b) Seed Mix: The [~~division must approve any~~] owner or permittee shall obtain the division's prior approval for the seed mix to be used. The seed mix shall be suitable for the land management goals and objectives specified in the forest harvest practice plan and shall [~~avoid introducing~~] not introduce noxious weeds. The owner or permittee shall provide proof of the purchase date, the seed mix viability and germination rate. The owner or permittee may use the certification tag from the bag [~~may be used~~] if it provides the required information.

E. SKID TRAILS AND LANDINGS:

(1) Skid Trails:

(a) The owner, permittee or responsible person or entity shall not locate skid trails [~~shall not be located~~] on excessive slopes unless the owner or permittee shows that it is technically or economically infeasible to remove the felled trees by other means.

(b) Skidding shall not destroy a stream channel or bank or reduce the [~~capacity of the stream channel~~] stream channel's capacity to carry water.

(c) Skidding is not allowed within watercourses. Skidding [~~may~~] shall not take place across perennial watercourses unless the owner or permittee shows that it is technically and economically infeasible to remove felled trees by other means. [~~When~~] If the division approves skidding across a perennial watercourse, the owner, permittee or responsible person or entity shall limit skidding [~~shall be limited~~] to designated crossings. Crossings shall be at a right angle to the main channel and the approach to the crossing shall be at a minimal grade. The owner, permittee or responsible person or entity shall divert drainage [~~shall be diverted~~] at a distance from the stream that provides filtering of sediment.

(d) The owner, permittee or responsible person or entity should plan skid trails [~~should be planned~~] in advance to minimize damage to the residual stand, soil compaction and erosion.

(e) The owner, permittee or responsible person or entity should flag skid trails [~~should be flagged~~] so skidder operators can easily follow them.

(f) The owner, permittee or responsible person or entity should keep skid trails [~~should be kept~~] as narrow as possible.

(2) Landings: The owner, permittee or responsible person or entity:

(a) shall provide adequate drainage [~~shall be provided~~] for the landing and ensure that runoff [~~shall~~] does not discharge directly into a watercourse; and

(b) [~~Landings should be planned~~] should plan landings in advance.

F. ROADS:

(1) The owner, permittee or responsible person or entity shall:

[~~**(1)**~~] **(a)** design, construct and maintain roads [~~that will be~~] used or constructed for a harvest of commercial forest species [~~shall be designed, constructed, and maintained~~] to minimize erosion and impact on soils and vegetation in areas adjacent to the road;

[~~**(2)**~~] **(b)** [~~Roads shall be constructed~~] construct and maintain roads to drain properly [~~so that the road does not~~] and not cause gully erosion; the division may require the owner, permittee or responsible person or entity to take action if rill erosion is frequent and the depth exceeds three inches;

[~~**(3)**~~] **(c)** [~~Roads shall be outsloped or ditched~~] outslope or ditch roads on the uphill side and provide appropriate surface drainage [~~shall be provided~~] by using adequate cross drains, ditches, drivable dips, culverts, water bars, diversion ditches or other structures demonstrated to be equally effective;

[~~**(4)**~~] **(d)** [~~Roads shall be constructed and maintained~~] construct and maintain roads so the stream channel or bank is not destroyed and the [~~capacity of the stream channel~~] stream channel's capacity to carry water is not diminished; and

[~~**(5)**~~] **(e)** design road widths excluding any portion not [~~used~~] intended for travel [~~should be designed~~] to sufficiently carry the anticipated traffic load with reasonable safety, but [~~shall~~] not to exceed 24 feet.

[~~**(6)**~~] **(2)** Road location, design and construction shall address:

(a) building the fewest roads necessary for the harvest;

(b) locating the road to fit the topography to minimize alteration of natural features;

(c) avoiding road construction along or within narrow canyons;

(d) building roads on locations away from streams such as benches, ridge tops and the tops of slopes unless there is no feasible alternative;

(e) the stability of slopes where roads are cut;

(f) avoiding slopes of 60 percent or greater; and

(g) keeping the road grade to a minimum, usually less than 10 percent.

[~~**(7)**~~] **(3)** Road construction: The owner, permittee or responsible person or entity shall:

(a) not use organic debris [~~shall not be used~~] as a fill material;

(b) prior to construction, remove and utilize or treat as slash trees or portions of trees within the road corridor;

(c) not windrow trees or portions of trees within the road corridor, unless used as filter strip and are less than three feet in height;

[~~**(b)**~~] **(d)** remove debris in stream channels that is added during construction [~~shall be removed, but~~] (natural materials may be used as part of a sediment control structure);

[~~**(c)**~~] **(e)** deposit organic debris and surplus soil and rock [~~shall be deposited~~] where runoff will not be carried into a lake or watercourse;

[~~**(d)**~~] **(f)** [~~if culverts are used they shall be sized~~] size culverts, if used, to handle a minimum 25-year flood event; in determining the appropriate size consider debris potential and the potential for increased runoff from a reduction in vegetation resulting from the harvest [~~shall be considered. Culverts shall be installed~~]; and install them to prevent blockage and erosion of fill materials at the outlet;

[~~**(e)**~~] **(g)** install bridges [~~are required~~] where drainage structures cannot carry the water flow; and

[~~**(f)**~~] **(h)** divert road drainage [~~shall be diverted~~] at a distance from the stream that provides filtering of sediment such as through the use of cross drains.

[~~**(8)**~~] **(4)** [~~Roads to be closed shall be closed~~] The owner, permittee or responsible person or entity shall close roads intended for closure when the cutting unit closes unless needed for other cutting units. Upon closure, [~~the road shall be treated~~] the owner, permittee or responsible person or entity shall treat the road to control erosion and remove stream-crossing structures [~~shall be removed~~].

G. REQUIREMENTS FOR STREAMSIDE MANAGEMENT AREAS:

(1) Streamside management areas shall include the area within 50 feet of the ordinary high water mark of [~~any~~] a lake or wetland or within 50 feet of both high water marks for a perennial or intermittent watercourse [~~or wetland~~]. When a preexisting road is within 50 feet of the ordinary high water mark the streamside management area [~~will end~~] ends at the road's edge nearest to the watercourse. The owner, permittee or responsible person or entity shall minimize disturbance in the streamside management area [~~shall be minimized~~].

(2) The owner, permittee or responsible person or entity shall not har-

vest within 50 feet of the ordinary high water mark of a lake or watercourse or within 50 feet of both high water marks of a perennial or intermittent watercourse, unless the division has approved an alternate practice pursuant to 19.20.4.10 NMAC for activities such as riparian restoration or hazardous fuel reduction.

[~~(2)~~] **(3)** [~~The following apply within the~~] Within streamside management areas, the owner, permittee or responsible person or entity:

(a) [~~No landings shall be located within the streamside management area~~] shall not locate landings;

(b) shall design and flag skid trails [~~within the streamside management area must be designed~~] in advance to minimize disturbance;

(c) [~~No new roads shall be constructed within a streamside management area~~] shall not construct new roads unless the permittee or owner shows that it is technically or economically infeasible to construct the road elsewhere or that the damage to the environment would be greater if the road was constructed elsewhere; [~~when~~] if the division approves construction of a new road within a streamside management area, in addition to other requirements in Subsection F of 19.20.4.9 NMAC, the owner, permittee or responsible person or entity shall limit stream crossings [~~shall be limited~~] to those that are essential with crossings [~~shall be~~]at a right angle to the main channel and the approach to the crossing [~~shall be~~] at a minimal grade; and

(d) [~~Directional felling should be used~~] should use directional felling.

[~~(e) Sufficient shading of lakes and watercourses should be maintained to avoid adverse temperature changes in the lake or watercourse.~~]

H. TREE UTILIZATION:

(1) Unless contract or market conditions require different utilization standards that are included in the harvest permit, the owner, permittee or responsible person or entity shall utilize

[~~(1)~~] **(a)** [~~All~~] commercial forest species [~~shall be utilized~~] to a minimum six-inch top diameter (inside bark) except that harvesting for other than lumber production shall utilize trees to a minimum four-inch top diameter (outside bark); and

[~~(2)~~] **(b)** the tree's main stem [~~shall be utilized~~] as stated above in Paragraph (1) of Subsection H[~~(1)~~] of 19.2.4.9 NMAC when the net scale of the severed log or section of the main stem is more than 50 percent of the total gross volume using the Scribner Decimal C log scale table.

[~~(3)~~] **(2)** Long Butting: Long butting is prohibited except when resulting from removal of defects up to the limit of Paragraph (1) of Subsection H [~~(2)~~] of 19.20.4.9 NMAC.

[~~(4)~~] **(3)** Stump Height: Stump height shall [~~not exceed~~] be half the diameter of the tree where severed or 12 inches, whichever is less, on the uphill side except when immovable objects such as rocks or other trees prevent operation of felling equipment. The owner, permittee or responsible person or entity shall ensure that stumps less than eight inches in diameter shall have a flat, horizontal top surface.

I. SLASH:

(1) The owner, permittee or responsible person or entity shall treat slash and damaged trees in [~~any~~] a cutting unit, unless piled, [~~shall be treated~~] to stand no higher than three feet above ground level, unless chipped or within one quarter of a mile of a structure. Chipped slash shall not exceed two inches in depth. The owner, permittee or responsible person or entity shall treat slash within one quarter of a mile of a structure to stand no higher than two feet above ground level.

(2) [~~Slash piles may stand more than three feet above ground level. Piles shall be constructed for safety and efficiency during burning. Piles shall be located to avoid damage to the residual stand.~~] The owner, permittee or responsible person or entity shall:

(a) construct slash piles for safe and efficient burning; to be free of mineral soil and to cause no more than minimal soil sterilization; and

(b) locate slash piles to avoid damage to the residual stand.

(3) [~~Time Limit.~~] The owner, permittee or responsible person or entity shall treat slash, unless piled, [~~shall be treated~~] no later than [~~thirty~~] 30 calendar days from the movement of harvest operations out of the subject cutting unit into another cutting unit under a multiple cutting unit permit, or no later than [~~thirty~~] 30 calendar days following the cessation of major harvest activities within the cutting unit, whichever occurs first. In any event, the time shall not exceed 365 calendar days from the start of harvesting within the cutting unit. The owner, permittee or responsible person or entity may allow piled slash [~~may be allowed~~] to cure, but shall [~~be burned~~] burn it no later than the end of the next winter burning season following the cessation of major harvest activities within that cutting unit. If weather conditions prevent piled slash from being burned by the end of the next winter burning season, the owner or permittee may request an extension of time.

(4) For the purpose of creating a fuel break along public roads, the owner, permittee or responsible person or entity shall eliminate slash greater than [~~24 inches~~] two feet in length or larger than one inch in diameter at the large end and within 50 feet of either side of the center line of a public road [~~shall be eliminated~~] by chipping, burning, removal or equivalent means within 365 calendar days of cessation of major harvest activities within the cutting unit.

(5) Unless incorporated into a sediment control structure, slash is not allowed within the ordinary high water mark of an intermittent or perennial watercourse, lake or wetland.

J. COARSE WOODY DEBRIS RETENTION AND RECRUITMENT: Where available, the owner, permittee or responsible person or entity shall retain one to five scattered down logs per acre in a variety of stages of decomposition, with preference for down logs that have a diameter at breast height of 15 inches or greater and a length of 15 feet or greater. If scattered down logs are not available but unmerchantable trees have been harvested, the owner, permittee or responsible person or entity may scatter one to five unmerchantable trees per acre, with preference for logs that have a diameter at breast height of 15 inches or greater and a length of 15 feet or greater.

[~~J~~] K. LOG DECKS: [~~Log decks must be removed~~] The owner, permittee or responsible person or entity shall remove log decks no later than 365 calendar days from the start of harvesting within the cutting unit.

[~~K~~] L. CABLE YARDING: The following requirements apply to cable yarding:

(1) The yarding system shall have lateral yarding capabilities, using a carriage that can maintain a fixed position on the skyline during lateral pulls and shall keep one end of the log suspended above the ground during in-haul.

(2) The owner, permittee or responsible person or entity shall use uphill yarding [~~should be used~~] unless the yarder cannot be located on a ridge top, bench or on top of a slope. If the owner, permittee or responsible person or entity must use downhill yarding [~~must be used~~], they shall suspend the leading end of the log [~~shall be suspended~~] above the ground.

(3) The applicant shall include corridor design [~~shall be included~~] in the harvest permit application and the owner, permittee or responsible person or entity shall mark actual corridors [~~shall be marked~~] on the ground prior to clearing and felling. Cable corridors shall not be closer than an average of 75 feet, center to center, at a point one-half way to the end of the corridor where radial corridors are required; and an average of 140 feet where parallel corridors are used. No more than four cable corridors shall radiate from a single yarder position.

(4) The owner, permittee or responsible person or entity shall initially

cut cable corridors [~~shall be cut initially~~] to a maximum 12-foot width, prior to felling in the cutting unit, to allow passage of the carriage and turn of logs. Corridors shall not exceed 20 feet in width after yarding is completed and the owner, permittee or responsible person or entity has removed the rub trees [~~have been removed~~].

(5) The owner, permittee or responsible person or entity shall fell harvested trees except corridor trees [~~shall be felled~~] along the contour or diagonally to the slope to facilitate yarding and reduce damage to the residual trees.

(6) When topography and ground conditions permit, the owner, permittee or responsible person or entity shall pull logs [~~shall be pulled~~] endwise from where they are felled. Lateral yarding distance shall be limited to no more than 75 feet.

[~~L.~~] M. DAMAGE: The owner, permittee or responsible person or entity shall remove trees damaged by harvest activities [~~must be removed or treated~~] or treat them as slash. If the damaged trees were intended to be leave trees then the harvest is not in compliance with the harvest permit. If a leave tree is damaged the division may require that the owner, permittee or responsible person or entity leave additional trees [~~be left~~] as leave trees or require other means of regeneration.

N. TRASH AND LITTER: The owner, permittee or responsible person or entity shall remove all human-made trash and litter resulting from harvest and transportation activities from the harvest area and properly dispose of it.

O. SPILLS: The owner, permittee or responsible person or entity shall comply with 20.6.2.1203 NMAC with respect to discharge of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life or property, or unreasonably interfere with the public welfare or property use. The owner, permittee or responsible person or entity shall not service trucks, graders, dozers, felling equipment or other equipment where spills may contaminate soils, wetlands, lakes or watercourses.

P. MARKING OF LOG BUTTS:

(1) The owner, permittee or responsible person or entity shall mark one to five logs per load, if being transported in log form, or mark the load with a sign readable from 30 feet if the wood product is transported in another form such as chips, with the following information in the color of paint assigned to the district where the harvesting is occurring:

(a) if a harvest permit is required, with the two letter designator assigned by the district and the sequential load number (*i.e.* JV 011); or

(b) if a harvest permit is not required, with the landowner's first and last initials or the initial's of the ranch or property name and the abbreviation of the county in which the harvest is occurring (*i.e.*, if the landowner is Bill Smith and the harvest is occurring in San Miguel county the mark would be BS/SM).

(2) The following colors are assigned to the districts:

(a) Bernalillo - orange

(b) Capitan - red

(c) Chama - black

(d) Cimarron - blue

(e) Las Vegas - green

(f) Socorro – white.

Q. FIRE EQUIPMENT:

(1) The owner, permittee or responsible person or entity shall:

(a) have a long handled shovel; pulaski, McLeod or combi-tool; and a five-pound capacity ABC dry chemical fire extinguisher available at the harvest location when harvesting is occurring;

(b) ensure that each skidder, feller-buncher, delimber, dozer, log truck, etc. is equipped with a long handled shovel and a five-pound capacity ABC dry chemical fire extinguisher; and

(c) ensure each passenger vehicle, light truck or medium truck up to 40,000 GVW is equipped with a long handled shovel and a two and one half pound capacity ABC dry chemical fire extinguisher.

(2) The owner, permittee or responsible person or entity shall ensure that the tools and fire extinguishers are in good working condition.

[19.20.4.9 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.10 ALTERNATE PRACTICES: An applicant or permittee may request to use an alternate practice in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC, so long as equivalent or better protection regarding fire, insect and disease control and erosion control measures is provided. The request to use an alternate practice shall describe the mitigation measures that [~~will be taken~~] the applicant or permittee will take so that the division can determine that the proposal offers equivalent or better protection. The division shall make the decision to grant or deny the use of an alternate practice within 30 calendar days after the request's receipt [~~of the request~~]. The division's written approval or disapproval shall state the reasons why the division granted or denied the request [~~was granted or denied~~]. The division shall not allow the applicant or permittee to use [~~of~~] an alternate practice if it is known to result in violation of other applicable state laws. The permittee may appeal the denial of a request to use an alternate practice [~~may be appealed~~] to the state forester pursuant to Subsection A of 19.20.4.13 NMAC.

[19.20.4.10 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.12 VIOLATIONS:

A. NOTICE OF DEFICIENT CONDITION: The division may issue a notice of deficient condition for violation of the act, [~~this part~~] 19.20.4 NMAC or a harvest permit. The division may issue a notice of deficient condition for violations that harm the forest or forest resources and will require the permittee or responsible person or entity to cease the violation and take corrective action to repair the deficient condition.

(1) The division [~~shall have the authority to~~] may serve upon the permittee or responsible person or entity a notice of deficient condition if:

(a) there is a violation of the act, [~~this part~~] 19.20.4 NMAC or a harvest permit; or

(b) the violation or activity creates harm or the potential for harm to the forest or forest resource.

(2) The notice of deficient condition shall set forth:

(a) the specific nature of the violation charged or harm to the forest or forest resources;

(b) the specific course of action needed to correct such violation;

(c) the date such correction shall be completed; and

(d) the recipient's right to a hearing to review the notice of deficient condition.

(3) [~~Service of~~] The division shall serve the notice of deficient condition [~~shall be made~~] upon the permittee or responsible person or entity by personal delivery or certified mail return receipt requested. If the notice is not served upon the permittee the division [~~will~~] shall provide a copy to the permittee by first class mail or personal service.

B. REVOCATION OF A HARVEST PERMIT:

(1) The state forester may revoke a harvest permit for [~~any of~~] the following:

(a) refusal to allow the division to enter and inspect a permitted area;

(b) failure to timely complete corrective action after receiving a notice of deficient condition;

(c) discovery that any of the reasons for harvest permit application denial exists; or

(d) failure to keep statements of understanding current.

(2) To proceed with revocation of a harvest permit the division shall schedule

a revocation hearing and provide written notice of intent to revoke to the permittee by personal delivery or certified mail return receipt requested at least 10 working days before the date set for the hearing. The written notice of the intent to revoke shall include the hearing's date, time and location [~~of the hearing~~].

(a) The hearing shall be held before the state forester.

(b) The division shall provide evidence as to the reasons to revoke the harvest permit and the permittee may provide evidence as to the reasons not to revoke the harvest permit.

(c) Oral testimony at the hearing shall be made under oath. The division shall make a tape or stenographic record [~~shall be made~~] of the hearing.

(d) If the state forester finds that a preponderance of the evidence supports revocation, the state forester shall revoke the harvest permit [~~shall be revoked~~].

(e) The state forester shall issue a written final decision within 10 working days [~~of~~] after the close of the hearing or [~~any~~] deadline for the submission of additional materials following the hearing.

[19.20.4.12 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.13 ADMINISTRATIVE REVIEW:

A. DENIAL OF PERMITS, REQUEST TO USE ALTERNATE PRACTICES OR PERMIT REVISIONS:

(1) To request review of the denial of a harvest permit application, use of alternate practices or a harvest permit revision, an applicant or permittee [~~must~~] shall submit a written request for review, which includes the reasons for requesting review, to the state forester within 15 calendar days [~~of~~] after the issuance and provide written notice to the district office that denied the harvest permit application, use of alternate practices or harvest permit revision. If the applicant submitted additional information or revisions to the harvest permit application pursuant to Paragraph (2) of Subsection E of 19.20.4.8 NMAC the time period starts with the last denial. [~~A request must include the reasons for requesting the review.~~]

(2) The applicant or permittee and the district office shall submit written statements to the state forester within 10 working days [~~of the submission of~~] after the applicant or permittee submits the request for review.

(3) The state forester shall base [~~his~~] the review decision on the written statements unless the applicant or permittee or the district office requests the opportunity to call witnesses or make oral arguments within 10 working days [~~of the submission of~~] after the applicant or permittee submits the request for review. A request for a hearing shall explain the need for [~~any~~] witness testimony or oral argument. If the applicant or permittee or the district office asks to make oral arguments or call witnesses, the state forester may set a hearing to be held within 10 working days [~~of~~] after receiving that request and provide notice of the hearing date, time and location to the applicant or permittee and the district office. Oral testimony shall be made under oath. The division shall make a tape or stenographic record [~~shall be made~~] of [~~any~~] oral argument or witness testimony.

(4) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10 working days after the date for submission of written statements, or a hearing, if any, and send copies to the applicant or permittee and the district office.

B. NOTICE OF DEFICIENT CONDITION:

(1) To request review of the issuance of a notice of deficient condition the permittee or responsible person or entity [~~must make~~] shall submit a written request for a hearing, which specifically states the reasons for the review, to the district forester within 10 working days [~~of receipt of the notice~~] after the notice's receipt. [~~The request must specifically state the reasons for the review.~~] If the district forester issued the notice of deficient condition, then the district forester from another district shall conduct the hearing.

(a) The district forester shall consult with the permittee or responsible person or entity to set a hearing to be held within three working days [~~of receipt of the request~~] after the request's receipt.

(b) The district forester shall issue a written decision within five working days [~~of~~] after the hearing.

(c) The permittee or responsible person or entity may appeal the district forester's decision to the state forester by submitting a written request for review to the state forester within 10 working days [~~of~~] after the decision and providing written notice to the district forester.

(2) The permittee or responsible person or entity and the district forester shall submit written statements to the state forester within 10 working days [~~of the submission of~~] after the permittee or responsible person or entity submits the request for review.

(a) The state forester shall base [~~his~~] the review decision on the written statements unless the permittee or responsible person or entity or the district forester requests the opportunity to call witnesses or make oral arguments within 10 working days [~~of the submission of~~] after the permittee or responsible person or entity submits the request for review. A request for a hearing shall explain the need for [~~any~~] witness testimony or oral argument.

(b) If the permittee or responsible person or entity or the district forester asks to make oral arguments or call witnesses, the state forester may set a hearing to be held within 10 working days [~~of~~] after receiving that request and provide notice of the hearing date, time and location to the permittee, responsible person or entity and the district forester. Oral testimony shall be made under oath. The division shall make a tape or stenographic record [~~shall be made~~] of [~~any~~] oral argument or witness testimony.

(c) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10 working days after the date for submission of written statements, or a hearing, if any, and send copies to the permittee, responsible person or entity and the district forester.

[19.20.4.13 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.14 FIRE RESTRICTIONS: Whenever the state forester declares restrictions on use of lands or use of fire within an area permitted under 19.20.4 NMAC, the restrictions shall apply to harvesting. If these restrictions require that harvesting stop, it [~~will~~] shall not be considered a cessation of harvesting pursuant to [~~this part~~] 19.20.4 NMAC.

[19.20.4.14 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.15 CRIMINAL PENALTIES:

A. Following the procedures in 19.20.4.12 NMAC does not limit the division in its ability or authority to issue citations or otherwise enforce the possible criminal penalties for violating the act, [~~this part~~] 19.20.4 NMAC or a harvest permit.

B. Violation of the act, [~~this part~~] 19.20.4 NMAC or a harvest permit is a misdemeanor punishable by a fine of not more than [~~one thousand dollars ($1000.00)~~] $1000 or by imprisonment in the county jail not to exceed one year or both for each violation, NMSA 1978, Section 68-2-17.

[19.20.4.15 NMAC - N, 1/1/2002; A, 6/29/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 305 MEDICAID MANAGED CARE
PART 17 ENHANCED SERVICES

8.305.17.1 ISSUING AGENCY: Human Services Department
[8.305.17.1 NMAC - N, 7-1-07]

8.305.17.2 SCOPE: This rule applies to the general public.
[8.305.17.2 NMAC - N, 7-1-07]

8.305.17.3 STATUTORY AUTHORITY: The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See NMSA 1978 Section 27-2-12 et. seq.
[8.305.17.3 NMAC - N, 7-1-07]

8.305.17.4 DURATION: Permanent
[8.305.17.4 NMAC - N, 7-1-07]

8.305.17.5 EFFECTIVE DATE: July 1, 2007, unless a later date is cited at the end of a section.
[8.305.17.5 NMAC - N, 7-1-07]

8.305.17.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid managed care program.
[8.305.17.6 NMAC - N, 7-1-07]

8.305.17.7 DEFINITIONS: See 8.305.1.7 NMAC.
[8.305.17.7 NMAC - N, 7-1-07]

8.305.17.8 MISSION STATEMENT: The mission of the medical assistance division is to ensure access to quality and cost-effective health care.
[8.305.17.8 NMAC - N, 7-1-07]

8.305.17.9 ENHANCED SERVICES: The MCO/SE shall offer members enhanced services. The cost of these services cannot be included when HSD determines the payment rates. Enhanced services are not included in the managed care medicaid benefit package. Enhanced services shall not be construed as medicaid funded services, benefits, or entitlements under the NM Public Assistance Act. Enhanced services shall be approved by and reported to HSD. The MCO/SE shall work with HSD to identify codes to be used for enhanced services. Enhanced services shall be direct services, not administrative in nature unless approved by HSD.

A. **Potential enhanced services (MCO only):** The following are suggested enhanced services:

(1) anticipatory guidance provided as a part of the normal course of office visits or a health education program, including behavioral health;
(2) child birth education, parenting skills classes;
(3) child abuse and neglect prevention programs;
(4) stress control programs;
(5) car seats for infants and children;
(6) culturally-traditional indigenous healers and treatments;
(7) smoking cessation programs;
(8) weight loss and nutrition programs;
(9) violence prevention services;
(10) substance abuse prevention and treatment, beyond the benefit package; and
(11) respite care for care givers

B. **Potential enhanced services (SE only):** The SE shall strategically determine a continuum of services, identify enhanced service needs and work with the collaborative to develop enhanced services. Enhanced services should promote evidence based practices that support recovery and resiliency.

C. **Member specific enhanced services:** Other services may be made available to members based on the MCO/SE's discretion. Eligibility for enhanced services may be based upon a set of assessment criteria to be employed by the MCO/SE.
[8.305.17.9 NMAC - N, 7-1-07]

HISTORY OF 8.305.17 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Sections 5 and 12, which will be effective on July 1, 2007. The Medical Assistance Division amended the subsections by changing the deduction amounts.

8.200.510.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.
[2-1-95; 8.200.510.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 1-1-01; A, 7-1-07]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION	AMOUNT
A. Personal needs allowance for institutionalized spouse	[~~$57~~] $58
B. Basic community spouse monthly income allowance standard (CSMIA)	[~~$1,650~~] $1,712
(CSMIA standard minus income of community spouse = deduction	
C. * Excess shelter allowance for allowable expenses for community spouse	[~~$891~~] $829
D. ** Extra maintenance allowance	
E. Dependent family member	1/3 X (CSMIA - dependent member's income)
F. Non-covered medical expenses	
G. * The allowable shelter expenses of the community spouse must exceed	[~~$495~~] $514 per month for any deduction to apply.

H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.

I. **MAXIMUM TOTAL:** The maximum total of the community spouse monthly income allowance and excess shelter deduction is $2,541.
[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.1 NMAC, Section 7 which will be effective on July 1, 2007. The Medical Assistance Division amended the section to clarify existing definitions and add

new definitions.

8.305.1.7 DEFINITIONS: The state of New Mexico is committed to improving the health status of New Mexico residents whose health care services are funded by the Title XIX (medicaid) program. As a means of improving health status, a capitated managed care plan has been implemented. This section contains the glossary for the New Mexico medicaid managed care 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 medicaid, or the interagency behavioral health purchasing collaborative (the collaborative), 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 client or member practices that result in unnecessary costs to medicaid or the collaborative.

(2) **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, 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, member:** A request from a member or provider, on the member's behalf with the member's written permission, for review by the managed care organization (MCO) or the single statewide entity (SE) for behavioral health of an [~~MCO/SE~~] MCO or SE action as defined above in Paragraph (2) of Subsection A of 8.305.1.7 NMAC.

(4) **Appeal, provider:** A request by a provider for a review by the MCO or SE of an MCO or SE action related to the denial of payment or an administrative denial.

[~~(4)~~] (5) **Approvals:** Approvals are either initial or concurrent review decisions, which yield utilization management authorizations based on the client meeting the clinical criteria for the requested medicaid service(s) [~~and/or~~] or level of care.

[~~(5)~~] (6) **Assignment algorithm:** Predetermined method for assigning mandatory enrollees who do not select an MCO.

B. Definitions beginning with letter "B":

(1) **Behavioral health:** Refers to mental health and substance abuse.

(2) **Behavioral health planning council (BHPC):** Refers to the council created by HB 271 to meet federal advisory council requirements and to provide consistent, coordinated input to behavioral health service delivery in New Mexico. The SE will be expected to interact with the BHPC as an advisory council.

(3) **Behavioral health purchasing 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 eight agencies that provide and fund direct services, including the human services department.

(4) **Benefit package:** Medicaid covered services that must be furnished by the MCO/SE and for which payment is included in the capitation rate.

C. Definitions beginning with letter "C":

(1) **Capitation:** A per-member, monthly payment to an MCO/SE that covers contracted services and is paid in advance of service delivery. A set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed [~~in units of~~] as "per member per month" (PM/PM).

(2) **Care coordination for behavioral health:** [~~An office-based administrative function of the SE, rather than a service, and is not separately reimbursed by behavioral health fund sources. It is not the same as case management, which is a therapeutic service provided face-to-face and primarily by subcontracted providers for only those customers/families in need of such services and in different levels of intensity depending on the customer's/family's need. Care coordination will be operated by the SE as a dedicated independent function that is linked to the other SE systems, such as quality improvement/management, customer services, and complaints and grievances.~~] An office-based administrative function to assist members with multiple, complex and special cognitive, behavioral or physical health care needs on an as needed basis. It is member-centered and consumer-directed, family-focused when appropriate, culturally competent and strengths-based. Care coordination ensures that medical and behavioral health needs are identified and services are provided and coordinated with the member and family, if appropriate. Care coordination operates independently within the SE and has separately defined functions with a dedicated care coordination staff, but is structurally linked to other SE systems, such as quality assurance, member services and grievances. Clinical decisions shall be based on the medically necessary covered services and not fiscal or administrative considerations. The care coordinator coordinates services within the behavioral [~~heath~~] health delivery system, as well as with other service providing systems. The care coordinator may interface and collaborate with the [~~customer's case manager~~] consumer's case manager, if applicable, for those who receive case management services. If both physical and behavioral health conditions exist, the primary care coordination responsibility lies with the condition that is most acute.

(3) **Care coordination for physical health:** An office-based administrative function to assist members with multiple, complex and special cognitive, behavioral [~~and/or~~] or physical health care needs on an as needed basis. It is member-centered and consumer-directed, family-focused when appropriate, culturally competent and strengths-based. Care coordination ensures that medical and behavioral health needs are identified and services are provided and coordinated with the member and family if appropriate. Care coordination operates independently within the MCO and has separately defined functions with a dedicated care coordination staff, but is structurally linked to other MCO systems, such as quality assurance, member services and grievances. Clinical decisions shall be based on the medically necessary covered services and not fiscal or administrative considerations. The care coordinator coordinates services within the physical health delivery system, as well as with other service providing systems. The care coordinator may interface and collaborate with the member's case manager, if applicable, for those who receive case management services. If both physical and behavioral health conditions exist, the primary care coordination responsibility lies with the condition that is most acute.

(4) **Care coordination plan/individual plan of care (SE only):** The care coordination plan is based on a comprehensive assessment of the goals, capacities and the behavioral health service needs of the member and with consideration of the needs and goals of the family, if appropriate.

[~~(4)~~] (5) **Case:** A household that medicaid treats as a unit for purposes of eligibility determination; for example, a parent and child; a legal guardian and child; or a set of siblings.

[~~(5)~~] (6) **Case management for behavioral [~~heath~~] health:** A set of therapeutic services delivered primarily face-to-face in community settings (generally not office settings) and intended to ensure that individuals receive the services they need in a timely, appropriate, effective, efficient and coordinated fashion. Case management is designed for individuals and families who cannot otherwise access services, obtain the benefits of services, [~~and/or~~] or reach their treatment and service goals without assistance. Case management is [~~customer con-~~

~~tered, family-consumer-focused~~] consumer-centered, family-consumer-focused when appropriate, culturally competent and strength-based. Providers are encouraged to offer this service in the communities that they serve.

[~~(6)~~] (7) **Case management for physical health:** The [~~five~~] targeted case management programs, that are part of the medicaid benefit package. The [~~five~~] targeted case management programs will continue to be important service components. In these programs, case managers typically function independently and assess a member's/family's needs and strengths; develop a service/treatment plan, coordinate, advocate for and link members to all needed services related to the targeted case management program.

[~~(7)~~] (8) **Children with special health care needs (CSHCN):** Individuals under 21 years of age, who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition, and who also require health and related services of a type or amount beyond that required by children generally.

[~~(8)~~] (9) **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.

[~~(9)~~] (10) **Client:** An individual who has applied for and been determined eligible for Title XIX (medicaid). A "client" may also be referred to as a "member", "customer", or "consumer".

[~~(10)~~] (11) **CMS:** Centers for medicare and medicaid services.

[~~(11)~~] (12) **Community-based care:** A system of care, which seeks to provide services to the greatest extent possible, in or near the member's home community.

[~~(12)~~] (13) **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.

[~~(13)~~] (14) **Cultural competence:** 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 an MCO/SE gives another entity the authority to perform certain functions on its behalf. The MCO/SE 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 medicaid, not being on the MCO/SE formulary or due to provider noncompliance with administrative policies and procedures established by either the MCO/SE 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 medicaid service or a formulary exception request 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 client'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) **Disease management plan:** A comprehensive plan following nationally recognized components for chronic disease interventions including population identification/stratification process, collaborative practice models, patient self-management education process, evidence-based practice guidelines, process and outcomes measurements, and internal quality improvement processes.

[~~(4)~~] (5) **Disenrollment, MCO initiated:** When requested by an MCO for substantial reason, removal of a medicaid member from membership in the requesting MCO, as determined by HSD, on a case-by-case basis.

[~~(5)~~] (6) **Disenrollment, member initiated (switch):** When requested by a member for substantial reason, transfer of a medicaid member as determined by HSD on a case-by-case basis, from one MCO to a different MCO during a member lock-in period.

[~~(6)~~] (7) **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 medical 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) **Encounter:** The record of a physical or behavioral health service rendered by a provider to an MCO/SE member, client, customer, or consumer.

(3) **Enhanced service:** Any service offered to members by the MCO/SE that is [~~beyond the standard required medicaid services~~] not included in the managed care medicaid benefit package and is not a medicaid funded service, benefit or entitlement under the NM Public Assistance Act.

(4) **Enrollee:** A medicaid recipient who is currently enrolled in a managed care organization in a given managed care program.

(5) **Enrollee rights:** Rights which each managed care enrollee is guaranteed.

[~~(5)~~] (6) **Enrollment:** The process of enrolling eligible clients in an MCO/SE for purposes of management and coordination of health care delivery.

(7) **EPSDT:** Early and periodic screening, diagnostic and treatment.

[~~(6)~~] (8) **Exempt:** The enrollment status of a client who is not mandated to enroll in managed care.

[~~(7)~~] (9) **Exemption:** Removal of a medicaid member from mandatory enrollment in managed care and placement in the medicaid fee-for-service program. Such action is only for substantial reason, as determined by HSD on a case-by-case basis.

(10) **Expedited appeal:** A federally mandated provision for an expedited resolution within three working days of the requested appeal, which includes an expedited review by the MCO/SE of an MCO/SE action.

[~~(8)~~] (11) **External quality**

review organization (EQRO): An independent organization with clinical and health services expertise [~~that is~~] capable of reviewing the evidence of compliance of health care delivery [~~systems and their internal quality assurance mechanisms~~] and internal quality assurance/improvement requirements.

F. Definitions beginning with letter "F":

(1) **Family-centered care:** When a child is the patient, the system of care reflects the importance of the family or legal guardian in the way services are planned and delivered. Family-centered care facilitates collaboration between family members and medical professionals, builds on individual and family strengths and respects diversity of families.

(2) **Family planning services:** Services provided to members of childbearing age to temporarily or permanently prevent or delay pregnancy (see MAD-762, *Reproductive Health Services*).

(3) **Fee-for-service (FFS):** The traditional medicaid payment method whereby payment is made by HSD to a provider after services are rendered and billed.

(4) **Fraud:** An intentional deception or misrepresentation made by an entity or person, including but not limited to, an MCO/SE, subcontractor, provider or client 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.

(5) **Full risk contracts:** Contracts that place the MCO/SE at risk for furnishing or arranging for comprehensive services.

G. Definitions beginning with letter "G":

(1) **Gag order:** Subcontract provisions or MCO/SE 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/SE or its business practices.

(2) **Grievance (member):** Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO/SE or its operations that is not an MCO/SE action.

(3) **Grievance (provider):** Oral or written statement by a provider to the MCO/SE expressing dissatisfaction with any aspect of the MCO/SE or its operations that is not an MCO/SE action.

H. Definitions beginning with letter "H":

(1) **HCFA:** Health care financing administration. Effective 2001, [~~now known as CMS,~~] the name was changed to centers for medicare and medicaid services (CMS).

(2) **Health plan:** A health maintenance organization (HMO), managed care organization (MCO), or third party payer or their agents.

(3) **HIPAA:** Health Insurance Portability and Accountability Act of 1996.

(4) **Hospitalist:** A physician employed by a hospital to manage the care of a member admitted to the hospital for inpatient care.

(5) **Human services department (HSD):** The sole executive department in New Mexico responsible for the administration of Title XIX (medicaid). "HSD" may also indicate the department's designee, as applicable.

I. Definitions beginning with letter "I":

(1) **IBNR (claims incurred but not reported):** Claims for services authorized or rendered for which the [~~MCO~~] MCO/SE has incurred financial liability, but the claim has not been received by the [~~MCO~~] MCO/SE. This estimating method relies on data from prior authorization and referral systems, [~~as well as~~] other data analysis systems and accepted accounting practices.

(2) **Individuals with special health care needs (ISHCN):** Individuals who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition, or have low to severe functional limitation and who also require health and related services of a type or amount beyond that required by individuals generally.

J. - L. [RESERVED]

M. Definitions beginning with letter "M":

(1) **Managed care organization (MCO):** An organization licensed to manage, coordinate and assume financial risk on a capitated basis 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/SE yellow page advertisements, and any other presentation materials used by an MCO/SE, MCO/SE representative, or MCO/SE subcontractor to attract or retain medicaid enrollment.

(3) **MCO/SE:** The use of MCO/SE in these medicaid managed care regulations indicates the following regulation applies to both the MCO and the SE who must each comply with the regulation independent of each other.

[~~(4) **MCO/SE appeal (member):** A request from a member or a provider, with the member's written consent, for review by the managed care organization MCO/SE of an MCO/SE action. An "MCO/SE 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.~~]

[~~(5)~~] (4) [~~MCO~~] **MCO/SE mandatory enrollee:** A client whose enrollment into an [~~MCO~~] MCO/SE is mandated.

[~~(6)~~] (5) **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.

[~~(7)~~] (6) **Medical/clinical home:** A conceptual model that facilitates the provision of quality care that is accessible, family-centered, continuous, coordinated, compassionate and culturally competent.

[~~(8)~~] (7) **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 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, mental 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; and

(iv) decisions regarding benefit coverage for children shall be governed by the EPSDT coverage rules.

[~~(9)~~] (8) **Member:** A client enrolled in an MCO/SE.

[~~(10)~~] (9) **Member month:** A calendar month during which a member is enrolled in an MCO/SE.

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/SE to furnish medical or behavioral health services to the MCO's/SE's members under the provisions of the medicaid managed care contract.

O. [RESERVED]

P. Definitions beginning with letter "P":

(1) **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/SE to pend approval does not extend or modify required utilization management decision timelines.

(2) **Performance improvement project (PIP):** An MCO/SE QM program activity must include projects that are designed to achieve significant improvement in clinical or non-clinical care areas. PIPs must involve measurements using objective quality indicators, system intervention to achieve improvement, evaluation of the effectiveness of interventions and activities for increasing or sustaining improvement. Outcomes must be measurable over a period of time.

(3) **Performance measurement (PM):** Data specified by the state that enables the MCO/SE's performance to be determined.

(4) **Plan of care:** A written document including all medically necessary services to be provided by the MCO/SE for a specific member.

(5) **Policy:** The statement or description of requirements.

[~~(2)~~] (6) **Potential enrollee:** A medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific [~~MCO~~] MCO/SE.

[~~(3)~~] (7) **Pregnancy-related services:** Medically necessary medical or surgical services related to pregnancy, including procedures to terminate pregnancy.

[~~(4)~~] (8) **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.

(9) **Preventive health services:** Services that follow current national standards for prevention including both physical and behavioral health.

[~~(5)~~] (10) **Primary care case management (PCCM):** A medical care model in which clients are assigned to a primary care provider who is responsible for managing the quality, appropriateness, and efficiency of the care they receive. The primary care provider is responsible for furnishing case management services to medicaid eligible recipients that include the location, coordination, and monitoring of primary health care services and the appropriate referral to specialty care services.

[~~(6)~~] (11) **Primary care case manager :** A physician, a physician group practice, an entity that medicaid-eligible recipients [~~employs or arranges~~] employ or arrange with physicians to furnish primary care case management services or, at state option, any of the following:

(a) a physician assistant;

(b) a nurse practitioner; or

(c) a certified nurse mid-wife.

[~~(7)~~] (12) **Primary care provider (PCP):** A provider who agrees to manage and coordinate the care provided to members in the managed care program.

(13) **Procedure:** Process required to implement a policy.

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~~] MCO/SE but not paid affecting appropriate expense and aging accounting categories. Such claims are counted as of the date of receipt by the [~~MCO~~] MCO/SE.

(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 than were originally requested. The authorization is based on the client's physical health (medical needs) or behavioral health (clinical needs). [~~Authorizations for pharmaceutical services are subject to the preferred drug list (PDL) exception 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/SE 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/SE 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) **Single statewide entity (SE):** The entity selected by the state of New Mexico through the behavioral health 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 administer both the medicaid managed care and medicaid fee-for-service (FFS) programs for all medicaid behavioral health services. The SE shall 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.

(2) **Subcontract:** A written agreement between the MCO/SE and a third party, or between a subcontractor and another subcontractor, to provide services.

(3) **Subcontractor:** A third party who contracts with the MCO/SE or an MCO/SE 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 medicaid members for services furnished under a state plan.

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.

[8.305.1.7 NMAC - Rp 8.305.1.7 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.2 NMAC, Section 9 which will be effective on July 1, 2007. The Medical Assistance Division amended the section to clarify existing policy and to update physical health screening requirements.

8.305.2.9 MEMBER EDUCATION: Medicaid members shall be educated about their rights, responsibilities, service availability and administrative roles under the managed care program. Member education is initiated when a member becomes eligible for medicaid and is augmented by information provided by HSD and the managed care organization (MCO) or the single statewide entity [~~(MCO/SE)~~] SE.

A. **Initial information:** The education of the member is initiated by the eligibility determination agencies. HSD distributes information about medicaid managed care and the enrollment process to these agencies. [~~The SE shall also distribute medicaid behavioral health information to medicaid members upon enrollment~~.]

B. **MCO/SE enrollment information:** Once a member is determined to be an MCO/SE mandatory enrollee, HSD will provide to the member information about services included in the MCO/SE benefit package, and the MCOs from which the member can choose to enroll as a member.

C. **Informational materials:** The MCO/SE is responsible for providing members and potential members, upon request, a member handbook and a provider directory. The member handbook and the provider directory shall be available in formats other than English. If there is a prevalent population of 5% within the MCO/SE membership, as determined by the MCO/SE or HSD, these materials shall be made available in the language of the identified prevalent population.

(1) The MCO member handbook must include the following:

(a) MCO/SE demographic information, including the organization's hotline telephone number;

(b) information on how to obtain services such as after-hours and emergency services, including the 911 telephone system or its local equivalent;

(c) member bill of rights and member responsibilities, including any restrictions on the member's freedom of choice among network providers;

(d) information pertaining to coordination of care by and with PCPs;

(e) how to obtain care in emergency and urgent conditions;

(f) description of mandatory benefits;

(g) information on accessing behavioral health or other specialty services, including a discussion of the member's rights to self-refer to in-plan and out-of-plan family planning providers and a female member's right to self-refer to a women's health specialist within the network for covered care;

(h) limitations to the receipt of care from out-of-network providers;

(i) a list of services for which prior authorization or a referral is required and the method of obtaining both;

(j) a policy on referrals for specialty care and other benefits not furnished by the member's PCP;

(k) notice to members about the grievance process and about HSD's fair hearing process;

(l) information on the member's right to terminate enrollment and the process for voluntarily disenrolling from the plan;

(m) information regarding advance directives;

(n) information regarding obtaining a second opinion;

(o) information on cost sharing, if any;

(p) how to obtain information, upon request, determined by HSD as essential during the member's initial contact with the [~~MCO/SE~~] MCO, which may include a request for information regarding the [~~MCO's/SE's~~] MCO's structure, operation, and physician's or senior staff's incentive plans;

(q) populations excluded from enrollment, subject to mandatory enrollment, or free to enroll voluntarily in the program; and

(r) physical health benefits under the state medicaid plan which are not covered by the contract and how the member will be able to access those benefits.

(2) The SE member handbook shall include the following:

(a) MCO/SE demographic information, including the organization's hotline telephone number;

(b) information on how to obtain services such as after-hours and emergency services, including the 911 telephone system or its local equivalent;

(c) member bill of rights and member responsibilities, including any restrictions on the member's freedom of choice among network providers;

(d) information pertaining to coordination of care with PCPs;

(e) how to obtain care in emergency and urgent conditions;

(f) description of mandatory benefits;

(g) information on accessing behavioral health services, including a discussion of the member's rights to self-refer;

(h) limitations to the receipt of care from out-of-network providers;

(i) a list of services for which prior authorization or a referral is required and the method of obtaining both;

(j) notice to members about the grievance process and about HSD's fair hearing process;

(k) information regarding advance directives;

(l) information regarding obtaining a second opinion;

(m) information on cost sharing, if any;

(n) how to obtain information, upon request, determined by HSD as essential during the member's initial contact with the SE, which may include a request for information regarding the SE's structure, operation, and physician's or senior staff's incentive plans.

[~~(2)~~] (3) The provider directory must include the following:

(a) MCO/SE addresses and telephone numbers;

(b) MCO: a listing of primary care and self-refer specialty providers with the identity, location, phone number, and qualifications to include area of special expertise and non-English languages spoken that would be helpful to individuals. [~~deciding to enroll;~~] MCO specialty

providers for self-referral shall include, but not be limited to, family planning providers, [~~point-of-entry behavioral health providers,~~] urgent and emergency care providers, Indian health service, other Native American providers and pharmacies; [~~and~~]

(c) SE: a listing of behavioral health providers with the name, location, phone number, and qualifications to include area of special expertise and non-English languages spoken that would be helpful to individuals; and

[~~(c)~~] (d) the material shall be available in a manner and format that can be easily understood by all identified prevalent populations.

D. **Other requirements:**

(1) The MCO/SE shall provide to enrolled members the member handbook and provider directory within 30 calendar days of enrollment.

(2) The handbook and directory shall be provided, in a comprehensive, understandable format that takes into consideration the special needs population, and is in accordance with federal mandates and meets communication requirements delineated in 8.305.8.15 NMAC, *Member Bill Of Rights*. This information may also be accessible via the internet, and be provided as requested by HSD.

(3) Oral and sign language interpretation must be made available free of charge to members and to potential members, upon request, and be available in all non-English languages.

(4) The member handbook shall be approved by HSD prior to distribution to medicaid members. The SE's behavioral health member [~~(or customer)~~] (or consumer) handbook shall be approved prior to distribution by HSD or its designee.

(5) Notification of material changes in the administration of the MCO/SE, changes to the MCO's/SE's provider network, significant changes in applicable state law, and any other information deemed relevant by HSD shall be distributed to the members [~~thirty~~] 30 days [~~(30)~~] prior to the intended effective date of the change. In addition, the MCO/SE shall make a good faith effort to give written notice of termination of a contracted provider to affected members within [~~fifteen~~] 15 days after receipt or issuance of termination notice.

(6) Notification about any of these changes may be made without reprinting the entire handbook.

(7) The MCO/SE shall notify all members at least once per year of their right to request and obtain member handbooks and provider directories.

E. **MCO/SE policies and procedures on member education:** The MCO/SE shall maintain policies and procedures governing the development and distribution of educational material for members. Policies shall address how members and potential members receive information, the means of dissemination and the content comprehension level and languages of this information. The MCO/SE shall have written policies and procedures regarding the utilization of information on race, ethnicity, and primary language spoken by its membership.

F. **Health education:** The MCO/SE shall provide a continuous program of health education without cost to members. Such a program may include publications (brochures, newsletters), electronic media (films, videotapes), presentations (seminars, lunch-and-learn sessions) and classroom instruction. HSD shall not approve health education materials. The MCO/SE shall provide programs of wellness education, including programs provided to address the social, physical, behavioral and emotional consequences of high-risk behaviors.

G. **Maintenance of toll-free line:** The MCO/SE shall maintain one or more toll-free telephone lines which are accessible 24 hours a day, seven days a week, to facilitate member access to a qualified clinical staff to answer health-related questions. MCO/SE members may also leave voice mail messages to obtain other MCO/SE policy information and to register grievances with the MCO/SE. The MCO/SE shall return the telephone call by the next business day.

H. **Member services meetings:** The MCO/SE shall meet as requested with HSD staff for member services meetings. Member services meetings are held to plan outreach and medicaid enrollment activities and events which will be jointly conducted by the MCO/SE and HSD outreach staff.

[8.305.2.9 NMAC - Rp 8.305.2.9 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.3 NMAC, Sections 10 and 11 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements.

8.305.3.10 CONTRACT MANAGEMENT: HSD is responsible for management of the medicaid contracts issued to MCOs/SE. HSD shall provide the oversight and administrative functions to ensure [~~MCO/SE~~] MCO compliance with the terms of the medicaid contract. The collaborative or its designee shall provide the oversight and administrative functions to ensure SE compliance with the terms of its contract. HSD, as a member of the collaborative, shall provide oversight of the SE contract as it relates to medicaid behavioral health services, providers and members.

A. **General contract requirements:** The [~~MCOs/SE~~] MCO/SE shall meet all specified terms of the medicaid contract with HSD and the collaborative as it relates to medicaid members and services 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 [~~MCOs/SE~~] MCO/SE shall be held harmless in conversion to HIPAA electronic transmission formats when delays are the result of implementation issues at HSD.

B. **Subcontracting requirements:** The MCO/SE may subcontract to a qualified individual or organization the provision of any service defined in the benefit package or other required MCO/SE functions. The MCO/SE shall submit boilerplate contract language and sample contracts for various types of subcontracts. Any substantive changes to contract templates shall be approved by HSD or the collaborative prior to issuance. The SE may assign, transfer, or delegate to [~~the sub contractual level~~] a subcontractor key management functions including, but not limited to, care coordination and universal credentialing with the explicit written approval of HSD [~~or~~] and the collaborative.

(1) **Credentialing requirements:** The MCO/SE shall maintain policies and procedures for verifying that the credentials of its providers and subcontractors meet applicable standards. The MCO/SE shall assure the prospective subcontractor's ability to perform the activities to be delegated.

(2) **Review requirements:** The MCO/SE shall maintain a fully executed original of all subcontracts and make them accessible to HSD on request.

(3) **Minimum requirements (MCO/SE):**

(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~~] to 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 and the services to be performed under

other subcontracts; subcontracts must describe 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 10 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 include a provision for the subcontractor to release to the MCO/SE any information necessary to perform any of its obligations;

(j) subcontractors shall accept payment from the MCO/SE for any services included in the benefit package and cannot request payment from HSD for services performed under the subcontract;

(k) if subcontracts include primary care, provisions for compliance with PCP requirements delineated in the MCO contract with HSD apply;

(l) subcontractors shall comply with all applicable state and federal statutes, rules and regulations, including the prohibition against discrimination;

(m) subcontracts shall have a provision for terminating, rescinding, or canceling the contracts for violation of applicable HSD requirements;

(n) subcontracts shall not prohibit a provider or other subcontractor from entering into a contractual relationship with another MCO (MCO only);

(o) subcontracts may not include incentives or disincentives that encourage a provider or other subcontractor [~~to not enter~~] not to enter into a contractual relationship with another [~~MCO/SE~~] MCO (MCO only);

(p) subcontracts shall not contain any gag order provisions nor sanctions against providers who assist members in accessing the grievance process or otherwise protecting member's interests; [~~and~~]

(q) subcontracts shall specify the time frame for submission of encounter data to the MCO/SE; and

(r) subcontracts to entities that receive annual medicaid payments of at least $5 million shall include detailed information regarding employee education of the New Mexico and federal False Claims Act.

(4) **Excluded providers:** The MCO/SE shall not contract with an individual provider, or an entity, or an entity with an individual who is 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, excluded from participation in any other state's medicaid program, medicare, or any other public or private health or health insurance program, assessed a civil penalty under the provision of Section 1128, or who has a contractual relationship with an entity convicted of a crime specified in Section 1128.

C. **Provider incentive plans:** The MCO/SE 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.

[8.305.3.10 NMAC - Rp 8.305.3.10 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07]

8.305.3.11 ORGANIZATIONAL REQUIREMENTS:

A. **Organizational structure:** The MCO/SE shall provide the following information to HSD and updates, modifications, or amendments to HSD within 30 days:

(1) current written charts of organization or other written plans identifying organizational lines of accountability;

(2) articles of incorporation, bylaws, partnership agreements, or similar documents that describe the MCO's/SE'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/SE's relationship to parent affiliated and related business entities including, but not limited to, subsidiaries, joint ventures or sister corporations.

B. **[~~Policies and procedures~~] Policies, procedures and job descriptions:** The MCO/SE shall establish and maintain written policies, procedures and job descriptions as required by HSD. The MCO/SE shall establish, maintain and implement guidelines for developing, reviewing and approving policies, procedures and job descriptions. The MCO/SE shall provide MCO/SE policies, procedures and job descriptions for key personnel and guidelines for review to HSD, or its designee on request. The MCO/SE shall notify HSD within 30 days when changes in key personnel occur.

(1) **Review of policies and procedures:** The MCO/SE shall review the MCO's/SE's policies and procedures at least every two years, unless otherwise specified herein, to ensure that they reflect the MCO's/SE's current best industry practices. Job descriptions shall be reviewed to ensure that current employee duties reflect written requirements. Modifications or amendments to current policies, procedures or job descriptions of key positions shall be made using the guidelines delineated during the procurement process. Substantive modification or amendment to key positions must be reviewed by HSD.

(2) **Distribution of information:** The MCO/SE shall distribute to providers information necessary to ensure that providers meet all contract requirements.

(3) **Business requirements:** The MCO/SE shall have the administrative, information and other systems in place necessary to fulfill the terms of the medicaid managed care contracts. Any change in identified key MCO/SE personnel shall conform to the requirements of the managed care contract.

(4) **Financial requirements:** The MCO/SE shall meet minimum requirements delineated by federal and state law with respect to solvency and performance guarantees for the duration of the contract. In addition, the MCO/SE shall meet additional financial requirements specified in the contract.

(5) **Member services:** The MCO/SE 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/SE'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 MCOs and the SE shall establish their respective consumer advisory board that includes regional representation of [~~customers, family member~~] consumers, family members, advocates and providers. The SE's behavioral health consumer advisory board shall also interact with the behavioral health planning council (BHPC) as directed by the collaborative. The MCO and the SE consumer advisory boards shall interface and collaborate with one another as appropriate.

(a) The MCO 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 medicaid, including managed care. [~~The board shall meet at least quarterly and keep a written record of meetings.~~] The SE consumer advisory board members shall serve to advise the SE 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 medicaid, including managed care.

The MCO and the SE board shall meet at least quarterly and keep a written record of meetings. The board roster and minutes shall be made available to HSD on request. The MCO shall advise HSD ten days in advance of meetings to be held. HSD shall attend and observe the MCOs' consumer advisory board meetings at their discretion. HSD shall attend and observe the [~~SEs'~~] SE's consumer advisory board meetings at [~~their~~] its discretion.

(b) The MCO/SE shall attend at least two statewide consumer driven or hosted meetings per year, of the MCO's/SE's choosing, that focus on consumer issues and needs, to ensure that members' 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 monetary penalties [~~and/or~~] or sanctions to the extent authorized by federal or state law:

(i) HSD retains the right to apply progressively stricter sanctions against the MCO/SE, including an assessment of a monetary penalty against the MCO/SE, for failure to perform in any contract area;

(ii) unless otherwise required by law, the level of sanctions shall be based on the frequency or pattern of conduct, or the severity or degree of harm posed to or incurred by members or the integrity of the medicaid program;

(iii) a monetary penalty, depending upon the severity of the infraction; penalty assessments shall range up to [~~five (5) percent~~] 5% of the MCO's/SE's medicaid capitation payment in the month in which the penalty is assessed;

(iv) any withholding of capitation payments in the form of a penalty assessment does not constitute just cause for the MCO/SE to interrupt services provided to members; and

(v) all administrative, contractual or legal remedies available to HSD shall be employed in the [~~even~~] event that the MCO/SE violates or breaches the terms of the contract;

(d) impose other 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 member 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 under (ii) above;

(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 medicaid program; the state must deduct from the penalty the amount of overcharge and return it to the affected enrollees;

(e) adjust automatic assignment formula;

(f) rescind marketing consent;

(g) suspend new enrollment, including default enrollment after the effective date of the sanction;

(h) appoint a state monitor, the cost of which shall be borne by the MCO/SE;

(i) deny payment;

(j) assess actual damages;

(k) assess liquidated damages;

(l) remove members with third party coverage from enrollment with the MCO/SE;

(m) allow members to terminate enrollment;

(n) suspend agreement;

(o) terminate MCO/SE contract;

(p) apply other sanctions and remedies specified by HSD; and

(q) impose temporary management only if it finds, through on-site survey, enrollee complaints, or any other means that;

(i) there is continued egregious behavior by the [~~MCO~~] MCO/SE, including but not limited to, behavior that is described in Subparagraph (d) above, or that is contrary to any requirements of 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 and safety of the MCO's/SE's members while improvement is made to remedy violations made under Subparagraph (d) above; or until there is orderly termination or reorganization of the MCO/SE.

(iv) HSD shall not delay the imposition of temporary management to provide a hearing before imposing this sanction; HSD shall not terminate temporary management until it determines that the MCO/SE can ensure that the sanction behavior will not re-occur; refer to state and federal regulations for due process procedures.

[8.305.3.11 NMAC - Rp 8.305.3.11 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.4 NMAC, Section 10 which will be effective on July 1, 2007. The Medical Assistance Division amended the section to clarify existing policy and to update physical health screening requirements.

8.305.4.10 SPECIAL SITUATIONS:

A. **Newborn enrollment:** The following provisions apply to newborns:

(1) Medicaid eligible and enrolled newborns of medicaid eligible enrolled mothers are eligible for a period of 12 months starting with the month of birth. These newborns are enrolled with the same MCO the mother had during the birth month, regardless of where the child is born (that is, in the hospital or at home).

(2) If the newborn's mother is not a member of the MCO at the time of the birth in a hospital or at home, the newborn must be medicaid enrolled and shall be MCO eligible during the next applicable enrollment cycle. [~~At the time of the newborn's medicaid enrollment, the MCO shall only be responsible for a current hospitalization if the mother was an enrolled MCO member.~~]

B. **Hospitalized members:** If a medicaid-eligible member is hospitalized in a general acute care, a rehabilitation or free-standing psychiatric hospital either at the time the member enters managed care [~~or enters exempt status or vice versa~~], disenrolls from managed care to FFS (exempt) or switches from one managed care organization to another, the MCO/SE or FFS (exempt), which was originally responsible for the hospital inpatient placement, shall remain financially responsible for the hospital-related charges until discharge [~~or a change in the level of care. Upon discharge or change in the level of care,~~]. Upon discharge, the member will then become the financial responsibility of the organization or entity receiving capitation payments. This does not apply to newborns born to a member mother, see Subsection A of 8.305.4.10 NMAC above. Transition services, e.g., DME supplies for

the home, shall be the financial responsibility of the MCO or the SE, if applicable to behavioral health receiving capitation payments. The originating and receiving organization are both required to ensure continuity and coordination of care during the transition.

C. **Native Americans:** [~~Upon identifying himself as Native American, a~~] A self-identified Native American shall be afforded the option of participating in managed care or being covered by medicaid fee-for-service for medical or behavioral health services. Upon determination of medicaid eligibility, a Native American may choose to participate in managed care, or opt in, by enrolling in an MCO[~~. By not enrolling in an MCO~~] for medical services or by choosing the managed care SE for behavioral health services. By not enrolling in an MCO or not choosing the managed care SE, the Native American chooses not to participate in [~~a~~] managed care [~~plan~~] and shall be covered through medicaid fee-for-service. A medicaid eligible Native American may opt-in at any time by enrolling with an MCO or by choosing the managed care SE. If an opt-in request is made prior to the 20th of the month, the opt-in shall become effective the following month. If the opt-in request is made after the 20th of the month and before the first day of the next month, the opt-in shall be effective on the first day of the second full month following the request. After enrolling in an MCO or the managed care SE, a Native American may opt out during the first 90 days of any 12-month enrollment lock-in period (disenrollment). Disenrollment is effective the following month. At the end of the lock-in period, a Native American may [~~re-enroll in an MCO~~] choose to either continue enrollment in managed care or opt-out of managed care. [~~A medicaid eligible Native American may opt-in at any time by enrolling with an MCO. If an opt-in request is made prior to the 20th of the month, the opt-in shall become effective the following month. If the opt-in request is made after the 20th of the month and before the first day of the next month, the opt-in shall be effective on the first day of the second full month following the request. Native American enrollment in the SE is mandatory.~~]

D. **Members receiving hospice services:** Members who have elected to receive hospice services and are receiving hospice services at the time they are determined eligible for medicaid will be exempt from enrolling in managed care unless they revoke their hospice election.

E. **Members placed in nursing facilities:** If a member is placed in a nursing facility for what is expected to be a long term or permanent placement, the MCO or the SE, [~~if the placement relates to behavioral health,~~] remains responsible for the member until the member is disenrolled by HSD. Failure of a nursing facility to maintain abstract authorization for an institutionalized member that causes the system to enroll the member into managed care is considered an error in enrollment. The MCO/SE is not responsible for payment of any medical or behavioral services delivered and all capitations shall be recouped.

F. **Members 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 8.305.11.9 NMAC for special payment requirements.

G. **Members placed in institutional care facilities for the mentally retarded (ICF/MR):** If a member is placed in an ICF/MR for what is expected to be a long-term or permanent placement, the MCO/SE remains responsible for the member until the member is disenrolled by HSD.

H. In compliance with federal law and authorizations, HSD may mandate that a member eligible for medicaid and medicare (dual eligibles) shall be enrolled with an MCO/SE to receive benefits from the medicaid benefit package that are not provided by medicare. This program will be implemented in compliance with federal law and requirements.

[8.305.4.10 NMAC - Rp 8 NMAC 4.MAD.606.3.2, 7-1-01; A, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.5 NMAC, Sections 9, 11 and 13 which will be effective on July 1, 2007. The Medical Assistance Division amended the section to clarify existing policy and to update physical health screening requirements.

8.305.5.9 ENROLLMENT PROCESS.

A. **Enrollment requirements:** The managed care organization (MCO) [~~or single statewide entity (SE)~~] shall provide an open enrollment period during which the [~~MCO/SE~~] MCO shall accept eligible individuals in the order in which they apply without restriction, unless authorized by the CMS regional administrator, up to the limits contained in the contract. The [~~MCO/SE~~] MCO shall not discriminate on the basis of health status or a need for health care services. The [~~MCO/SE~~] MCO shall not discriminate against individuals eligible to enroll on the basis of race, color, national origin, or sexual orientation and will not use any policy or practice that has the effect of discriminating on the basis of race, color, national origin, or sexual orientation. All enrollments in a specific MCO shall be member choice. Enrollment in the SE is mandatory for all members enrolled in managed care or medicaid fee-for-service.

B. **Selection period:** The member shall have 14 calendar days to select an MCO. If a selection is not made in 14 days, the member shall be assigned to an MCO by HSD. Members mandated into managed care shall be automatically assigned to the SE.

C. **Enrollment methods when no selection made:**

(1) **Enrollment with previous MCO:** The member is automatically enrolled with the previous MCO unless the MCO is no longer in good standing, is no longer contracting with HSD or has had enrollment suspended.

(2) **Enrollment based on case continuity:** Enrollment based on case continuity is applied in the following manner:

(a) **Processing case continuity:** The member is enrolled with the MCO to which the majority of the case (family) members is assigned. If an equal number of case (family) members are assigned to different MCOs and a majority cannot be identified, the member is assigned to an MCO to which other case (family) members are assigned.

(b) **Newborn enrollment:** A newborn whose mother is a member in an [~~MCO/SE~~] MCO is automatically enrolled in the mother's MCO [~~or~~] and in the SE. The newborn remains enrolled with the mother's MCO until the mother selects a new MCO for the child.

(3) **Percentage-based assignment (assignment algorithm):** As determined by HSD, members who are not enrolled using the previous methods may be enrolled in an MCO using a percentage-based assignment process. The percentage-based assignments for each MCO may be determined based upon consideration of the MCO's performance in such areas as the quality assurance standards, encounter data submissions, reporting requirements, third party liability collections, marketing plan, community relations, coordination of service, grievance resolution, claims payment, and consumer input.

D. **Begin date of enrollment:** Enrollment begins the first day of the first full month following selection or assignment except in the following circumstances:

(1) newborn enrollment, (Subsection A of 8.305.4.10 NMAC, *newborn enrollment*);

(2) members receiving hospice care, (Subsection E of 8.305.4.10 NMAC,

members receiving hospice services); and

(3) if the selection or assignment is made 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 month after the selection or assignment.

E. **Member lock-in:** Member enrollment in an MCO runs for a 12-month cycle. During the first 90 days after a member initially selects or is assigned to an MCO, the member shall have the option to choose a different MCO to provide care during the member's remaining period of managed care enrollment.

(1) If the member does not choose a different MCO, the member will continue to receive care from the MCO that provided the member's care in the first 90 days.

(2) If, during the member's first 90 days with an MCO, he chooses a different MCO, the member will have a 90-day open enrollment period with this new MCO.

(3) After exercising his switching rights, and returning to a previously selected MCO, the member shall remain with this MCO until his [~~twelve (12) month~~] 12-month lock-in period expires before being permitted to switch MCOs.

(4) At the conclusion of the 12-month cycle, the member shall have the same choices offered at the time of initial enrollment. The member shall be notified 60 days prior to the expiration date of the member's lock-in period of the expiration of the lock-in and the deadline by when to choose a new MCO.

(5) If a member loses medicaid eligibility for a period of two months or less, he will be automatically reenrolled with the former MCO. If the member misses the annual disenrollment opportunity during this two-month time, he may request to be assigned to another MCO.

F. **Member switch enrollment:** A member who is required to enroll in managed care may request to be disenrolled from an MCO and switch to another MCO "for cause" at any time. The member or his representative shall make the request [~~either orally or~~] in writing to HSD. HSD shall review the request and furnish a written response to the member and the MCO no later than the first day of the second month following the month in which the member or his representative files the request. If HSD fails to make a disenrollment determination so that the member may be disenrolled during this timeframe, the disenrollment is considered approved. A member who is denied disenrollment shall have access to HSD's fair hearing process. The following criteria shall be cause for disenrollment:

(1) continuity of care issues;

(2) family continuity;

(3) administrative or data entry error in assigning a member 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 contract, or lack of access to providers experienced in dealing with the member's health care needs.

G. **Exemption:** HSD shall grant exemptions to mandatory enrollment on a case-by-case basis. HSD shall grant exemptions to mandatory enrollment for medicaid managed care behavioral health services for cause on a case-by-case basis. If the exemption is granted, the member shall receive his behavioral health services through the SE under the medicaid fee-for-service (FFS) program. A member or the member's representative, parent or legal guardian shall request exemption in writing to HSD, describing the special circumstances that warrant an exemption. Alternatively, HSD may initiate an exemption on a case-by-case basis. Requests for exemption shall be evaluated by HSD clinical staff and forwarded to the medical assistance division medical director or designee for final determination. Members shall be notified of the disposition of exemption requests. A member requesting an exemption, who is not enrolled in managed care at the time of the exemption request, shall remain exempt until a final determination is made. A member already in managed care at the time of the exemption request shall remain in managed care until a final determination is made. HSD shall review the request and furnish a written response to the member no later than the first day of the second month following the month in which the member files the request. If HSD fails to make a determination so that the member may become exempt within this timeframe, the exemption is considered approved. A member who is denied exemption shall have access to HSD's fair hearing process.

H. **Disenrollment, MCO/SE initiated:** The MCO/SE may request that a particular member be disenrolled from managed care. Member disenrollment from an MCO/SE shall be considered in rare circumstances. Disenrollment requests shall be made in writing to HSD. The request and supporting documentation shall meet HSD conditions stated below in Subsection I of 8.305.5.9 NMAC. The MCO/SE 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/SE seriously impairs the MCO's or SE's ability to furnish services to either this particular member or other members). The MCO/SE shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The MCO/SE shall submit a copy of the member's notification letter to HSD. If the disenrollment is granted, the MCO/SE retains responsibility for the member's care until the member is enrolled with another MCO or exempted from managed care. In the case of the SE, the member would be exempted from the SE medicaid managed care and would receive behavioral health benefits under the medicaid fee-for-service (FFS) program. The MCO/SE shall assist with transition of care.

I. **Conditions under which an MCO/SE may request member disenrollment:** Conditions under which an MCO/SE may request disenrollment are:

(1) the MCO/SE demonstrates a good faith effort has been made to accommodate the member and address the member's problems, but those efforts have been unsuccessful;

(2) the conduct of the member does not allow the MCO/SE to safely or prudently provide medical or behavioral health care subject to the terms of the contract;

(3) the MCO/SE has offered to the member in writing the opportunity to use the grievance procedures; and

(4) the MCO/SE has received threats or attempts of intimidation from the member to the MCO's or SE's providers or MCO/SE staff.

J. **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 contracted MCOs, HSD shall evaluate the member for medical management. In the case of the SE, the member would be exempted from the SE medicaid managed care and would receive behavioral health benefits under the medicaid fee-for-service (FFS) program.

K. **Date of disenrollment:** MCO/SE enrollment upon approval, shall terminate at the end of a calendar month.

[8.305.5.9 NMAC - Rp 8.305.5.9 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.5.11 MEMBER IDENTIFICATION CARD: The [~~MCO/SE~~] MCO shall issue a member identification card with SE contact information within 30 days of enrollment to each member. The card shall be substantially the same as the card issued to commercial enrollees. The card shall not contain information that identifies the member as a medicaid recipient, other than designations commonly used by MCOs to identify for providers the members' benefits, such as group or plan numbers.

[8.305.5.11 NMAC - Rp 8.305.5.14 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.5.13 MEDICAID MANAGED CARE AND SINGLE STATEWIDE ENTITY MARKETING GUIDELINES: When marketing to medicaid members, MCOs/SE shall follow the medicaid managed care marketing guidelines.

A. **Minimum marketing and outreach requirements:** Marketing is defined as the act or process of promoting a business or commodity**.** The marketing and outreach material must meet the following minimum requirements:

(1) marketing and outreach materials must meet requirements for all communication with medicaid members, as delineated in the quality standards (8.305.8.15 NMAC, *member bill of rights*) and incorporated into the managed care contract;

(2) all marketing or outreach materials produced by the MCO/SE under the medicaid managed care contract shall state that such services are funded in part under contract with the state of New Mexico;

(3) marketing and outreach information provided to members shall be accurate, not misleading, and non-threatening;

(4) if there is a prevalent population of 5% in the MCO/SE membership that has limited English proficiency, as identified by the MCO/SE or HSD, marketing materials must be available in the language of the prevalent population; and

(5) other requirements specified by the state.

B. **Scope of marketing guidelines:** Marketing materials are defined as brochures and leaflets, newspaper, magazine, radio, television, billboard, MCO/SE yellow page advertisement, web site and presentation materials used by an MCO/SE, and MCO/SE representative or MCO/SE sub-contractor to attract or retain medicaid enrollment. HSD may request, review and approve or disapprove any communication to any medicaid member. HSD may request, review and approve or disapprove any communication to any medicaid member regarding behavioral health. MCO/SE are not restricted by HSD in their general communications to the public. HSD shall approve advertisements mailed to, distributed to, or aimed at medicaid members and marketing material that mentions medicaid, medical assistance, Title XIX or makes reference to medicaid behavioral health services. The MCO/SE shall notify HSD of significant format changes to advertisements. Examples of medicaid-specific materials would be those that:

(1) are in any way targeted to medicaid populations, such as billboards or bus posters disproportionately located in low-income neighborhoods;

(2) mention the MCO/SE's medicaid product name; or

(3) contain language or information designed to attract medicaid enrollment.

C. **Advertising and marketing material:** The dissemination of medicaid-specific advertising and marketing materials, including materials disseminated by a sub-contractor and information disseminated via the Internet requires the approval of HSD or its designee. In reviewing this information, HSD shall apply a variety of criteria.

(1) **Accuracy:** The content of the material must be accurate. Information deemed inaccurate shall be disallowed.

(2) **Misleading references to MCO/SE strengths:** Misleading information shall not be allowed even if it is accurate. For example, an MCO/SE may seek to advertise that its health care services, including behavioral health, are free to medicaid members. HSD would not allow the language because it could be construed by members as being a particular advantage of the MCO/SE. In other words, they might believe they would have to pay for medicaid health services if they chose another MCO or remained in fee-for-service medicaid.

(3) **Threatening messages:** An MCO/SE shall not imply that another managed care or other behavioral health program is endangering members' health status, personal dignity or the opportunity to succeed in various aspects of their lives. An MCO/SE may differentiate itself by promoting its legitimate strengths and positive attributes, but not by creating threatening implications about the mandatory assignment process or other aspects of the program.

D. **Marketing and outreach activities not permitted:** The following marketing and outreach activities are not permitted regardless of the method of communication (oral, written or other means of communication) or whether the activity is performed by the MCO/SE directly, its network providers, its subcontractors or any other party affiliated with the MCO/SE. HSD shall prohibit additional marketing activities at its discretion.

(1) asserting or implying that a member will lose medicaid benefits if he does not enroll with the MCO or creating other scenarios that do not accurately depict the consequences of choosing a different MCO;

(2) designing a marketing or outreach plan that discourages or encourages MCO selection based on health status or risk;

(3) initiating an enrollment request on behalf of a medicaid member;

(4) making inaccurate, misleading or exaggerated statements designed to recruit a potential member;

(5) asserting or implying that the MCO offers unique covered services where another MCO provides the same or similar services;

(6) the use of more than nominal gifts such as diapers, toasters, infant formula or other incentives to entice medicaid members to join a specific health plan;

(7) telemarketing or face-to-face marketing with potential members;

(8) conducting any other marketing activity prohibited by HSD or its designee;

(9) explicit direct marketing to members enrolled with other MCOs unless the member requests the information;

(10) distributing any marketing materials without first obtaining the approval of HSD or its designee;

(11) seeking to influence enrollment in conjunction with the sale or offering of any private insurance;

(12) engaging in door-to-door, telephone or other cold call marketing activities, directly or indirectly; and

(13) other requirements specified by HSD.

E. **Marketing in current care sites:** Promotional materials may be made available to members and potential MCO/SE enrollees in care delivery sites, including patient waiting areas, if HSD has prior approved the content. Face-to-face meetings at care delivery sites for the pur-

pose of marketing to potential MCO/SE enrollees by MCO/SE staff shall not be permitted.

F. **Provider communications with medicaid members about MCO/SE options:** HSD marketing restrictions shall apply to MCO/SE subcontractors and providers as well as to the MCO/SE. [~~MCOs/SE are~~] The MCO/SE is required to notify participating providers of the HSD marketing restrictions, including providing a copy of these regulations. HSD shall not review yellow page ads of individual providers, unless specifically requested to do so.

G. **Member-initiated meetings with MCO/SE staff prior to enrollment:** Face-to-face meetings requested by a member are permitted. These meetings may occur at a mutually agreed upon site. All verbal interaction with the member must be in compliance with the guidelines identified in these regulations.

H. **Mailings by the MCO/SE:** MCO/SE mailings shall be permitted in response to a member's oral or written request for information. The content of marketing or promotional mailings shall be prior approved by HSD or its designee. MCO/SE may, with HSD approval, provide potential members with information regarding the MCO/SE medicaid benefit package. MCO/SE shall not send gifts however nominal in value, in these mailings. MCO/SE may send solicited and unsolicited mailings to members and potential members. Unsolicited mailings are defined as: newsletters; notification of outreach events and member services meetings; educational materials and literature related to the MCO/SE preventive medicine initiatives, (such as, diabetes screening, drug and alcohol awareness, and mammograms). HSD shall approve the content of mailings except health education materials. The target audience of the mailings shall be prior approved by HSD or its designee.

I. **Group meetings:** The MCO/SE may hold public meetings. HSD shall be furnished with notice of the meetings and shall prior approve [~~the~~] any marketing material to be presented at the meeting. HSD, or its designee shall approve the methodology used by the MCO/SE to solicit attendance for the public meetings. HSD or its designee may attend the meeting.

J. **Light refreshments for members at meetings:** The MCO/SE may offer light refreshments at approved group meetings. The availability of food and beverages shall not be mentioned in advertisements for the meetings. *Alcoholic beverages shall not be offered at meetings.*

K. **Gifts, cash incentives or rebates to members:** MCO/SE and their providers, with HSD approval, may disseminate marketing materials, including nominal gifts such as pens, key chains and magnets to potential members.

L. **Gifts to members at health milestones unrelated to enrollment:** Members may be given "rewards" for accessing care, such as a baby T-shirt when a woman completes a targeted series of prenatal visits. Items that reinforce a member's healthy behavior, (car seats, infant formula, magnets and telephone labels) that advertise the member services hotline and the PCP office telephone number for members are examples of "rewards". HSD shall approve gifts with a retail value of over $25.00. Health education videos may be provided. HSD encourages MCOs/SE to include reward items in information sent to new MCO/SE members.

M. **Marketing time frames:** The MCO/SE may initiate marketing and outreach activities at any time.

[8.305.5.13 NMAC - Rp 8.305.5.16 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.6 NMAC, Sections 9 and 18 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements. Section 18 was created to cover transition of care.

8.305.6.9 GENERAL NETWORK REQUIREMENTS: The MCO/SE shall establish and maintain a comprehensive network of providers willing and capable of serving members enrolled with the MCO/SE.

A. **Service coverage:** The MCO/SE [~~CO~~] shall provide or arrange for the provision of services described in 8.305.7 NMAC, *Benefit Package*, in a timely manner. The MCO/SE is solely responsible for the provision of covered services and must ensure that its network includes providers in sufficient numbers and required specialists to make all services included in the package available and in accordance with access standards.

B. **Comprehensive network:** The MCO/SE shall contract with the full array of providers necessary to deliver a level of care at least equal to, or better than, community norms. The MCO/SE shall contract with a number of providers sufficient to maintain equivalent or better access than that available under medicaid fee-for-service. The MCO/SE shall take into consideration the characteristics and health care needs of its individual medicaid populations. The MCO/SE must contractually require that all network providers and subcontractors be in compliance with the Health Insurance Portability and Accountability Act (HIPAA). In establishing and maintaining the network of appropriate providers, the MCO/SE shall consider the following:

(1) the numbers of network providers who are not accepting new medicaid members;

(2) the geographic location of providers and medicaid members, considering distance, travel time, the means of transportation ordinarily used by medicaid members; and

(3) whether the location provides physical access for medicaid members, including members with disabilities.

C. **Maintenance of provider network:** The MCO/SE shall notify HSD within five working days of unexpected changes to the composition of its provider network that negatively affects [~~members~~] members' access or the [~~MCO's/SE's~~] MCO/SE's ability to deliver services included in the benefit package in a timely manner. Anticipated material changes in an MCO/SE provider network shall be reported to HSD in writing within 30 days prior to the change, or as soon as the MCO/SE knows of the anticipated change. A notice of significant change must contain:

(1) the nature of the change;

(2) how the change [~~effects~~] affects the delivery of or access to covered services; and

(3) the [~~MCO's~~] MCO/SE's plan for maintaining access and the quality of member care.

D. **Required policies and procedures:** The MCO/SE shall maintain policies and procedures on provider recruitment and termination of provider participation with the MCO/SE. The recruitment policies and procedures shall describe how an MCO/SE responds to a change in the network that affects access and its ability to deliver services in a timely manner. The MCO/SE:

(1) must not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment;

(2) must not discriminate against providers with respect to participation, reimbursement, or indemnification for any provider acting within the scope of that provider's license or certification under applicable state law solely on the basis of the provider's license or certification;

(3) must not decline to include individual or groups of providers in its network without giving the affected providers

written notice of the reason for its decision;

(4) shall not be required to contract with providers beyond the number necessary to meet the needs of its members;

(5) shall be allowed to use different reimbursement amounts for different specialties or for different practitioners within the same specialty;

(6) shall be allowed to establish measures that are designed to maintain quality of services and control costs and are consistent with its responsibility to members;

(7) may not employ or contract with providers excluded from participation in federal health care programs because of misconduct; and

(8) shall not be required to contract with providers who are ineligible to receive reimbursement under medicaid fee-for-service.

E. **General information submitted to HSD:** The MCO shall maintain an accurate unduplicated list of contracted, subcontracted and terminated PCPs, specialists, hospitals and other providers participating or affiliated with the MCO. The SE shall maintain an accurate unduplicated list of contracted, subcontracted, and terminated behavioral health providers for both mental health and substance abuse. The MCO/SE shall submit a list to HSD on a regular basis, as determined by HSD, and include a clear delineation of all additions and terminations that have occurred since the last submission.

[8.305.6.9 NMAC - Rp 8 NMAC 4.MAD.606.5.1, 7-1-01; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.6.18 MCO/SE PROVIDER TRANSITION OF CARE: The MCO shall notify HSD and the SE shall notify the collaborative of unexpected changes to the composition of its provider network that would have a significantly negative effect on member access to services or on the MCO/SE's ability to deliver services included in the benefit package in a timely manner. In the event that provider network changes are unexpected or when it is determined that a provider is unable to meet their contractual obligation, the MCO shall be required to submit a transition plan(s) to HSD for all affected members and the SE shall be required to submit transition plans to the collaborative for all affected consumers.

[8.305.6.18 NMAC - N, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.7 NMAC, Sections 9, 10, 11 and 16 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements. Section 16, Enhanced Services is being repealed from this Part.

8.305.7.9 BENEFIT PACKAGE: This part defines the medicaid benefit package for which the MCO/SE shall be paid fixed per-member per-month payment rates. The MCO/SE shall cover these services. The MCO/SE shall not delete benefits from the medicaid-defined benefit package. [~~An MCO shall provide an enhanced benefit package, which could include health-related educational, preventive, outreach and enhanced physical services. The SE shall provide enhanced behavioral health services, including behavioral health related educational and preventive services and outreach~~.] The MCO/SE may utilize providers licensed in accordance with state and federal requirements to deliver services.

[8.305.7.9 NMAC - Rp 8.305.7.9 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07]

8.305.7.10 MEDICAL ASSISTANCE DIVISION PROGRAM POLICY MANUAL: The medical assistance division program policy manual contains a detailed explanation of the services covered by medicaid, limitations and exclusions to covered services and services that are not covered by medicaid. The manual is the official source of information on covered and noncovered services. [~~MCOs/SE~~] The MCO/SE shall determine their own utilization management (UM) protocols which are based on reasonable medical evidence, and are not bound by those found in the medicaid program manual. HSD may review and approve the MCO's or SE's UM protocols.

[8.305.7.10 NMAC - Rp 8.305.7.10 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.7.11 SERVICES INCLUDED IN THE MEDICAID BENEFIT PACKAGE:

A. **Inpatient hospital services (MCO/SE):** The benefit package includes hospital inpatient acute care, procedures and services for members, as detailed in 8.311.2 NMAC, *Hospital Services*. The MCO shall comply with the maternity length of stay in the Health Insurance Portability and Accountability Act of 1996. Coverage for a hospital stay following a normal, vaginal delivery may not be limited to less than 48 hours for both the mother and the newborn child. Health coverage for a hospital stay in connection with childbirth following a caesarian section may not be limited to less than 96 hours for mother and newborn child.

B. **Transplant services (MCO only):** The following transplants are covered in the benefit package as long as the indications are not considered experimental or investigational: heart transplants, lung transplants, heart-lung transplants, liver transplants, kidney transplants, autologous bone marrow transplants, allogeneic bone marrow transplants and corneal transplants, as detailed in 8.325.5 NMAC, *Transplant Services*. Also see 8.325.6 NMAC, *Experimental or Investigational Procedures, Technologies or Non-Drug Therapies* for guidance on determining if transplants are experimental or investigational.

C. **Hospital outpatient service (MCO/SE):** The benefit package includes hospital outpatient services for preventive, diagnostic, therapeutic, rehabilitative or palliative medical or behavioral health services as detailed in 8.311.2 NMAC, *Outpatient Covered Services.*

D. **Case management services (MCO/SE):** The benefit package includes case management services necessary to meet an identified service need as detailed in 8.326.2 NMAC through 8.326.6 NMAC and 8.320.5 NMAC.

E. **Specific case management programs:** The following are specific case management programs available to medicaid members within the MCO or the SE, which meet the requirements specified in policy manual parts:

(1) **case management services for adults with developmental disabilities (MCO only):** Case management services provided to adult members (21 years of age or older) who are developmentally disabled, as detailed in 8.326.2 NMAC, *Case Management Services for Adults with Developmental Disabilities*;

(2) **case management services for pregnant women and their infants (MCO only):** Case management services provided to pregnant women up to 60 days following the end of the month of the delivery, as detailed in 8.326.3 NMAC, *Case Management Services for Pregnant Women and Their Infants*;

(3) **case management services for the chronically mentally ill (SE only):** Case management services provided to adults who are 18 years of age or older and who are chronically mentally ill, as detailed in 8.326.4 NMAC, *Case Management Services for the Chronically Mentally Ill*;

(4) **case management services for traumatically brain injured adults (MCO only):** Case management services provided to adults who are 21 years of age or older who are traumatically brain injured, as detailed in 8.326.5 NMAC, *Case Managed Services for Traumatically Brain Injured Adults*;

(5) **case management services for children up to the age of three (MCO only):** Case management services for chil-

dren up to the age of three who are medically at risk due to family conditions and not developmentally delayed, as detailed in 8.326.6 NMAC, *Case Management Services for Children Up to Age Three*; and

(6) **case management services for the medically at risk (MCO/SE):** Case management services for individuals who are under 21 who are medically at risk for physical or behavioral health conditions, as detailed in 8.320.5 NMAC, *EPSDT Case Management*; the benefit package does not include case management provided to developmentally disabled children ages 0-3 who are receiving early intervention services, or case management services provided by the children, youth and families department and defined as protective services case management or juvenile probation and parole officer case management; "medically at risk" is defined as those individuals who have a diagnosed physical or behavioral health condition which has a high probability of impairing their cognitive, emotional, neurological, social, behavioral or physical development.

F. **Emergency services ([~~MCO only~~] MCO/SE):** The benefit package includes inpatient and outpatient services meeting the definition of emergency services. It is the responsibility of the MCOs to cover emergency room facility costs even when the primary diagnosis is a behavioral health diagnosis, with the exception of UNM psychiatric emergency room, which will be the responsibility of the SE. Services shall be available 24 hours per day and 7 days per week. Services meeting the definition of emergency services shall be provided without regard to prior authorization or the provider's contractual relationship with the MCO/SE. 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 this stabilized condition. This coverage may include improving or resolving the member's condition if either the MCO/SE 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/SE; or

(2) the hospital contacted the MCO/SE but did not get instructions within an hour of the request.

G. **Physical health services (MCO only):** The benefit package includes primary (including those provided in school-based settings) and specialty physical health services provided by a licensed practitioner performed within the scope of practice, as defined by state law and detailed in 8.310.2 NMAC, *Medical Services Providers*; 8.310.10 NMAC, *Midwife Services*, including out of hospital births and other related birthing services performed by certified nurse midwives or direct-entry midwives licensed by the state of New Mexico, who are either validly contracted with and fully credentialed by the MCO or validly contracted with HSD; 8.310.11 NMAC, *Podiatry Services*; 8.310.3 NMAC, *Rural Health Clinic Services*; and 8.310.4 NMAC, *Federally Qualified Health Center Services*.

H. **Laboratory services (MCO or SE):** The benefit package includes laboratory services provided according to the applicable provisions of Clinical Laboratory Improvement Act (CLIA), as detailed in 8.324.2 NMAC, *Laboratory Services*. [~~If an inpatient physical health facility provider bills for a laboratory service where the attending physician is a psychiatrist, it shall be covered under the SE. Laboratory services provided and billed by a behavioral health provider affiliated with the SE shall be covered under the SE (e.g., residential treatment center (RTC), inpatient psych hospital, mental health clinic, etc.).~~] Laboratory costs shall be the responsibility of the SE when they are provided within, and billed by, a freestanding psychiatric hospital, a PPS exempt unit of a general acute hospital or UNM psychiatric emergency room. In the event that a psychiatrist orders lab work but completes that lab work in his/her office/facility and bills for it, the SE shall be responsible for payment. Lab costs shall be the responsibility of the MCO when a BH provider orders lab work that is performed by an outside, independent laboratory, including those lab services provided for persons within a freestanding psychiatric hospital, a psychiatric unit, a psychiatric unit within a general hospital or UNM psychiatric ER. All other covered laboratory services shall be the responsibility of the MCO.

I. **Diagnostic imaging and therapeutic radiology services (MCO or SE):** The benefit package includes medically necessary diagnostic imaging and radiology services, as detailed in 8.324.3 NMAC, *Diagnostic Imaging and Therapeutic Radiology Services*. [~~If an inpatient physical health facility provider bills for a diagnostic imaging and therapeutic radiology service where the attending physician is a psychiatrist, it shall be covered under the SE. Diagnostic imaging and therapeutic services provided and billed by a behavioral health provider affiliated with the SE shall be covered under the SE (e.g., residential treatment center (RTC), inpatient psych hospital, mental health clinic, etc.).~~] Radiology costs shall be the responsibility of the SE when they are provided within, and billed by, a freestanding psychiatric hospital, a PPS exempt unit of a general acute hospital or UNM psychiatric emergency room. In the event that a psychiatrist orders radiology services but completes those tests in his/her office/facility and bills for it, the SE shall be responsible for payment. Radiology costs shall be the responsibility of the MCO when a BH provider orders radiology services that are performed by an outside, independent radiology facility, including those radiology services provided for persons within a freestanding psychiatric hospital, a psychiatric unit, a psychiatric unit within a general hospital or UNM psychiatric ER. All other diagnostic imaging and therapeutic radiology services shall be the responsibility of the MCO.

J. **Anesthesia services (MCO):** The benefit package includes anesthesia and monitoring services necessary for the performance of surgical or diagnostic procedures, as detailed in 8.310.5 NMAC, *Anesthesia Services*. Reimbursement for anesthesia related to electroconvulsive therapy (ECT) shall be the responsibility of the MCO.

K. **Vision services (MCO only):** The benefit package includes vision services, as detailed in 8.310.6 NMAC, *Vision Care Services*.

L. **Audiology services (MCO only):** The benefit package includes audiology services, as detailed in 8.324.6 NMAC, *Hearing Aids and Related Evaluation*.

M. **Dental services (MCO only):** The benefit package includes dental services, as detailed in 8.310.7 NMAC, *Dental Services*.

N. **Dialysis services (MCO only):** The benefit package includes medically necessary dialysis services, as detailed in 8.325.2 NMAC, *Dialysis Services*. Dialysis providers shall assist members in applying for and pursuing final medicare eligibility determination.

O. **Pharmacy services (MCO/SE):** The benefit package includes all pharmacy and related services, as detailed in 8.324.4 NMAC, *Pharmacy Services*. The MCO/SE shall maintain written policies and procedures governing its drug utilization review (DUR) program in compliance with all applicable federal med-

icaid laws. The MCO/SE shall use a single medicaid preferred drug list (PDL). The MCO shall coordinate as necessary with the SE, and the SE shall coordinate with the MCO and the member's PCP when administering pharmacy services. The SE shall be responsible for payment of all medications prescribed by a behavioral health provider, such as psychiatrists, psychologists certified to prescribe, psychiatric clinical nurse specialists, psychiatric nurse practitioners, and any other prescribing practitioner contracted with the SE [~~and treating a psychiatric disorder~~].

P. **Durable medical equipment and medical supplies (MCO only):** The benefit package includes the purchase, delivery, maintenance and repair of equipment, oxygen and oxygen administration equipment, nutritional products, disposable diapers, augmentative alternative communication devices and disposable supplies essential for the use of the equipment, as detailed in 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies*.

Q. **EPSDT services (MCO/SE):** The benefit package includes the delivery of the federally mandated early and periodic screening, diagnostic and treatment (EPSDT) services provided by a PCP and physical or behavioral health specialist, as detailed in 8.320.2 NMAC, *EPSDT Services*. The SE shall provide access to early intervention programs/services for members identified in an EPSDT screen as being at risk for developing or having a severe emotional, behavioral or neurobiological disorder.

R. **Tot-to-teen health checks (MCO only):** The MCO shall adhere to the periodicity schedule and ensure that eligible members receive EPSDT screens (tot-to-teen health checks). The services include the following with respect to treatment follow-up:

(1) education of and outreach to members regarding the importance of the health checks;

(2) development of a proactive approach to ensure that the members receive the services;

(3) facilitation of appropriate coordination with school-based providers;

(4) development of a systematic communication process with MCO network providers regarding screens and treatment coordination;

(5) processes to document, measure and assure compliance with the periodicity schedule; and

(6) development of a proactive process to insure the appropriate follow-up evaluation, referral and treatment, including early intervention for vision and hearing screening, dental examinations and current immunizations; the MCO will facilitate referral to the SE for identified behavioral health conditions.

S. **EPSDT private duty nursing (MCO only):** The benefit package includes private duty nursing for the EPSDT population, as detailed in 8.323.4 NMAC, *EPSDT Private Duty Nursing Services*. The services shall either be delivered in the member's home or the school setting.

T. **EPSDT personal care (MCO only):** The benefit package includes personal care services for the EPSDT population, as detailed in 8.323.2 NMAC, *EPSDT Personal Care Services*.

U. **Services provided in schools (MCO/SE):** The benefit package includes services provided in schools, excluding those specified in the individual education plan (IEP) or the individualized family service plan (IFSP), as detailed in 8.320.6 NMAC, *School-Based Services for Recipients under 21 Years Of Age*.

V. **Nutritional services (MCO only):** The benefit package includes nutritional services furnished to pregnant women and children as detailed in 8.324.9 NMAC, *Nutrition Services*.

W. **Home health services (MCO only):** The benefit package includes home health services, as detailed in 8.325.9 NMAC, *Home Health Services*. The MCO is required to coordinate home health and the home and community-based waiver programs if a member is eligible for both home health and waiver services.

X. **Hospice services (MCO only):** The benefit package includes hospice services, as detailed in 8.325.4 NMAC, *Hospice Care Services*.

Y. **Ambulatory surgical services (MCO only):** The benefit package includes surgical services rendered in an ambulatory surgical center setting, as detailed in 8.324.10 NMAC, *Ambulatory Surgical Center Services*.

Z. **Rehabilitation services (MCO only):** The benefit package includes inpatient and outpatient hospital and outpatient physical, occupational and speech therapy services, as detailed in 8.325.8 NMAC, *Rehabilitation Services Providers* and licensed speech and language pathology services furnished under the EPSDT program as detailed in 8.323.5 NMAC, *Licensed Speech And Language Pathologists*. The MCO is required to coordinate rehabilitation [~~and the home health and~~] services with the home and community-based waiver programs if a member is eligible for rehabilitation [~~, home health~~] and waiver services.

AA. **Reproductive health services (MCO only):** The benefit package includes reproductive health services, as detailed in 8.325.3 NMAC, *Reproductive Health Services*. The MCO will provide female members with direct access to women's health specialists within the network for covered care necessary to provide women's routine and preventive health care services. This is in addition to the member's designated source of primary care if that source is not a women's health specialist.

(1) The MCO shall provide medicaid members with sufficient information to allow them to make informed choices including the following:

(a) types of family planning services available;

(b) a member's right to access these services in a timely and confidential manner; and

(c) freedom to choose a qualified family planning provider who participates in the MCO network or from a provider who does not participate in the MCO network.

(2) If members choose to receive family planning services from an out-of-network provider, they shall be encouraged to exchange medical information between the PCP and the out-of-network provider for better coordination of care.

BB. **Pregnancy termination procedures (MCO only):** The benefit package includes services for the termination of pregnancy [~~and pre- or post-decision counseling or psychological services. The MCO shall provide coverage of pregnancy terminations for rape, incest and endangerment to the life of the mother as allowed per 42 CFR 441.202. A certification from the provider shall be provided to the MCO prior to payment~~] as allowed by 42 CFR 441.200 et seq. Medically necessary pregnancy terminations which do not meet the requirements of 42 CFR 441.202 are excluded from the capitation payment made to the MCO and shall be reimbursed solely from state funds[~~. State funded pregnancy termination services specified within the medicaid benefit package are excluded from 42 CFR 441.202 and shall be covered by the MCO~~] pursuant to the provisions of 8.325.7 NMAC.

CC. **Emergency and non-emergency transportation services (MCO only):** The benefit package includes transportation service such as ground ambulance, air ambulance, taxicab and handivan, commercial bus, commercial air, meal and lodging services as indicated for medically necessary physical and behavioral health services, as detailed in 8.324.7 NMAC, *Transportation Services*. Non-emergency transportation is covered only when a member does not have a source of transportation available and when the member does not have access to alternative free sources. The MCO/SE shall coordinate efforts when providing transportation services for medicaid members/customers requiring physical or behavioral health services.

DD. **Prosthetics and orthotics (MCO only):** The benefit package includes prosthetic and orthotic services as detailed in 8.324.8 NMAC, *Prosthetics and Orthotics*.

EE. **Preventative physical health services (MCO only):** The benefit package shall include preventative services that follow current national standards and are recommended by the U.S preventive services task force, the centers for disease control and prevention, or the American college of obstetricians and gynecologists. The MCO shall follow current national standards for preventive health services.

[8.305.7.11 NMAC - Rp 8.305.7.11 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07]

8.305.7.16 [~~ENHANCED SERVICES:~~ ~~MCOs/SE shall offer members a package of enhanced services. The cost of these services cannot be included when HSD determines the payment rates. Enhanced services shall be approved by and reported to HSD. Enhanced services shall be direct services, not administrative in nature unless approved by HSD.~~

~~A. **Potential enhanced services:** The following are suggested enhanced services:~~

~~(1) **(MCO/SE)** anticipatory guidance provided as a part of the normal course of office visits or a health education program, including behavioral health;~~

~~(2) **(MCO only)** child birth education, parenting skills classes;~~

~~(3) **(MCO/SE)** child abuse and neglect prevention programs;~~

~~(4) **(MCO/SE)** stress control programs;~~

~~(5) **(MCO only)** car seats for infants and children;~~

~~(6) **(MCO/SE)** culturally traditional indigenous healers and treatments;~~

~~(7) **(MCO/SE)** smoking cessation programs;~~

~~(8) **(MCO only)** weight loss and nutrition programs;~~

~~(9) **(MCO/SE)** violence prevention services;~~

~~(10) **(MCO/SE)** substance abuse prevention and treatment, beyond the benefit package;~~

~~(11) **(MCO/SE)** respite care for care givers; and~~

~~(12) **(SE only)** peer support services that utilize consumers or survivors to help persons with behavioral health conditions recover and reach their full potential; agencies, facilities or groups of providers that utilize peer supporters shall carry liability insurance to cover the peer supporters.~~

~~B. **Member specific enhanced services:** Other services may be made available to members based on the MCO's or SE's discretion. Eligibility for enhanced services may be based upon a set of assessment criteria to be employed by the MCO/SE.~~] [RESERVED]

[8.305.7.16 NMAC - Rp 8.305.7.16 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; Repealed, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.8 NMAC, Sections 11 through 19 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements.

8.305.8.11 BROAD STANDARDS:

A. **NCQA requirement:** The MCO shall have and maintain national committee for quality assurance (NCQA) accreditation for its medicaid product line. If the MCO is not so accredited, it will actively pursue such accreditation. [~~The SE shall document its behavioral health accreditation status annually with HSD, including submission of its current certificate of accreditation together with a copy of the survey report.~~] NCQA accreditation is not required for the SE.

(1) An MCO with NCQA [~~and/or an SE with~~] national accreditation shall provide HSD a copy of its current certificate of accreditation together with a copy of the survey report, scores for the medicaid product line using the standards categories and scores using the reporting categories. In addition, the [~~MCO/SE~~] MCO shall provide to HSD a copy of any annual NCQA or national accreditation review/revision of accreditation status for the medicaid product line.

(2) If the [~~MCO/SE~~] MCO is not accredited, it must provide a copy of the NCQA/national accreditation confirmation letter indicating the date for the site visit.

B. **HEDIS requirement:** The [~~MCO/SE~~] MCO shall submit a copy of its audited health plan employer data and information set (HEDIS) data submission tool to HSD at the same time it is submitted to NCQA. [~~The SE shall submit a copy of its audited HEDIS behavioral health data submission tool to HSD, as per the contract.~~] The [~~MCOs/SE are~~] MCO is expected to use and rely upon HEDIS data as an important measure of performance for HSD. The [~~MCOs/SE are~~] MCO is expected to incorporate the results of each year's HEDIS data submission into [~~their~~] its QI/QM plan. For the [~~MCOs/SE~~] MCO accredited by NCQA, the data submission shall be at the same time it is submitted to NCQA. [~~If the SE is accredited by another body other than NCQA, the HEDIS submission shall be submitted no later than June 30th of every year.~~] The results of the [~~MCO's/SE's~~] MCO's HEDIS ® Compliance Audit ™ shall accompany its data submission tool.

C. **Mental health reporting requirement:** The SE shall be responsible for the collection and submission of a statistically valid mental health statistics improvement project (MHSIP) survey for both the medicaid adult and child family population as an annual reporting requirement. The SE shall adhere to the established HSD survey administration and reporting process. The annual MHSIP shall also include non-survey indicators defined by HSD as part of this reporting requirement for each contract calendar year. The SE shall report the MHSIP data set and any additional HSD requested data that are similar to that of MHSIP to HSD [~~for each contract calendar year~~] annually each fiscal year. The SE shall submit to HSD a written [~~report of the completed calculation of performance indicators~~] analysis of the annual MHSIP report based on the aggregate survey data results for both the child/family and adult populations.

D. **Collection of clinical data:** For indicators requiring clinical data as a data source, the MCO/SE shall collect and utilize a sample of clinical records sufficient to produce statistically valid results. The size of the sample shall support stratification of the population by a range of demographic and clinical factors pertinent to the special vulnerable populations served. These populations shall include, but are not limited to, ethnic minorities, homeless, pregnant women, gender and [~~age~~] age-based populations.

E. **Behavioral health data (SE only):** [~~Performance indicator data~~] For reporting purposes, BH data shall be collected and reported for any medicaid managed care member receiving any behavioral health service provided by a licensed or certified behavioral health practitioner (including behavioral health case managers), regardless of setting or location as required by HSD. This includes behavioral health licensed professionals, practicing within the SE. [~~Only those services provided in the primary care setting directly by the PCP are excluded. The SE shall monitor its utilization review (UR), and its findings shall be reported to HSD regularly.~~] The SE shall monitor and ensure the integrity of data. Findings shall be reported to HSD upon request.

F. **Provision of emergency services:** The [~~MCO/SE~~] MCO shall ensure that acute general hospitals are reim-

bursed for emergency services, which they will provide because of federal mandate, such as the "anti-dumping" law in the Omnibus Reconciliation Act of 1989, P.L. (101-239) and 42 U.S.C. Section 1395dd. (1867 of the Social Security Act). The SE shall ensure that the UNM psychiatric emergency room is reimbursed for emergency services provided.

G. **Disease reporting:** The MCO/SE shall require its providers to comply with the disease reporting required by the "New Mexico Regulations Governing the Control of Disease and Conditions of Public Health Significance, 1980".

H. The MCO/SE agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. Section 7401 et. seq. and the Federal Water Pollution Control Act, as amended and codified at 33 U.S.C. Section 1251 et. seq.. In addition to any and all remedies [~~and/or~~] or penalties set forth in this agreement, any violation of this provision shall be reported to the HHS and the appropriate regional office of the environmental protection agency.

[8.305.8.11 NMAC - Rp 8 NMAC 4.MAD.606.7.2, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.12 STANDARDS FOR QUALITY MANAGEMENT AND IMPROVEMENT:

A. **Program structure:** Quality management is an integrated approach that links knowledge, structure and processes together throughout an [~~MCO's/SE's~~] MCO/SE's system to assess and improve quality. The goal of quality improvement activities is to improve the quality of clinical care and services provided to members in the areas of health care delivery as well as supportive administrative systems. The [~~MCO's/SE's~~] MCO/SE's quality management (QM) and improvement (QI) structures and processes shall be planned, systematic, clearly defined, and at least as stringent as federal requirements; responsibilities shall be assigned to appropriate individuals. The MCO/SE shall submit annually its comprehensive QM/QI plan for the coming year as well as a comprehensive QM/QI evaluation of the previous year's achievement and performance of its QM/QI goals and initiatives. The QI program for [~~MCOs/SE~~] the MCO/SE shall be reviewed and approved by HSD annually. The [~~MCO's/SE's~~] MCO/SE's QI/QM activities shall demonstrate the linkage of quality improvement projects to findings from multiple quality evaluations, such as the external quality review (EQR) annual evaluation, opportunities for improvement identified from either the annual HEDIS indicators [~~and the annual MHSIP survey (SE only), consumer~~] or state defined performance measures and the annually required consumer satisfaction surveys and provider surveys, as well as any findings identified by an accreditation body such as NCQA.

(1) The QI program shall include: specific QI targeted goals, objectives and structure that cover the [~~MCO's/SE's~~] MCO/SE's immediate objectives for each contract year or calendar year, and long-term objectives for the entire contract period. The annual QI plan shall include the specific interventions to be utilized to improve the quality targets, as well as, the timeframes for evaluation.

(2) The QI program shall be accountable to the governing body that reviews and approves the QI program.

(3) The program description shall specify the roles, authority and responsibilities of a designated physician/psychiatrist in the QI program.

(4) A quality-related committee shall oversee and be involved in QI activities.

(5) The program description shall specify the role of the QI committee and subcommittees, including any committees dealing with oversight of delegated activities.

(6) The program description shall describe QI committee composition, including MCO/SE providers, committee member selection policies, roles and responsibilities.

(7) The program description shall include: the QI committee functions, including policy recommendations; review/evaluation of quality improvement activities; institution of needed actions; follow-up of instituted actions; and contemporaneous documentation of committee decisions and actions.

(8) The program description shall address QI for all major demographic groups within the MCO/SE, such as, infants, children, adolescents, adults, seniors and special population groups, including, but not limited to, specific racial and ethnic groups, pregnant members, developmentally disabled members and persons with behavioral health disorders (SE only), including co-occurring disorders, or other chronic diseases.

(9) The program description shall address member satisfaction, including methods of collecting and evaluating information, including the consumer assessment of health plans survey (CAHPS)[~~H~~], a survey identifying opportunities for improvement, implementing and measuring effectiveness of intervention and informing providers of results.

(10) The description or work plan shall address the process by which the MCO/SE adopts, reviews at least every two years[~~,~~] and appropriately updates and disseminates evidence-based clinical practice guidelines for provision of services for acute and chronic conditions, including behavioral health (SE only). The MCO/SE shall involve its providers in this process.

(11) The program description or work plan shall address activities aimed at addressing culture-specific health beliefs and behaviors as well as risk conditions and shall respond to member and provider requests for culturally appropriate services. Culturally appropriate services may include: language and translation services, dietary practices, individual and family interaction norms and the role of the family in compliance with long-term treatment. The MCO/SE shall incorporate cultural competence into utilization management, quality improvement, and the planning for the course of treatment.

(12) The program description or work plan shall address activities to improve health status of members with chronic conditions, including identification of such members; implementation of services and programs to assist such members in managing their conditions, including behavioral health; and informing providers about the programs and services for members assigned to them.

(13) The program description or work plan shall address activities that ensure continuity and coordination of care, including physical and behavioral health services, collection and analysis of data, and appropriate interventions to improve coordination and continuity of care.

(14) The program description or work plan shall include specific activities that facilitate continuity and coordination of physical and behavioral health care. The responsibility for these activities shall not be delegated.

(15) The program description shall include: objectives for the year; activities regarding quality of clinical care and service[~~;~~], timelines, responsible person, planned monitoring for both newly identified and previously identified issues[~~; and planned,~~] and an annual evaluation of the QI program.

(16) The program description shall include means by which the MCO/SE shall, upon request, communicate quality improvement results to its members and providers.

(17) The QI program personnel and information resources shall be adequate to meet program needs and devoted to and available for quality improvement activities.

(18) The annual written evaluation [~~to be~~] submitted to HSD shall include a review of completed and continuing quality improvement activities that address quality of clinical care and quality of service; determination and documentation of

any demonstrated improvements in quality of care and service; and evaluation of the overall effectiveness of the QI program based on evidence of meaningful improvements (See Subsection J of 8.305.8.12 NMAC, *Effectiveness of the QI Program*)

(19) For targeting QI activities to the provider and consumer surveys, the program description or work plan shall include specific activities related to findings identified in the annual consumer and provider surveys as areas that indicate targeted QI interventions and monitoring.

B. **Program operations:** The QI committee shall:

(1) recommend QI policy review and evaluate the results of quality improvement activities, institute needed action and ensure follow-up, as appropriate;

(2) have contemporaneous dated and signed minutes that reflect all QI committee decisions and actions;

(3) ensure that the [~~MCO's/SE's~~] MCO/SE's providers participate actively in the QI program;

(4) ensure that the MCO/SE shall coordinate the QI program with performance monitoring activities throughout the organization, including but not limited to, utilization management, fraud and abuse detection, credentialing, monitoring and resolution of member grievances and appeals, assessment of member satisfaction and medical records review;

(5) ensure that there shall be linkage between the QI program and other management activities, such as network changes, benefits redesign, practice feedback to providers, member health education and member services, which will be documented in quarterly progress reports submitted to HSD;

(6) ensure that there shall be evidence that the results of QI activities performance improvement projects and reviews are used to improve quality; there will be evidence of communication of and use of the results of QI activities, performance improvement projects and reviews, with appropriate individual and institutional providers;

(7) ensure that the MCO/SE shall also coordinate the QI program with performance monitoring activities throughout the organization, including but not limited to, its compliance with all quality standards and other specifications in the contract for medicaid services, such as compliance with state standards;

(8) ensure that the MCO/SE [~~shall ensure that the~~] QI program is applied to the entire range of health services provided through the MCO/SE by assuring that all major population groups, care settings and types of service are included in the scope of the review; a major population or prevalent group is one that represents at least 5 [~~percent~~] % of an [~~MCO's/SE's~~] MCO/SE's enrollment; and

(9) ensure that stakeholders/members have an opportunity to provide input.

C. **Health services contracting:** Contracts with individual and institutional providers shall specify that contractors cooperate with the [~~MCO's/SE's~~] MCO/SE's QI program.

D. **Continuous quality improvement/total quality management:** The MCO/SE shall ensure that clinical and nonclinical aspects of the MCO/SE quality management program shall be based on principles of continuous quality improvement/total quality management (CQI/TQM). Such an approach shall include at least the following:

(1) recognition that opportunities for improvement are unlimited;

(2) be data driven;

(3) use member and provider input; and

(4) require on-going measurement of clinical and non-clinical effectiveness and programmatic improvements.

E. **Member satisfaction:** The MCO/SE shall implement methods aimed at member satisfaction with the active involvement and participation of members and their families, whenever possible.

(1) The [~~MCO/SE~~] MCO in accordance with NCQA requirements, shall conduct and submit to HSD as part of its HEDIS reporting requirements, an annual survey of member satisfaction (CAHPS or latest version of adult and child instruments) [~~with the MCO/SE~~]. The SE, in accordance with the requirement for the annual consumer satisfaction survey, will submit the MHSIP analysis report to HSD and utilize its results in the following year's quality initiatives.

(2) The MCO/SE shall evaluate member grievances and appeals for trends and specific problems, including behavioral health problems.

(3) The MCO/SE shall use input from the consumer advisory board to identify opportunities for improvement in the quality of MCO/SE performance.

(4) The MCO/SE shall implement interventions to improve its performance.

(5) The MCO/SE shall measure the effectiveness of the interventions.

(6) The MCO/SE shall inform providers, HSD, and the MCO/SE members of the results of member satisfaction activities.

(7) The [~~MCO/SE~~] MCO shall participate in the design of specific questions for the CAHPS adult and child surveys.

F. **Health management systems:**

(1) The MCO/SE shall actively work to improve the health status of its members with chronic physical and behavioral health conditions, utilizing best practices throughout the MCO/SE's provider networks. Additionally, the [~~MCOs/SE~~] MCO/SE shall implement policies and procedures for coordinating care between their organizations.

(a) The MCO shall proactively identify members with chronic medical conditions, and offer appropriate outreach, services and programs to assist in managing and improving their chronic conditions. The SE shall proactively identify members with chronic behavioral health (both mental health and substance abuse) conditions, including co-occurring disorders, and offer appropriate outreach, services and programs to assist in managing and improving their chronic behavioral health conditions.

(b) The SE shall proactively identify the unduplicated number of adult severely disabled mentally ill (SDMI) and severe emotionally, behaviorally and neurobiologically disturbed children (SED) and chronic substance abuse (CSA) members served, including those with co-occurring mental health and substance abuse disorders.

(c) The MCO/SE shall report the following adverse events involving SDMI, SED, CSA, and co-occurring mental health and substance abuse members to HSD on a monthly basis: suicides, other deaths, attempted suicides, involuntary hospitalizations, detentions for protective custody and detentions for alleged criminal activity utilizing and HSD-provided reporting template. The SE shall utilize HSD's definitions for the identification of these categories of behavioral health members for standardization purposes.

(d) The MCO/SE shall proactively identify individuals with special health care needs who have or are at increased risk for a chronic physical and behavioral health condition.

(e) The MCO/SE shall inform and educate its providers about using the health management programs for the members.

(f) The MCO/SE shall participate with providers to reduce inappropriate use of psychopharmacological medications and adverse drug reactions.

(g) The MCO/SE shall periodically update its providers regarding best practices and on the procedures for appropriate healthcare referral.

(2) The MCO/SE shall pursue continuity of care for members.

(a) The MCO/SE shall report changes in its provider network to HSD.

(b) The MCO/SE shall have a defined health delivery process to promote a

high level of member compliance with follow-up appointments, consultations/referrals and diagnostic laboratory, diagnostic imaging and other testing.

(c) The MCO/SE shall have a defined process to ensure prompt member notification by its providers of abnormal results of diagnostic laboratory, diagnostic imaging and other testing and this will be documented in the medical record.

(d) The MCO/SE shall ensure that the processes for follow-up visits, consultations and referrals are consistent with high quality care and service and do not create a clinically significant impediment to timely medically necessary services. The determination of medical necessity shall be based on HSD's medical necessity definition and its application.

(e) The MCO/SE shall ensure that all medically necessary referrals are arranged and coordinated by either the referring provider or by the [~~MCO's/SE's~~] MCO/SE's care coordination unit.

(f) The MCO/SE shall implement policies and procedures to ensure that continuity and coordination of care occur across practices, provider sites and between the [~~MCOs/SE~~] MCO/SE. In particular, the MCO/SE shall coordinate, in accordance with applicable state and federal privacy laws, with other state agencies such as DOH, CYFD protective services and juvenile justice, corrections community reentry services, as well as, with the schools. In addition, the SE shall coordinate services with all applicable state agencies comprising the collaborative.

(g) The MCO/SE shall assist and monitor for continuity of care the transitions between providers in order to avoid abrupt changes in treatment plan and caregiver for members currently being served.

(3) At the request of a member or legal guardian, the MCO/SE shall provide information on options for converting coverage to a different insurance to members whose enrollment is terminated due to loss of medicaid eligibility and this shall be documented.

G. **Clinical practice guidelines:** The MCO/SE shall disseminate recommended practice guidelines, practice parameters, consensus statements and specific criteria for the provision of acute and chronic physical and behavioral health care services.

(1) The MCO/SE shall select the clinical issues to be addressed with clinical guidelines based on the needs of the medicaid populations.

(2) The clinical practice guidelines shall be [~~based on reasonable medical evidence~~] evidence-based.

(3) The MCO/SE shall involve board certified providers from its network who are appropriate to the clinical issue in the development and adoption of clinical practice guidelines.

(4) The MCO/SE shall develop a mechanism for reviewing the guidelines when clinically appropriate, but at least every two years, and updating them as [~~appropriate~~] necessary.

(5) The MCO/SE shall distribute the guidelines to the appropriate providers and to HSD, upon request.

(6) [~~The MCO/SE shall periodically measure practitioner performance against at least three guidelines~~] The MCO/SE shall annually measure practitioner performance against at least two important aspects of three clinical practice guidelines and determine consistency of decision-making based on the clinical practices guidelines.

(7) Decision-making in utilization management, member education, interpretation of covered benefits and other areas shall be consistent with those guidelines.

(8) The MCOs shall implement targeted disease management protocols and procedures for chronic diseases [~~and/or~~] or conditions, such as asthma, diabetes, and hypertension that are appropriate to meet the needs of the varied medicaid populations. The SE shall implement targeted disease management protocols and procedures for chronic diseases [~~and/or~~] or conditions, such as bipolar disorder, depression, and schizophrenia that are appropriate to meet the needs of the varied medicaid populations.

H. **Quality assessment and performance improvement:** The MCO/SE shall achieve required minimum performance levels, as established by HSD and by CMS, on certain quality performance measures and projects. These required levels of performance would address a broad spectrum of key aspects of enrollee care and services. These quality measures may change from year to year and may be used in part to determine the MCO assignment algorithm. In addition, the MCO shall provide HSD with copies of all studies performed for national accreditation such as NCQA. The SE shall annually provide HSD with copies of its QM/QI studies including its data analysis.

(1) An agreed upon number of disease management/performance measures shall be identified by HSD, in consultation with the [~~MCOs/SE~~] MCO, at the beginning of each contract year. The MCO/SE shall achieve minimum performance levels set by HSD for each performance measure. Examples of quality measures used in performance improvement projects may include: EPSDT screening rates, childhood and adolescent immunization rates, ER visits or adherence to grievance resolution timeframes. The SE shall implement the required number of targeted disease management programs as defined by HSD such as depression, bipolar disorder and co-occurring disorders.

(2) The MCO/SE shall measure its performance, using claims, encounter data and other predefined sources of information, and report its performance on each measure to HSD at a frequency to be determined by HSD.

I. **Intervention and follow-up for clinical and service issues:** The MCO/SE shall have a process and take action to improve quality by addressing opportunities for improving performance identified through clinical and service QI activities, as appropriate, and shall also assess the effectiveness of the interventions through systematic follow-up.

(1) The MCO/SE shall implement interventions to improve practitioner and system performance as appropriate.

(2) The MCO/SE shall implement appropriate corrective interventions when it identifies individual occurrences of poor or substandard quality, especially regarding health and safety issues.

(3) The MCO/SE shall implement appropriate corrective interventions when it identifies underutilization or overutilization.

J. **Effectiveness of the QI program:** The MCO/SE shall evaluate the overall effectiveness of its QI program and demonstrate improvements in the quality of clinical care and the quality of service to its members.

(1) The MCO/SE shall perform an annual written evaluation of the QI program and provide a copy to HSD for CMS review. This evaluation shall include at least the following:

(a) a description of completed and ongoing QI activities;

(b) trending of measures to assess performance in quality of clinical care and quality of service;

(c) an analysis of whether there have been demonstrated improvements in the quality of clinical care and quality of service; and

(d) an evaluation of the overall effectiveness of the QI program.

(2) There shall be evidence that QI activities have contributed to meaningful improvement in the quality of clinical care and quality of service, including preventive health care, provided to members.

[8.305.8.12 NMAC - Rp 8 NMAC 4.MAD.606.7.2, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.13 STANDARDS FOR UTILIZATION MANAGEMENT: New Mexico medicaid requires appropriate utilization management (UM) standards to be implemented as well as activities to be performed so that excellent services are pro-

vided in a coordinated fashion with neither over nor [~~under-utilization~~] under-utilization. The [~~MCO's/SE's~~] MCO/SE's UM programs shall be based on standard external national criteria, where available, and established clinical criteria, which are congruent with HSD's medical [~~necessary~~] necessity service definition as defined in 8.305.1 NMAC and are applied consistently in UM decisions by the MCO/SE. The [~~MCO's/SE's~~] MCO/SE's utilization management program shall assign responsibility to appropriately qualified, educated, trained, and experienced individuals in order to manage the use of limited resources; to maximize the effectiveness of care by evaluating clinical appropriateness; authorize the type and volume of services through fair, consistent and culturally competent decision making; and assure equitable access to care. These standards shall also apply to pharmacy utilization management including the formulary exception process.

A. **Program design:**

(1) A written description of the UM program shall outline the program structure and include a clear definition of authority and accountability for all activities between the MCO and entities to which the MCO/SE delegates UM activities.

(2) A designated physician and a behavioral health care physician for the SE shall have substantial involvement in the design and implementation of the UM program.

(3) The description shall include the scope of the program; the processes and information sources used to determine benefit coverage; clinical necessity, appropriateness and effectiveness; policies and procedures to evaluate care coordination, discharge criteria, site of services, levels of care, triage decisions and cultural competence of care delivery; processes to review, approve and deny services; processes to evaluate service outcomes; and a plan to improve outcomes, as needed. The above service definitions are to be no less than the amount, duration and scope for the same services furnished to members under fee-for-service medicaid as set forth in 42 CFR Section 440.230.

(4) The MCO/SE shall ensure that the services are sufficient in amount, duration and scope to reasonably be expected to achieve the purpose for which the services are furnished. The MCO/SE may not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of the beneficiary's diagnosis, type of illness, or condition.

(5) The UM program shall be evaluated and approved annually by senior management and the medical (or behavioral health) director or the QI committee.

(6) The UM program shall include policies and procedures for monitoring inter-rater reliability of all individuals performing UR review. The procedures shall include a monitoring and education process for all UR staff identified as not meeting 90 [~~percent~~] % agreement on test cases, until adequately resolved.

B. **UM decision criteria:** To make utilization decisions, the MCO/SE shall use written utilization review decision criteria that are based on reasonable medical evidence, consistent with the New Mexico medicaid definition for medically necessary services, and that are applied in a fair, impartial and consistent manner to serve the best interests of all members.

(1) UM decisions shall be based on reasonable and scientifically valid utilization review criteria that are objective and measurable, insofar as practical.

(2) The criteria for determining medical necessity shall be academically defensible; based on national standards of practice when such standards are available; involve appropriate practitioners when developing, adopting and reviewing criteria; and acceptable to the [~~MCO's/SE's~~] MCO/SE's medical (or behavioral health) director, peer consultants and relevant local providers. The MCO/SE shall specify what constitutes medically necessary services in a manner that is no more restrictive than that used by HSD as indicated in state statutes and regulations. According to this definition, the MCO/SE must be responsible for covered services related to the following:

(a) the prevention, diagnosis, and treatment of health impairments; and

(b) the ability to attain, maintain, or regain functional capacity.

(3) Criteria for determination of medical appropriateness shall be clearly documented.

(4) The MCO/SE shall maintain evidence that it has reviewed the criteria at specified intervals and that the criteria have been updated, as necessary.

(5) The MCO/SE shall [~~provide the criteria to its providers upon request~~] state in writing how practitioners can obtain UM criteria and shall provide criteria to its practitioners upon request.

C. **Authorization of services:** For the processing of requests for initial and continuing authorization of services, the MCO/SE shall:

(1) have a policy and procedure in place for authorization decisions;

[~~(1)~~] (2) require that its subcontractors have in place written policies and procedures;

[~~(2)~~] (3) have in effect a mechanism to ensure consistent application of review criteria for authorization decisions;

[~~(3)~~] (4) consult with requesting providers when appropriate.

D. **Use of qualified professionals:** [~~Qualified health professionals~~] The MCO/SE shall have written policies and procedures explaining how qualified health professionals shall assess the clinical information used to support UM decisions.

(1) Appropriately licensed and experienced health care practitioners whose education, training, experience and expertise are commensurate with the UM reviews conducted shall supervise review decisions.

(2) Denials based on medical necessity shall be made by a designated physician for the UM program. The reason for the denial shall be cited.

(3) For a health service determined to be medically necessary, but for which the level of care (setting) is determined to be inappropriate, the MCO/SE shall approve the appropriate level of care as well as deny that which was determined to be inappropriate.

(4) The reasons for review decisions (approve/deny) shall be clearly documented and communicated to the requesting practitioner responsible for justifying the medical necessity.

E. **Timeliness of decisions and notifications:** The MCO/SE shall make utilization decisions and notifications in a timely manner that accommodates the clinical urgency of the situation and shall minimize disruption in the provision and continuity of health care services. The following time frames are required [~~, based on NCQA standards,~~] and shall not be affected by "pend" decisions.

(1) **Precertification - routine:**

(a) **Decision:** For precertification of non-urgent (routine) care, the MCO/SE shall make [~~decisions within fourteen (14)~~] a decision within 14 calendar days from receipt of request for service [~~with a possible extension of up to fourteen (14) additional calendar days if the enrollee or the provider requests the extension or the MCO/SE justifies to the HSD upon request a need for additional information and how the extension is in the enrollee's interest~~].

[~~(2)~~] (b) **Notification:** For authorization or denial of non-urgent (routine) care, the MCO/SE shall notify a provider of the decision within one working day of making the decision.

[~~(3)~~] (c) **Confirmation - denial:** For [~~authorization~~] denial of non-urgent (routine) care [~~that results in a denial~~], the MCO/SE shall give the member and provider written or electronic confirmation of the decision within two working days of making the decision.

[~~(4)~~] (2) **Precertification - urgent:**

(a) **Decision and notification:**

For precertification of urgent care, the MCO/SE shall make a decision and notify the provider of the decision within [~~seventy-two~~] 72 hours of receipt of request.

[~~(5)~~] For authorization of urgent care that results in a denial, the MCO/SE shall notify both the member and provider that an expedited appeal has already occurred.

[~~(6)~~] (b) **Confirmation - denial:** For [~~authorization~~] denial of urgent care [~~that results in a denial~~], the MCO/SE shall give the member and provider written or electronic confirmation of the decision within two working days of making the decision. The MCO/SE shall provide written confirmation of its decision within two working days of providing notification of a decision if the initial notification was not in writing.

[~~(7) For concurrent review of services, the MCO/SE shall make decisions for:~~

~~(a) inpatient care within one working day of obtaining the necessary information and~~

~~(b) ongoing ambulatory care within 10 working days of obtaining the necessary information.~~

~~(8) For concurrent review, the MCO/SE shall notify providers of decisions within one working day of making the decision.~~

~~(9) For concurrent review decisions that result in a denial, the MCO/SE shall give the member and provider written or electronic confirmation within one working day of the original notification.~~

~~(10) For concurrent review decisions that result in a denial, the MCO/SE shall notify the member and provider how to initiate an expedited appeal at the time of notification of the denial.~~

~~(11) For authorization decisions of non-urgent or urgent care, a 14 calendar day extension may be requested by the member or provider. A 14 day extension may also be requested by the MCO/SE. The MCO/SE must justify in the UM file the need for additional information and that the 14 day extension is in the member's interest.~~

~~(12) The MCO/SE shall provide written confirmation of its decisions within two working days of providing notification of a decision if the initial decision was not in writing.~~]

(3) **Precertification - residential services (SE only):** For precertification of RTC, TFC and group home, the SE shall make a decision within five working days from receipt of request for service.

(4) **Precertification - extensions:** For precertification decisions of non-urgent or urgent care, a 14 calendar day extension may be requested by the member or provider. A 14 calendar day extension may also be requested by the MCO/SE. The MCO/SE must justify in the UM file the need for additional information and that the 14 day extension is in the member's interest.

(5) **Concurrent - routine:**

(a) **Decisions:** For concurrent review of routine services, the MCO/SE shall make a decision within 10 working days of the receipt of the request.

(b) **Notification:** For authorization or denial of routine continued stay, the MCO/SE shall notify a provider of the decision within one working day of making the decision.

(c) **Confirmation - denial:** For denial of routine continued stay, the MCO/SE shall give the member and provider written or electronic confirmation within one working day of the decision. The MCO/SE shall provide written confirmation of its decision within two working days of providing notification of a decision if the initial notification was not in writing.

(6) **Concurrent - urgent:**

(a) **Decision:** For concurrent review of urgent services, the MCO/SE shall make a decision within one working day of receipt of request.

(b) **Notification:** For authorization or denial of urgent continued stay, the MCO/SE shall notify a provider of the decision within one working day of making the decision. The MCO/SE shall initiate an expedited appeal for all denials of concurrent urgent services.

(c) **Confirmation - denial:** For denial of urgent continued stay, the MCO/SE shall give the member and provider written or electronic confirmation within one working day of the decision. The MCO/SE shall provide written confirmation of its decision within two working days of providing notification of a decision if the initial notification was not in writing.

(7) **Concurrent - residential services (SE only):** For concurrent reviews of RTC, TFC and group home, the SE shall make a decision within five working days from receipt of request for service. Timelines for routine and urgent concurrent shall apply.

(8) **Administrative/technical denials:** When the MCO/SE denies a request for services due to the requested service not being covered by medicaid or due to provider noncompliance with the MCO/SE's administrative policies, the MCO/SE shall adhere to the timelines cited above for decision making, notification and written confirmation.

F. **Use of clinical information:** When making a determination of coverage based on medical necessity, the MCO/SE shall obtain relevant clinical information and consult with the treating practitioner, as appropriate.

(1) A written description shall identify the information required and collected to support UM decision making.

(2) A thorough assessment of the member's needs based on clinical appropriateness and necessity shall be performed.

(3) There shall be documentation that relevant clinical information is gathered consistently to support UM decision making. The MCO/SE UM policies and procedures will clearly define in writing for providers what constitutes relevant clinical information.

(4) The clinical information requirements for UM decision making shall be made known in advance to relevant treating providers.

G. **Denial of services:** A "denial" is a nonauthorization of a request for care or services. The MCO/SE shall clearly document in the UR file a reference to the provision guideline, protocol or other criteria on which the denial decision is based, and communicate the reason for each denial.

(1) The MCO/SE shall require that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by a health care professional who has appropriate clinical expertise in treating the member's condition or disease, such as the MCO/SE medical director.

(2) The MCO/SE shall make available to a requesting provider a physician reviewer to discuss, by telephone, denial decisions based on medical necessity.

(3) The MCO/SE shall send written notification to the member of the reason for each denial based on medical necessity and to the provider, as appropriate.

(4) The MCO/SE shall recognize that a utilization review decision made by the designated HSD official resulting from a fair hearing is final and shall be honored by the MCO/SE, unless the MCO/SE successfully appeals the decision through judicial hearing or arbitration.

H. **Compensation for UM activities:** Each MCO/SE contract must provide that, consistent with 42 CFR Sections 438.6(h) and 422.208, compensation to individuals or entities that conduct UM activities is not structured so as to provide incentives for the individual or entity to deny, limit, or discontinue medically necessary services to any member.

I. **Evaluation and use of new technologies:** The MCO/SE and its delegates shall evaluate the inclusion of new medical technology and the new applications of existing technology in the benefit package. This includes the evaluation of clinical procedures and interventions, drugs and devices.

(1) The MCO/SE shall have a

written description of the process used to determine whether new medical technology and new uses of existing technologies shall be included in the benefit package.

(a) The written description shall include the decision variables used by the MCO/SE to evaluate whether new medical technology and new applications of existing technology shall be included in the benefit package.

(b) The process shall include a review of information from appropriate government regulatory bodies as well as published scientific evidence.

(c) Appropriate professionals shall participate in the process to decide whether to include new medical technology and new uses of existing technology in the benefit package.

(2) An MCO/SE shall not deem a technology or its application as experimental, investigational or unproven and deny coverage unless that technology or its application fulfills the definition of "experimental, investigational or unproven" contained in 8.325.6 NMAC.

J. **Evaluation of the UM process:** The MCO/SE shall evaluate member and provider satisfaction with the UM process [~~as a part of its~~] based on member and provider satisfaction survey results. The MCO/SE shall forward the evaluation results to HSD.

K. **HSD access:** HSD shall have access to the [~~MCO's/SE's~~] MCO/SE's UM review documentation on request.

[8.305.8.13 NMAC - Rp 8 NMAC 4.MAD.606.7.4, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.14 STANDARDS FOR CREDENTIALING AND RECREDENTIALING: The MCO/SE shall document the mechanism for credentialing and recredentialing of providers with whom it contracts or employs to treat members outside the in-patient setting and who fall under its scope of authority and action. This documentation shall include, but not be limited to, defining the scope of providers covered, the criteria and the primary source verification of information used to meet the criteria, the process used to make decisions that may not be discriminatory, and the extent of delegated credentialing or recredentialing arrangements. The credentialing process shall be completed within 180 days from receipt of completed application with all required documentation unless there are extenuating circumstances.

A. **Practitioner participation:** The MCO/SE shall have a process for receiving input from participating providers regarding credentialing and recredentialing of providers.

B. **Primary source verification:** At the time of credentialing the provider, the MCO/SE shall verify the following information from primary sources:

(1) a current valid license to practice;

(2) the status of clinical privileges at the institution designated by the practitioner as the primary admitting facility, if applicable;

(3) valid drug enforcement agency (DEA) or controlled substance registration (CSR) certificate, if applicable;

(4) education and training of providers, including graduation from an accredited professional program and the highest training program applicable to the academic or professional degree, discipline and licensure of the practitioner;

(5) board certification if the practitioner states on the application that the practitioner is board certified in a specialty; and

(6) current, adequate malpractice insurance, according to the [~~MCO's/SE's~~] MCO/SE's policy and history of professional liability claims that resulted in settlement or judgment paid by or on behalf of the practitioner; and

(7) primary source verification shall not be required for work history.

C. **Credentialing application:** The MCO/SE shall use the HSD-approved credentialing form. The provider shall complete a credentialing application that includes a statement by the applicant regarding:

(1) ability to perform the essential functions of the positions, with or without accommodation;

(2) lack of present illegal drug use;

(3) history of loss of license and felony convictions;

(4) history of loss or limitation of privileges or disciplinary activity;

(5) sanctions, suspensions or terminations imposed by medicare or medicaid; and

(6) applicant attests to the correctness and completeness of the application.

D. **External source verification:** Before a practitioner is credentialed, the MCO/SE shall receive information on the practitioner from the following organizations and shall include the information in the credentialing files:

(1) national practitioner data bank, if applicable to the practitioner type;

(2) information about sanctions or limitations on licensure from the following agencies, as applicable:

(a) state board of medical examiners, state osteopathic examining board, federation of state medical boards or the department of professional regulations;

(b) state board of chiropractic examiners or the federation of chiropractic licensing boards;

(c) state board of dental examiners;

(d) state board of podiatric examiners;

(e) state board of nursing;

(f) the appropriate state licensing board for other practitioner types, including behavioral health; and

(g) other recognized monitoring organizations appropriate to the practitioner's discipline.

(3) sanctions by medicare and medicaid, as applicable.

E. **Evaluation of practitioner site and medical records.** At the time of credentialing the MCO shall perform an initial visit to the offices of potential primary care providers, obstetricians, and gynecologists. The SE shall perform an initial visit to the offices of potential high volume behavioral health care practitioners, prior to acceptance and inclusion as participating providers. The MCO/SE shall determine its method for identifying high volume behavioral health practitioners.

(1) The MCO/SE shall document a structured review to evaluate the site against the MCO's organizational standards and those specified by the managed care contract.

(2) The MCO/SE shall document an evaluation of the medical record keeping practices at each site for conformity with the [~~MCO's/SE's~~] MCO/SE's organizational standards.

F. **Recredentialing:** The MCO/SE shall have formalized recredentialing procedures.

(1) The MCO/SE shall formally recredential its providers at least every three years. During the recredentialing process the MCO/SE shall verify the following information from primary sources:

(a) a current valid license to practice;

(b) the status of clinical privileges at the hospital designated by the practitioner as the primary admitting facility;

(c) valid DEA or CSR certificate, if applicable;

(d) board certification, if the practitioner was due to be recertified or became board certified since last credentialed or recredentialed;

(e) history of professional liability claims that resulted in settlement or judgment paid by or on behalf of the practitioner; and

(f) a current, signed attestation statement by the applicant regarding:

(i) ability to perform the essential functions of the position, with or without accommodation;

(ii) lack of current illegal drug use;

(iii) history of loss or limitation of privileges or disciplinary action; and

(iv) current professional malpractice insurance coverage.

(2) There shall be evidence that, before making a recredentialing decision, the MCO has received information about sanctions or limitations on licensure from the following agencies, if applicable:

(a) the national practitioner data bank;

(b) medicare and medicaid;

(c) state board of medical examiners, state osteopathic examining board, federation of state medical boards or the department of professional regulations;

(d) state board of chiropractic examiners or the federation of chiropractic licensing boards;

(e) state board of dental examiners;

(f) state board of podiatric examiners;

(g) state board of nursing;

(h) the appropriate state licensing board for other practitioner types; and

(i) other recognized monitoring organizations appropriate to the practitioner's discipline.

(3) The MCO/SE shall incorporate data from the following sources in its recredentialing decision-making process for providers:

(a) member grievances and appeals;

(b) information from quality management and improvement activities; and

(c) medical record reviews conducted under Subsection E of 8.305.8.14 NMAC.

G. **Imposition of remedies:** The MCO/SE shall have policies and procedures for altering the conditions of the practitioner's participation with the MCO/SE based on issues of quality of care and service. These policies and procedures shall define the range of actions that the MCO/SE may take to improve the provider's performance prior to termination.

(1) The MCO/SE shall have procedures for reporting to appropriate authorities, including HSD, serious quality deficiencies that could result in a practitioner's suspension or termination.

(2) The MCO/SE shall have an appeal process by which the MCO/SE may change the conditions of a practitioner's participation based on issues of quality of care and service. The MCO/SE shall inform providers of the appeal process in writing.

H. **Assessment of organizational providers:** The MCO/SE shall have written policies and procedures for the initial and ongoing assessment of organizational providers with whom it intends to contract or which it is contracted. Providers include, but are not limited to, hospitals, home health agencies, nursing facilities, free-standing surgical centers, behavioral, psychiatric and addiction disorder facilities or services, residential treatment centers, clinics, 24-hour programs, behavioral health units of general hospitals and free-standing psychiatric hospitals. At least every three years, the MCO/SE shall confirm that the provider is in good standing with state and federal regulatory bodies, including HSD, and[~~,~~] has been accredited or certified by the appropriate accrediting body and state certification agency or has met standards of participation required by the MCO/SE.

(1) The MCO/SE shall confirm that the provider has been certified by the appropriate state certification agency, when applicable. Behavioral health organizational providers and services are certified by the following:

(a) DOH is the certification agency for organizational services and providers that require certification, except for child and adolescent behavioral health services; and

(b) CYFD is the certification agency for child and adolescent behavioral health organizational services and providers that require certification.

(2) The MCO/SE shall confirm that the provider has been accredited by the appropriate accrediting body or has a detailed written plan that could reasonably be expected to lead to accreditation within a reasonable period of time. Behavioral health organizational providers and services are accredited by the following:

(a) adult behavioral health organizational services or providers are accredited by the council on accreditation of rehabilitation facilities (CARF);

(b) child and adolescent accredited residential treatment centers are accredited by the joint commission on accreditation of healthcare organizations (JCAHO); other child behavioral health organizational services or providers are accredited by the council on accreditation (COA); and

(c) organizational services or providers who serve adults, children and adolescents are accredited by either CARF or COA.

[8.305.8.14 NMAC - Rp 8 NMAC 4.MAD.606.7.5, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.15 MEMBER BILL OF RIGHTS: Under medicaid managed care, members have certain rights and responsibilities and the MCO/SE shall have policies and procedures governing member rights and responsibilities. The following subsections shall be known as the "Member Bill of Rights".

A. **Members' rights:**

(1) Members shall have the right to be treated equitably and with respect and recognition of their dignity and need for privacy.

(2) Members shall have the right to receive health care services in a non-discriminatory fashion.

(3) Members who have a disability shall have the right to receive any information in an alternative format in compliance with the Americans with Disabilities Act.

(4) Members or their legal guardians shall have the right to participate with their health care providers in decision making in all aspects of their health care, including the course of treatment development, acceptable treatments and the right to refuse treatment.

(5) Members or their legal guardians shall have the right to informed consent.

(6) Members or their legal guardians shall have the right to choose a surrogate decision-maker to be involved as appropriate, to assist with care decisions.

(7) Members or their legal guardians shall have the right to seek a second opinion from a qualified health care professional within the MCO/SE network, or the MCO/SE shall arrange for the member to obtain a second opinion outside the network, at no cost to the member. A second opinion may be requested, when the member or member's legal guardian needs additional information regarding recommended treatment or [~~believe~~] believes the provider is not authorizing requested care.

(8) Members or their legal guardians shall have a right to voice grievances about the care provided by the [~~MCO~~] MCO/SE and to make use of the [~~MCO's/SE's~~] MCO/SE's grievance process and the HSD fair hearings process without fear of retaliation.

(9) Members or their legal guardians shall have the right to choose from among the available providers within the limits of the plan network and its referral and prior authorization requirements.

(10) Members or their legal guardians shall have the right to make their wishes known through advance directives regarding health care decisions (e.g., living wills, right to die directives, "do not resuscitate" orders, etc.) consistent with federal and state laws and regulations.

(11) Members or their legal guardians shall have the right to access the member's medical records in accordance with the applicable federal and state laws and regulations.

(12) Members or their legal guardians shall have the right to receive

information about: the [~~MCO~~] MCO/SE, its health care services, how to access those services, and the MCO/SE network providers.

(13) Members or their legal guardians shall have the right to be free from harassment by the MCO/SE or its network providers in regard to contractual disputes between [~~MCOs/SE~~] the MCO/SE and providers.

(14) Members have the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as specified in federal or state of New Mexico regulations on the use of restraints and seclusion.

(15) (MCO only) Members or their legal guardians shall have the right to select an MCO and exercise switch enrollment rights without threats or harassment.

B. **Members' responsibilities:** Members or their legal guardians shall have certain responsibilities that will facilitate the treatment process.

(1) Members or their legal guardians shall have the responsibility to provide, whenever possible, information that the MCO/SE and providers need in order to care for them.

(2) Members or their legal guardians shall have the responsibility to understand the member's health problems and to participate in developing mutually agreed upon treatment goals.

(3) Members or their legal guardians shall have the responsibility to follow the plans and instructions for care that they have agreed upon with their providers or to notify providers if changes are requested.

(4) Members or their legal guardians shall have the responsibility to keep, reschedule or cancel an appointment rather than to simply not show up.

C. **MCO/SE responsibilities:**

(1) The MCO/SE shall provide a member handbook to its members and to potential members who request the handbook. The MCO/SE shall publish in the member handbook the members' rights and responsibilities from the member bill of rights. MCOs/SE shall honor the provisions set forth in the member bill of rights.

(2) The MCO/SE shall comply with the grievance resolutions process found in 8.305.12 NMAC, *MCO Member Grievance System*.

(3) The MCO/SE shall provide members or legal guardians with updated information within 30 days of a material change in the MCO/SE provider network, procedures for obtaining benefits, the amount, duration or scope of the benefits available under the contract in sufficient detail to ensure that enrollees understand the benefits to which they are entitled, and information on grievance, appeal and fair hearing procedures.

(4) The MCO/SE shall provide members and legal guardians with access to a toll-free hot line for the [~~MCO's/SE's~~] MCO/SE's program for grievance management. The toll-free hot line for grievance management shall include the following features:

(a) requires no more than a two-minute wait except following mass enrollment periods;

(b) does not require a "touch-tone" telephone;

(c) allows communication with members whose primary language is not English or who are hearing impaired; and

(d) is in operation 24 hours per day, seven days per week.

(5) The MCO/SE shall provide active and participatory education of members or legal guardians that takes into account the cultural, ethnic and linguistic needs of members in order to assure understanding of the health care program, improve access and enhance the quality of service provided.

(6) The MCO/SE shall protect the confidentiality of member information and records.

(a) The MCO/SE shall adopt and implement written confidentiality policies and procedures that conform to federal and state laws and regulations.

(b) The [~~MCO's/SE's~~] MCO/SE's contracts with providers shall explicitly state expectations about confidentiality of member information and records.

(c) The MCO/SE shall afford members or legal guardians the opportunity to approve or deny release by the MCO/SE of identifiable personal information to a person or agency outside the MCO/SE, except when release is required by law, state regulation, court order, HSD quality standards, or in the case of behavioral health, the collaborative.

(d) The MCO/SE shall notify members and legal guardians in a timely manner when information is released in response to a court order.

(e) The MCO/SE shall have written policies and procedures to maintain confidential information gathered or learned during the investigation or resolution of a complaint, including a member's status as a complainant.

(f) The MCO/SE shall have written policies and procedures to maintain confidentiality of medical records used in quality review, measurement and improvement activities.

(7) When the MCO/SE delegates member service activity, the MCO/SE shall retain responsibility for documenting MCO/SE oversight of the delegated activity.

(8) Policies regarding consent for treatment shall be disseminated annually to providers within the MCO/SE network. The MCO/SE shall have written policies regarding the requirement for providers to abide by federal and state law and New Mexico medicaid policies regarding informed consent specific to:

(a) the treatment of minors;

(b) adults who are in the custody of the state;

(c) adults who are the subject of an active protective services case with CYFD;

(d) children and adolescents who fall under the jurisdiction of CYFD; and

(e) individuals who are unable to exercise rational judgment or give informed consent consistent with federal and state laws and New Mexico medicaid regulations. [~~The policies regarding consent for treatment of these individuals shall be disseminated to providers within the MCO/SE network.~~]

(9) The MCO/SE shall have a process to detect, measure and eliminate operational bias or discrimination against members. The MCO/SE shall ensure that its providers and their facilities comply with the Americans with Disabilities Act.

(10) The MCO/SE shall provide a member handbook to its members or potential members who request the handbook, and it shall be accessible via the internet.

(11) The MCO/SE shall develop and implement policies and procedures to allow members to access behavioral health services without going through the PCP. These policies and procedures must afford timely access to behavioral health services.

(12) The MCO shall not restrict a member's right to choose a provider of family planning services.

(13) The [~~MCO's/SE's~~] MCO/SE's communication with members shall be responsive to the various populations by demonstrating cultural competence in the materials and services provided to members. The MCO/SE shall provide information to its network providers about culturally relevant services and may provide information about alternative treatment options, e.g., American Indian healing practices if available. Information and materials provided by the MCO/SE to medicaid members shall be written at a sixth-grade language level and shall be made available in the prevalent population language.

[8.305.8.15 NMAC - Rp 8 NMAC 4.MAD.606.7.6, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.16 STANDARDS FOR PREVENTIVE HEALTH SERVICES:

The [~~MCO/SE~~] MCO shall follow current national standards for preventive health services including behavioral health preventive services. These standards are derived from several sources, including the U.S. preventive services task force, the centers for disease control and prevention; and the American college of obstetricians and gynecologists. Any preventive health guidelines developed by the [~~MCO/SE~~] MCO under these standards shall be adopted, reviewed at least every two years, updated when appropriate and disseminated to practitioner and member. Unless a member refuses and the refusal is documented, the [~~MCO/SE~~] MCO shall provide the following preventive health services or screens or document that the services (with the results) were provided by other means. The [~~MCO/SE~~] MCO shall document medical reasons not to perform these services for an individual member. Member refusal is defined to include refusal to consent to and refusal to access care.

A. **Initial assessment:** The [~~MCO/SE~~] MCO shall perform an initial assessment of the medicaid member's health care needs within 90 days of the date the member enrolls in the [~~MCO/SE~~] MCO. For this purpose, a member is considered enrolled at the lock-in date.

B. **Immunizations:** The MCO shall adopt policies that to the extent possible, ensure that within six months of enrollment, members are immunized according to the type and schedule provided by current recommendations of the state department of health advisory committee on immunizations. The MCO shall provide the immunizations or verify the member's immunization history by a method acceptable to the health advisory committee.

C. **Screens:** The MCO shall adopt policies which will ensure that, to the extent possible, within six months of enrollment or within six months of a change in screening standards, asymptomatic members receive at least the following preventive screening services.

(1) *Screening for breast cancer*: Females aged [~~50-69~~] 40-69 years shall be screened every one to two years by mammography alone or by mammography and annual clinical breast examination.

(2) *Screening for cervical cancer*: Female members with a cervix shall receive cytopathology testing starting at the onset of sexual activity, but at least by [~~18~~] 21 years of age and every three years thereafter until reaching 65 years of age if prior testing has been consistently normal and the member has been confirmed not to be at high risk. If the member is at high risk, the frequency shall be at least annual.

(3) *Screening for colorectal cancer*: Members aged 50 years and older at normal risk for colorectal cancer shall be screened with annual fecal occult blood testing or sigmoidoscopy or colonoscopy or double contrast barium, at a periodicity determined by the MCO.

(4) *Blood pressure measurement*: Members over age 18 shall receive a blood pressure measurement at least every two years.

(5) *Serum cholesterol measurement*: Male members aged 35 and older and female members aged 45 and older who are at normal risk for coronary heart disease shall receive serum cholesterol and HDL cholesterol measurement every five years. Adults aged 20 or older with risk factors for heart disease shall have serum cholesterol and HDL cholesterol measurements.

(6) *Screening for obesity*: Members shall receive body weight and height/length measurements with each physical exam.

(7) *Screening for elevated lead levels*: Members aged 9-15 months (ideally at 12 months) shall receive a blood lead measurement at least once.

(8) *Screening for tuberculosis*: Routine tuberculin skin testing shall not be required for all members. The following high-risk persons shall be screened or previous screening noted: persons who immigrated from countries in Asia, Africa, Latin America or the Middle East in the preceding five years; persons who have substantial contact with immigrants from those areas; migrant farm workers; and persons who are alcoholic, homeless or injecting drug users. HIV-infected persons shall be screened annually. Persons whose screening tuberculin test is positive (≥10 mm of induration) must be referred to the local public health office in their community of residence for contact investigation.

(9) *Screening for rubella*: All female members of childbearing ages shall be screened for rubella susceptibility by history of vaccination or by serology.

(10) *Screening for chlamydia*: All sexually active female members age 25 or younger shall be screened for chlamydia. All female members over age 25 shall be screened for chlamydia if they inconsistently use barrier contraception, have more than one sex partner, or have had a sexually transmitted disease in the past.

(11) *Screening for type 2 diabetes*: Individuals with one or more of the following risk factors for diabetes shall be screened. Risk factors include a family history of diabetes (parent or sibling with diabetes); obesity (≥20% over desired body weight or BMI ≥27kg/m2); race/ethnicity (e.g. Hispanic, Native American, African American, Asian-Pacific islander); previously identified impaired fasting glucose or impaired glucose tolerance; hypertension (≥140/90 mmHg); HDL cholesterol level ≤35 mg/dl and triglyceride level ≥250 mg/dl; history of gestational diabetes mellitus (GDM) or delivery of babies over 9 lbs.

(12) *Prenatal screening*: All pregnant members shall be screened for preeclampsia, D(Rh) incompatibility, down syndrome, neural tube defects, hemoglobinopathies, vaginal and rectal group B streptococcal infection and screened and counseled for HIV in accordance with the most current recommendations of the American college of obstetricians and gynecologists.

(13) *Newborn screening*: Newborn members shall be screened for those disorders specified in the state of New Mexico metabolic screen.

(14) *Tot-to-teen health checks*: The MCO shall operate [~~a~~] tot-to-teen mandated early and periodic screening, diagnostic and treatment (EPSDT) services as outlined in 8.320.3 NMAC, *Tot-to-Teen Health Checks*. Within three months of enrollment lock-in, the MCO shall ensure that eligible members (up to age 21) are current according to the screening schedule (unless more stringent requirements are specified in these standards). The MCO shall encourage PCPs to assess for age, height and gender appropriate weight during EPSDT screens to detect and treat evidence of weight or obesity issues in children and adolescents.

(15) Members over age 21 must be screened to detect high risk for behavioral health conditions at their first encounter with a PCP after enrollment.

(16) The MCO shall require PCPs to refer members, whenever clinically appropriate, to behavioral health providers. The MCO/SE shall assist the member with an appropriate behavioral health referral.

[~~(17) The MCO shall require PCPs to use standardized alcohol and drug abuse screening tools, such as the CAGE (cut down, annoyed, guilty or eye opener) or AUDIT (alcohol use disorders identification test) tools, for the high risk potential population. The frequency of screening shall be determined by the results of the first screen and other clinical indicators. The SE shall require that standardized alcohol and drug abuse screening tools, such as CAGE or AUDIT, be used by its behavioral health providers for the high risk populations.~~]

D. **Counseling:** The [~~MCO/SE~~] MCO shall adopt policies that shall ensure that applicable asymptomatic members are provided counseling on the following topics unless recipient refusal is documented:

(1) prevention of tobacco use [~~(MCO/SE)~~];

(2) benefits of physical activity [~~(MCO/SE~~];

(3) benefits of a healthy diet [~~(MCO/SE~~];

(4) prevention of osteoporosis and heart disease in menopausal women cit-

ing the advantages and disadvantages of calcium and hormonal supplementation [~~(MCO only)~~];

(5) prevention of motor vehicle injuries [~~(MCO only)~~];

(6) prevention of household and recreational injuries [~~(MCO only)~~];

(7) prevention of dental and periodontal disease [~~(MCO only)~~];

(8) prevention of HIV infection and other sexually transmitted diseases [~~(MCO only); and~~];

(9) prevention of unintended pregnancies [~~(MCO only)~~]; and

(10) prevention or intervention for obesity or weight issues.

E. **Hot line:** The MCO/SE shall provide a toll-free [~~health advisor~~] clinical telephone hot line function that includes at least the following services and features:

[~~(1) general health information on topics appropriate to the various medicaid populations, including those with severe and chronic physical and behavioral health conditions~~;]

[~~(2)~~] (1) clinical assessment and triage to evaluate the acuity and severity of the member's symptoms and make the clinically appropriate referral; and

[~~(3)~~] (2) prediagnostic and post-treatment health care decision assistance based on symptoms [~~; and~~

~~(4) preventive/wellness counseling~~].

F. **Health information line:** The MCO shall provide a toll-free line that includes at least the following services and features:

(1) general health information on topics appropriate to the various medicaid populations, including those with severe and chronic physical and behavioral health conditions; and

(2) preventive/wellness counseling.

[~~F.~~] G. **Family planning:** The MCO must have a family planning policy. This policy must ensure that members of the appropriate age of both sexes who seek family planning services are provided with counseling and treatment, if indicated, as it relates to the following:

(1) methods of contraception; and

(2) HIV and other sexually transmitted diseases and risk reduction practices.

[~~G.~~] H. **Prenatal care:** The MCO shall operate a proactive prenatal care program to promote early initiation and appropriate frequency of prenatal care consistent with the standards of the American college of obstetrics and gynecology. The program shall include at least the following:

(1) educational outreach to all members of childbearing age;

(2) prompt and easy access to obstetrical care, including an office visit with a practitioner within three weeks of having a positive pregnancy test (laboratory or home) unless earlier care is clinically indicated;

(3) risk assessment of all pregnant members to identify high-risk cases for special management;

(4) counseling that strongly advises voluntary testing for HIV;

(5) case management services to address the special needs of members who have a high risk pregnancy especially if risk is due to psychosocial factors such as substance abuse or teen pregnancy;

(6) screening for determination of need for a post-partum home visit; and

(7) coordination with other services in support of good prenatal care, including transportation, other community services and referral to an agency that dispenses baby car seats free or at a reduced price.

[8.305.8.16 NMAC - Rp 8 NMAC 4.MAD.606.7.7, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.17 STANDARDS FOR MEDICAL RECORDS:

A. **Standards and policies:** The MCO/SE shall require that member medical records be maintained on paper or electronic format. Member medical records shall be maintained timely, and be legible, current, detailed and organized to permit effective and confidential patient care and quality review.

(1) The MCO/SE shall have medical record confidentiality policies and procedures in compliance with state and federal guidelines and HIPAA.

(2) The MCO/SE shall have medical record documentation standards that are enforced with its MCO/SE providers and subcontractors and require that records reflect all aspects of patient care, including ancillary services. The documentation standards shall, at a minimum, require the following:

(a) patient identification information (on each page or electronic file);

(b) personal biographical data (date of birth, sex, race or ethnicity (if available), mailing address, residential address, employer, school, home and work telephone numbers, name and telephone numbers of emergency contacts, marital status, consent forms and guardianship information);

(c) date of data entry and date of encounter;

(d) provider identification (author of entry);

(e) allergies and adverse reactions to medications;

(f) past medical history for patients seen two or more times;

(g) status of preventive services provided or at least those specified by HSD, summarized in an auditable form (a single sheet) in the medical record within six months of enrollment;

(h) diagnostic information;

(i) medication history including what has been effective and what has not, and why;

(j) identification of current problems;

(k) history of smoking, alcohol use and substance abuse;

(l) reports of consultations and referrals;

(m) reports of emergency care, to the extent possible;

(n) advance directive for adults; and

(o) record legibility to at least a peer of the author.

(3) For patients who receive two or more services from a behavioral health provider through the SE within a 12-month period, the documentation standards shall meet medicaid requirements and require that the following items also be included in the medical record in addition to the above:

(a) a mental status evaluation that documents affect, speech, mood, thought content, judgment, insight, concentration, memory and impulse control;

(b) DSM-IV diagnosis consistent with the history, mental status examination or other assessment data;

(c) a treatment plan consistent with diagnosis that has objective and measurable goals and time frames for goal attainment or problem resolution;

(d) documentation of progress toward attainment of the goal; and

(e) preventive services such as relapse prevention and stress management.

(4) The MCO/SE standards for a member's medical record shall include the following minimum detail for individual clinical encounters:

(a) history (and physical examination) for presenting complaints containing relevant psychological and social conditions affecting the patient's behavioral health, including mental health (psychiatric) and substance abuse status;

(b) plan of treatment;

(c) diagnostic tests and the results;

(d) drugs prescribed, including the strength, amount, directions for use and refills;

(e) therapies and other prescribed regimens and the results;

(f) follow-up plans and directions (such as, time for return visit, symptoms that shall prompt a return visit);

(g) consultations and referrals and the results; and

(h) any other significant aspect of the member's physical or behavioral health care.

B. **Review of records:** The MCO/SE shall have a process to systematically review provider medical records to ensure compliance with the medical record standards. The MCO/SE shall institute improvement and actions when standards are not met.

(1) The EQRO shall conduct reviews of a representative sample of medical records from the MCO's primary care providers, obstetricians, and gynecologists. The EQRO shall conduct a review of a representative sample of clinical records from the SE's behavioral health providers to determine compliance with the SE's established medical record standards and goals.

(2) The MCO/SE shall have a mechanism to assess the effectiveness of organization-wide and practice-site follow-up plans to increase compliance with the [~~MCO's/SE's~~] MCO/SE's established medical record standards and goals.

C. **Access to records:** The MCO/SE shall provide HSD or its designee appropriate access to provider medical records.

(1) The MCO shall ensure that the PCP maintains a primary medical record for each member, which contains sufficient medical information from all providers involved in the member's care, to ensure continuity of care. The MCO shall ensure that providers involved in the member's care have access to the member's primary medical record including the SE, when necessary.

(2) The MCO/SE shall include provisions in its contracts with providers for appropriate access to the [~~MCO's/SE's~~] MCO/SE's members' medical records for purposes of in-state quality reviews conducted by HSD, and for making medical records available to health care providers, including behavioral health, for each clinical encounter.

(3) The MCO shall have a policy that ensures the confidential transfer of medical and dental information to another primary medical, or dental practitioner whenever a primary medical or dental provider leaves the MCO the member changes primary medical or dental practitioner or after a member changes enrollment from one MCO and enrolls in another MCO.

(4) The SE shall have a policy that ensures the confidential transfer of behavioral health information from one practitioner to another whenever a provider leaves the SE network or whenever the member changes behavioral health provider or practitioner. The SE shall have a policy that ensures the confidential transfer of behavioral health information from one collaborative agency to another. [~~The SE shall have policies and procedures to keep the member's MCO informed of all behavioral health services provided to the MCO member. The information that shall be forwarded shall~~]

(5) The MCO/SE shall forward to HSD or it designee, specific health information from the provider's medical records. Examples of health information will include, but not be limited to, the following:

(a) [~~a list of~~] the member's principal physical and behavioral health problems, as applicable;

(b) [~~a list of~~] the member's current medications, dosage amounts and frequency;

(c) the member's preventive health services history; including behavioral health;

(d) EPSDT screening results (if the member is under age 21); and

(e) other information [~~necessary to ensure continuity of care~~] as requested.

[8.305.8.17 NMAC - Rp 8 NMAC 4.MAD.606.7.8, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.18 STANDARDS FOR ACCESS:

A. **Ensure access:** The MCO/SE shall establish and follow protocols to ensure the accessibility, availability and referral to health care providers for each medically necessary service. The MCO/SE shall submit documentation to HSD if requested, at least once per year, giving assurances that it has the capacity to serve the expected enrollment in its service area in accordance with HSD standards and in a format acceptable to HSD. The MCO/SE shall provide access to the full array of covered services within the benefit package. If a service is unavailable based on the access guidelines, a service equal to or higher than shall be offered.

B. **Access to urgent and emergency services:** Services for emergency conditions provided by physical health providers, including emergency transportation, urgent conditions, and post-stabilization care shall be covered by the MCO only within the United States for both physical and behavioral health. The SE shall coordinate all behavioral health transportation with the member's respective MCO. An urgent condition exists when a member manifests acute symptoms and signs that, by reasonable medical judgment, represent a condition of sufficient severity that the absence of medical attention within 24 hours could reasonably result in an emergency condition. Serious impairment of biopsychosocial functioning, imminent out-of-home placement for children and adolescents or serious jeopardy to the behavioral health of the member are considered urgent conditions. An emergency condition exists when a member manifests acute symptoms and signs that, by reasonable lay person judgment, represent a condition of sufficient severity that the absence of immediate medical attention, including behavioral health, could reasonably result in death, serious impairment of bodily function or major organ or serious jeopardy to the overall health of the member. Post-stabilization care means covered services related to an emergency medical or behavioral health condition, that are provided after the member is stabilized in order to maintain the stabilized condition and may include improving or resolving the member's condition.

(1) The MCO/SE shall ensure that there is no clinically significant delay caused by the [~~MCO's/SE's~~] MCO/SE's utilization control measures. Prior authorization is not required for emergency services in or out of the MCO/SE network, and all emergency services shall be reimbursed at [~~least at~~] the medicaid fee-for-service rate. The MCO/SE shall not retroactively deny a claim for an emergency screening examination because the condition, which appeared to be an emergency medical or behavioral health condition under the prudent lay person standard, turned out to be non-emergency in nature.

(2) The MCO/SE shall ensure that the member has the right to use any hospital or other licensed emergency setting for emergency care, regardless of whether the provider is contracted with the MCO/SE.

(3) The MCO/SE shall ensure that members have access to the nearest appropriately designated trauma center according to established EMS triage and transportation protocols.

C. **Primary care provider availability:** The MCO shall [~~ensure that~~] follow a process that ensures a sufficient number of primary care providers are available to members to allow the members a reasonable choice among providers.

(1) The MCO shall have at least one primary care provider available per 1,500 members and no more than 1,500 members assigned to a single provider unless approved by HSD.

(2) The minimum number of primary care providers from which to choose and the distances to those providers shall vary by county based on whether the county is urban, rural or frontier. 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 that are not urban or frontier. The standards are as follows:

(a) 90% of urban residents shall travel no farther than 30 miles;

(b) 90% of rural residents shall travel no farther than 45 miles; and

(c) 90% of frontier residents shall travel no farther than 60 miles.

D. **Pharmacy provider availability:** The MCO shall ensure that a sufficient number of pharmacy providers are available to members. The MCO shall ensure that pharmacy services meet geographic access standards based on the member's county of residence. The access standards are as follows:

(1) 90% of urban residents shall travel no farther than 30 miles;

(2) 90% of rural residents shall travel no farther than 45 miles; and

(3) 90% of frontier residents shall travel no farther than 60 miles.

E. **Access to health care services:** The MCO shall ensure that there are a sufficient number of PCPs and dentists available to members to allow members a reasonable choice. The SE shall ensure that there are a sufficient number of behavioral health providers, based on the least restrictive, medically necessary needs of its members, available statewide to members to allow members a reasonable choice.

(1) The MCO shall report to HSD all provider groups, health centers and individual physician practices and sites in their network that are not accepting new medicaid members. The SE shall report to HSD all individual providers, provider groups, provider agencies or facilities and corresponding sites in its network that are not accepting new medicaid members.

(2) (MCO only) For routine, asymptomatic, member-initiated, outpatient appointments for primary medical care, the request-to-appointment time shall be no more than 30 days, unless the member requests a later time. [~~(MCO only).~~]

(3) (MCO only) For routine asymptomatic member-initiated dental appointments, the request to appointment time shall be consistent with community norms for dental appointments. [~~(MCO only)~~]

(4) (MCO only) For routine, symptomatic, member-initiated, outpatient appointments for nonurgent primary medical and dental care, the request-to-appointment time shall be no more than 14 days, unless the member requests a later time. [~~(MCO only).~~]

(5) (SE only) For nonurgent behavioral health care, the request-to-appointment time shall be no more than 14 days, unless the member requests a later time. [~~(SE only).~~]

(6) (MCO/SE) Primary medical, dental and behavioral health care outpatient appointments for urgent conditions shall be available within 24 hours. [~~(MCO/SE).~~]

(7) (MCO only) For specialty outpatient referral and consultation appointments, excluding behavioral health, which is addressed in (5) above, the request-to-appointment time shall generally be consistent with the clinical urgency, but no more than 21 days, unless the member requests a later time. [~~(MCO only).~~]

(8) (MCO only) For routine outpatient diagnostic laboratory, diagnostic imaging and other testing appointments, the request-to-appointment time shall be consistent with the clinical urgency, but no more than 14 days, unless the member requests a later time. [~~(MCO/SE).~~]

(9) (MCO only) For outpatient diagnostic laboratory, diagnostic imaging and other testing, if a "walk-in" rather than an appointment system is used, the member wait time shall be consistent with severity of the clinical need. [~~(MCO/SE).~~]

(10) (MCO only) For urgent outpatient diagnostic laboratory, diagnostic imaging and other testing, appointment availability shall be consistent with the clinical urgency, but no longer than 48 hours. [~~(MCO/SE).~~]

(11) (MCO/SE) The in-person prescription fill time (ready for pickup) shall be no longer than 40 minutes. A prescription phoned in by a practitioner shall be filled within 90 minutes. [~~(MCO/SE).~~]

(12) (MCO/SE) The timing of scheduled follow-up outpatient visits with practitioners shall be consistent with the clinical need. [~~(MCO/SE).~~]

(13) The MCO/SE shall ensure that a medically necessary pharmaceutical agent is provided in a clinically timely manner.

(14) The [~~MCO's/SE's~~] MCO/SE's preferred drug list (PDL) shall follow HSD guidelines in Subsection O of 8.305.7.11 NMAC, *Services Included in the Salud! Benefit Package*, *Pharmacy Services*.

(15) The MCO shall approve or deny a request for new durable medical equipment (DME) or for repairs to existing DME owned or rented by the member within seven working days of the request date.

(a) All new customized or made-to-measure DME or customized modifications to existing DME owned or rented by the member shall be delivered to the member within 150 days of the request date.

(b) All standard DME shall be delivered within 24 hours of the request, if needed on an urgent basis.

(c) All standard DME not needed on an urgent basis shall be delivered within a time frame consistent with clinical need.

(d) All DME repairs or non-customized modifications shall be delivered within 60 days of the request date.

(e) The MCO shall have an emergency response plan for non-customized DME needed on an emergent basis.

(16) The MCO shall approve or deny a request for prescribed medical supplies within seven working days of the request date. The MCO shall ensure that:

(a) members can access prescribed medical supplies within 24 hours when needed on an urgent basis;

(b) members can access routine medical supplies within a time frame consistent with the clinical need;

(c) subject to any requirements to procure a physician's order to provide supplies to the member, members utilizing medical supplies on an ongoing basis shall submit to the MCO lists of needed supplies monthly; and the MCO or its subcontractor shall contact the member if the requested supplies cannot be delivered in the time frame expected and make other delivery arrangements consistent with clinical need.

[~~(17) The [MCO/SE] MCO shall have an emergency response plan for delivery of medical supplies needed on an emergent basis~~.

~~(18)~~] (17) The [~~MCO/SE~~] MCO shall ensure that members and members' families receive proper instruction on the use of DME and medical supplies provided by the MCO/SE or its subcontractor.

F. **Access to transportation services:** The MCO shall provide the transportation benefit for medically necessary physical and behavioral health. The MCO shall coordinate behavioral health transportation services with the SE, and the SE shall coordinate transportation services with the member's respective MCO. The MCO shall have sufficient transportation providers available to meet the needs of members, including an appropriate number of handivans available for members who are wheelchair or ventilator dependant or have other equipment needs. The MCO shall develop and implement policies and procedures to ensure that:

(1) transportation arranged is appropriate for the member's clinical condition;

(2) the history of services is available at the time services are requested to expedite appropriate arrangements;

(3) CPR-certified drivers are available to transport members consistent with clinical need;

(4) the transportation type is clinically appropriate, including access to non-emergency ground ambulance carriers;

(5) members can access and receive authorization for medically necessary transportation services under certain unusual circumstances without advance notification; and

(6) minors are accompanied by a parent or legal guardian as indicated to provide safe transportation.

G. **Use of technology:** The MCO/SE is encouraged to use state-of-the-art technology, such as telemedicine, to ensure access and availability of services statewide.

[8.305.8.18 NMAC - Rp 8 NMAC 4.MAD.606.7.9, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.8.19 DELEGATION: Delegation is a process whereby an MCO/SE gives another entity the authority to perform certain functions on its behalf. The MCO/SE is fully accountable for all [~~delegated~~] predelegation and delegation activities and decisions made. The MCO/SE shall document its oversight of the delegated activity. The SE may assign, transfer, or delegate to [~~the sub-contractual level~~] a subcontractor key management functions including, but not limited to, care coordination and universal credentialing with the explicit written approval of HSD and the collaborative [~~and as it applies to the state coverage insurance program,~~] with the written approval of the MCO.

A. A mutually agreed upon document between MCO/SE and the delegated entity shall describe:

(1) the responsibilities of the MCO/SE and the entity to which the activity is delegated;

(2) the delegated activity;

(3) the frequency and method of reporting to the MCO/SE;

(4) the process by which the MCO/SE evaluates the delegated entity's performance; and

(5) the remedies up to, and including, revocation of the delegation, available to the MCO/SE if the delegated entity does not fulfill its obligations.

B. The MCO/SE shall document evidence that the MCO/SE:

(1) evaluated the delegated entity's capacity to perform the delegated activities prior to delegation;

(2) evaluates regular reports and proactively identifies opportunities for improvement; and

(3) evaluates at least semi-annually the delegated entity's activities in accordance with the [~~MCO's/SE's~~] MCO/SE's expectations and HSD's standards.

[8.305.8.19 NMAC - N, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.9 NMAC, Sections 9 through 12 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements.

8.305.9.9 COORDINATION OF SERVICES:

A. The MCO/SE shall develop and implement policies and procedures to ensure access to care coordination for individuals with special health care needs (ISHCN) as defined in 8.305.15.9 NMAC. Care coordination is defined as a service to assist members with special health care needs, on an as needed basis. It is member-centered, family-focused when appropriate, culturally competent and strength-based. Care coordination can help to ensure that the physical and behavioral health needs of the medicaid population are identified and services are provided and coordinated with all service providers, individual members and family, if appropriate, and authorized by the member. Care coordination operates within the MCO/SE with a dedicated care coordination staff functioning independently, but is structurally linked to the other MCO/SE systems, such as quality assurance, member services and grievances. Care coordination is not "gate keeping" or "utilization management". Clinical decisions shall be based on the medically necessary covered services and not fiscal considerations. If both physical and behavioral health conditions exist, the primary care coordination responsibility lies with the condition that is most acute. The MCO/SE responsible for the care of the most acute condition shall be primary lead on care coordination activities with necessary assistance and collaboration from both entities. Care shall be coordinated between both physical health MCO staff and behavioral health SE staff. The MCO/SE shall [~~use the following primary elements for care coordination~~] conduct the following system processes for care coordination:

(1) identify proactively the eligible populations;

(2) identify proactively the needs of the eligible population;

(3) provide a designated person to be primarily responsible for coordinating the health services furnished to a specific member and to serve as the single point of contact for the member; and

(4) ensure access to care coordination for all medicaid eligible ISHCN, as required by federal regulations.

B. The care coordinator shall be responsible for the following activities:

[~~(4)~~] (1) communicate to the member the care coordinator's name and how to contact [~~him/her~~] this person;

[~~(5)~~] (2) ensure and coordinate access to a qualified provider who is responsible for developing and implementing a comprehensive treatment plan as per applicable provider regulations;

[~~(6) ensure the provision of necessary services and actively assist members and providers in obtaining such services;~~

~~(7)~~] (3) ensure appropriate coordination between physical and behavioral health services and non-managed care services; and, in the case of the SE, also coordinate care among other applicable agencies in the collaborative;

[~~(8)~~] (4) [~~coordinate with designated MCO/SE care coordinators and physical or behavioral health care service providers~~] coordinate the needs and identify the status of co-managed cases with either the MCO physical health care coordinator or the SE behavioral health care coordinator;

[~~(9)~~] (5) monitor progress of members to ensure that medically necessary services are received, to assist in resolving identified problems, and to prevent duplication of services;

[~~(10)~~] (6) [~~be responsible for linking members to MCO/SE care coordinators when needed, if a local community case manager is not available~~] (SE ONLY) coordinate the provision of necessary services and actively assist members in obtaining such services when a local community case manager is not available;

[~~(11)~~] (7) [~~ensure access to care coordination for all medicaid eligible ISHCN, as required by federal regulations~~] (SE ONLY) develop a member's individual plan of care (care coordination plan) with involvement from the member and family/guardian (as appropriate) based on a comprehensive assessment of the goals, capabilities and the behavioral health service needs of the member and with consideration of the needs and goals of the family (if appropriate); provide for an evaluation process of the plan that measures the member's response to care and ensures revision of the plan as needed;

[~~(12)~~] (8) (MCO ONLY) ensure the development of a member's individual plan of care, based on a comprehensive assessment of the goals, [~~capacities~~] capabilities and medical condition of the member [~~and the~~] and with consideration of the needs and goals of the family; provide for an evaluation process that measures the member's response to care and ensures revision of the plan as needed;

[~~(13)~~] (9) [~~ensure~~] involve the member and family [~~shall be involved~~] in the development of the plan of care, as appropriate; a member or family shall have the right to refuse care coordination or case management, that will be documented in the care coordination file; and

[~~(14)~~] (10) ensure that [~~all MCO/SE care coordination functions include responsibility for sharing the plan of care~~] all necessary information is shared with key providers with the member's writ-

ten permission or documented verbal permission; this information sharing is required to ensure optimum care and communication between primary care and behavioral health care, as well as among involved behavioral health providers and across other service providing systems [~~involved with providing services to medicaid members~~].

[~~B.~~] C. For clarification purposes, activities provided through care coordination at the MCO/SE level differ from case management activities provided as part of the [~~six specific~~] targeted case management programs included in the medicaid benefit package. These [~~six~~] external case management programs shall continue to be important service components delivered as a portion of the medicaid benefit package. The case management programs are defined in 8.326.2 NMAC through 8.326.6 NMAC and 8.320.5 NMAC
[8.305.9.9 NMAC - Rp 8.305.9.9 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.9.10 COORDINATION OF PHYSICAL AND BEHAVIORAL HEALTH SERVICES BENEFITS:

A. **Coordination of physical and behavioral health services:** Physical and behavioral health services shall be provided through a clinically coordinated system between the MCO and SE. The MCO and SE shall coordinate a member's care with one another, if the member has both physical and behavioral health needs. Both physical and behavioral health care providers would benefit from having access to relevant medical records of mutually-served members to ensure the maximum benefit of services to the member. [~~Coordination between the MCO and the SE shall require coordinated and collaborative~~] The MCO and the SE shall develop and share policies and procedures to ensure effective care coordination across systems as authorized by the member. Both contractors shall be responsible for monitoring the effectiveness of referrals and coordinating with multiple providers and for the process of information sharing between the physical and behavioral health care providers. The MCO/SE shall have defined processes for coordinating complex physical and behavioral health cases, which include participation of its medical directors. Confidentiality and HIPAA regulations apply during this coordination process.

B. **Coordination mechanisms:** The MCO/SE shall work proactively to achieve appropriate coordination between physical and behavioral health services by implementing complimentary policies and procedures for the coordination of services. The MCO/SE shall implement policies and procedures that maximize care coordination to access medicaid services external to the MCO's program, such as [~~the SE~~] home and community-based waiver programs, the medicaid school-based services (MSBS) program and the children's medical services (CMS). The MCO/SE shall have procedures that ensure PCPs consistently receive communication, with the member's written consent, regarding [~~patient~~] member status and follow-up care by a specialist provider. The MCO/SE shall provide comprehensive education to its provider networks regarding HIPAA compliant protocols for sharing information between physical health, behavioral health and other providers.

C. **Referrals for behavioral health services:** The MCO shall educate and assist the PCPs regarding proper procedures for making appropriate referrals for behavioral health consultation and treatment through the SE.

D. **Referrals for physical health services:** The SE shall educate and assist the behavioral health providers regarding proper procedures for making appropriate referrals for physical health consultation and treatment when accessing needed physical health services. The SE shall coordinate care with primary care providers, with the member's written consent.

E. **Referral policies and procedures:** [~~The MCO/SE shall implement compatible policies and procedures that maximize care coordination to access medicaid and non-medicaid services, that are external to the MCO/SE program.~~] The [~~MCOs/SE~~] MCO/SE shall offer statewide trainings to all providers regarding its specific referral policies and procedures. The [~~MCOs/SE~~] MCO/SE referral policies and procedures shall also be provided in provider manuals distributed to all contracted providers. The MCO/SE shall develop and implement policies and procedures that encourage PCPs to refer members to the SE for behavioral health services or directly to behavioral health service providers in an appropriate and timely manner, with the member's documented permission. A member may access behavioral health services through direct contact with the SE[~~, a referral from his or her MCO,~~] or by going directly to a behavioral health provider. A written report [~~of the outcome of any referral~~] of the behavioral health service containing sufficient information to coordinate the member's care shall be forwarded to the PCP by the behavioral health provider with the member's written consent with oversight from the SE within 7 calendar days after screening and evaluation.

F. **Indicators for PCP referral to behavioral health services:** The following are common indicators for a referral to the SE for behavioral health services or for a referral directly to a behavioral health provider by a PCP:

(1) suicidal/homicidal ideation or behavior;

(2) at-risk of hospitalization due to a behavioral health condition;

(3) children or adolescents at imminent risk of out-of-home placement in a psychiatric acute care hospital, residential treatment facility, or treatment foster care placement;

(4) trauma victims including possible abused or neglected members;

(5) serious threat of physical or sexual abuse or risk to life or health due to impaired mental status and judgment, mental retardation, or other developmental disabilities;

(6) request by member, parent or legal guardian of a minor for [~~behavior~~] behavioral health services;

(7) clinical status that suggests the need for behavioral health services;

(8) identified psychosocial stressors and precipitants;

(9) treatment compliance complicated by behavioral characteristics;

(10) behavioral, psychiatric [~~and/or~~] or substance abuse factors influencing a medical condition;

(11) victims or perpetrators of abuse and neglect;

(12) non-medical management of substance abuse;

(13) follow-up to medical detoxification;

(14) an initial PCP contact or routine physical examination indicates a substance abuse or mental health problem;

(15) a prenatal visit indicates a substance abuse or mental health problem;

(16) positive response to questions indicates substance abuse, observation of clinical indicators or laboratory values that indicate substance abuse;

(17) a pattern of inappropriate use of medical, surgical, trauma, urgent care or emergency room services that could be related to substance abuse or other behavioral health conditions; and

(18) the persistence of serious functional impairment.

G. **Referrals for physical health or behavioral health consultation and treatment:** The SE shall educate and assist behavioral health providers to make appropriate referrals for physical health consultation and treatment to the medicaid member's PCP [~~and/or~~] or MCO as authorized by the member. The MCO shall educate and assist the physical health providers to make appropriate referrals for behavioral health consultation and treatment.

H. **Independent access:**

The [~~MCOs/SE~~] MCO/SE shall develop and implement policies and procedures that allow members access to behavioral health services through the SE directly and without referral from the PCP. These policies and procedures shall require timely access to behavioral health services.

I. **Behavioral health plan [~~of care~~]:** The behavioral health provider designated as the "clinical home" shall take responsibility for developing and implementing the member's behavioral health treatment plan [~~of care~~] in coordination with the member, parent or legal guardian and other providers, when clinically indicated. With the member's documented permission, multiple behavioral health providers shall coordinate their treatment plans and progress information to provide optimum care for the member. [~~SE care coordinators and~~] Community case managers shall be responsible for monitoring the [~~coordination of the plan of care and information sharing for members~~] treatment plan and coordinating treatment team meetings for members receiving behavioral health care from multiple providers.

J. **On-going reporting:**

(1) [~~With the member's documented permission, the~~] The SE shall require that a behavioral health provider [~~shall~~] must keep the member's PCP informed, with the member's written consent, of the following:

(a) drug therapy;

(b) laboratory and radiology results;

(c) sentinel events such as hospitalization, emergencies, and incarceration;

(d) discharge from a psychiatric hospital, residential treatment services, treatment foster care placement or from other behavioral health services; and

(e) all transitions in level of care.

(2) [~~With the member's documented permission, the PCP shall keep the SE and~~] The MCO shall require that a PCP must keep the member's behavioral health provider informed, with the member's written consent, of the following:

(a) drug therapy;

(b) laboratory and radiology results;

(c) medical consultations; and

(d) sentinel events such as hospitalization and emergencies.

K. **Psychiatric consultation:** The PCP[~~, SE~~] and all behavioral health providers are encouraged to obtain consultations and assistance with psychopharmacotherapy and diagnostic evaluations from an SE contracted psychiatrist or other behavioral health specialist with prescribing authority, when clinically appropriate.

[8.305.9.10 NMAC - Rp 8.305.9.10 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.9.11 COORDINATION WITH WAIVER PROGRAMS: [~~There are four home and community-based medicaid waiver programs. These are the developmental disabilities waiver, the disabled and elderly waiver, the medically fragile waiver and the HIV-AIDS waiver. Members participating in these waiver programs may also participate in managed care and are eligible for the MCO/SE benefit package. In addition, the member can receive medically necessary waiver services, which are excluded from managed care. Case management is an integral part of each waiver. The waiver program is responsible for the case management function for waiver recipients. The MCO/SE shall assist with care coordination.~~] The MCO/SE shall have policies and procedures governing coordination of services with home and community-based medicaid waiver programs to assist with complex care coordination. The MCO/SE shall coordinate care with the member's waiver case manager to ensure that medical information is shared, following HIPAA guidelines, and that medically necessary services are provided and are not duplicated. HSD shall monitor utilization of services by waiver recipients to ensure that the MCO/SE provides to members who are waiver participants all benefits included in the medicaid benefit package.

[8.305.9.11 NMAC - Rp 8.305.9.11 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.9.12 COORDINATION OF SERVICES WITH CHILDREN, YOUTH AND FAMILIES DEPARTMENT (CYFD) AND AGING AND LONG TERM SERVICES DEPARTMENT (ALTSD): The MCO/SE shall have policies and procedures governing coordination of services with the CYFD protective services division (PSD) and juvenile justice division (JJD). If the member is receiving case management services through CYFD, the primary responsibility for the case management function remains with CYFD, and the MCO/SE shall assist with care coordination. Care coordination shall ensure that members receive medically necessary services, including behavioral health services through the SE, regardless of the member's custody status. If child protective services (CPS)[~~,~~] or juvenile justice division (JJD) [~~or adult protective services (APS~~)] has an open case on a member, the CYFD social worker assigned to the case shall be involved in the assessment and treatment plan, including decisions regarding the provision of services for the member. The MCO/SE shall have policies and procedures governing coordination of services with ALTSD's adult protective services. The MCO/SE shall ensure that any APS worker actively involved in an individual's life is included in care coordination. The MCO/SE shall assist CYFD and ALTSD staff in identifying access to all medically necessary services identified in the care coordination plan. The MCO/SE shall designate a single contact point within the MCO/SE for care coordination purposes.

A. **Children's Code compliance:** The MCO/SE policies and procedures shall comply with the current New Mexico Children's Code.

B. **Adult Protective Services Act compliance:** The MCO/ SE's policies and procedures shall comply with New Mexico Statutes, Chapter 27, Section 7 (27-7-14 through 27-7-31), the "Adult Protective Services Act."

[8.305.9.12 NMAC - Rp 8.305.9.12 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.11 NMAC, Section 9 which will be effective on July 1, 2007. The Medical Assistance Division amended the section to clarify existing policy and to update physical health screening requirements.

8.305.11.9 REIMBURSEMENT FOR MANAGED CARE:

A. **Payment for services:** HSD shall make actuarially sound payments under capitated risk contracts to the designated [~~MCOs/SE~~] MCO/SE. Rates negotiated between HSD and the MCO/SE are considered confidential. Rates shall be appropriate for the medicaid populations to be covered and the services to be furnished under the contract. The MCO/SE shall be responsible for the provision of services for members during the month of capitation. Medicaid members shall not be liable for debts incurred by an MCO/SE under the MCO's or SE's managed care contract for providing health care to medicaid members. This shall include, but not be limited to:

(1) the MCO's/SE's debts in the event of the MCO's/SE's insolvency;

(2) [~~covered~~] services provided to the member, that are not included in the medicaid benefit package and for which HSD does not pay the MCO/SE, e.g., enhanced services;

(3) when [~~HSD or~~] the MCO/SE does not pay the health care provider that furnishes the services under contractual, referral, or other arrangement;

(4) payments for covered services furnished under contract, referral, or other arrangement to the extent that those payments are in excess of the amount that the member would owe if the MCO/SE provided the service directly; and

(5) if an MCO/SE member loses

eligibility for any reason and is reinstated as eligible by HSD before the end of the month, the MCO/SE shall accept a retro capitation payment for that month of eligibility and assume financial responsibility for all medically necessary covered benefit services supplied to the member.

B. **Capitation disbursement requirements:** HSD shall pay a capitated amount to the MCO/SE for the provision of the managed care benefit package at specified rates. The monthly rate is based on actuarially sound capitation rate cells. The MCO/SE shall accept the capitation rate paid each month by HSD as payment in full for all services to be provided pursuant to the agreement, including all administrative costs associated therewith. [~~A minimum of eighty-five percent (85%) of all the MCO's/SE's income generated under this agreement, including but not limited to, third-party recoupments and interest, shall be expended on the physical or behavioral health services required under this agreement to be provided to the MCO's/SE's medicaid members. If the MCO/SE does not expend a minimum of eighty-five percent (85%) on physical or behavioral health services required under the agreement, HSD shall withhold an amount so that the MCO's/SE's ratio for service expenditures is eighty-five percent (85%). HSD shall calculate the MCO's/SE's income at the end of the state fiscal year to determine if eighty-five percent (85%) was expended on the physical or behavioral services required under the agreement/contract, utilizing reported information from the MCO/SE and the department of insurance reports. Administrative costs, which shall be no higher than fifteen percent (15%), and other financial information shall be monitored on a regular basis by HSD. Members shall be entitled to receive all covered services for the entire period for which payment has been made by HSD. Any and all costs incurred by the MCO/SE in excess of the capitation payment shall be borne in full by the MCO/SE. Interest generated through investment of funds paid to the MCO/SE pursuant to this agreement shall be the property of the MCO/SE.~~] HSD/MAD will calculate or verify the MCO/SE's income at the end of the state fiscal year to determine if the extent was expended on the services required under the contract utilizing reported information and the department of insurance reports. Administrative costs, to be no higher than the allowable percent, including all MCO/SE-delegated entities (if applicable), and other financial information will be monitored. The MCO/SE does not have the option of deleting benefits from the medicaid defined benefit package. Should the MCO/SE not meet the required administrative or direct services costs within the terms of the contract, sanctions or financial penalties may be imposed.

C. **Payment time frames:** Clean claims as defined in Subsection L of 8.305.1.7 NMAC, *Clean Claim*, shall be paid by the MCO/SE to contracted and non-contracted providers according to the following timeframe: 90% within 30 days of the date of receipt and 99% within 90 days of the date of receipt, as required by federal guidelines in the Code of Federal Regulations, Section 42 CFR 447.45. The date of receipt is the date the MCO/SE first receives the claim[~~, as indicated by the MCO's/SE's date stamp on the claim.~~] either manually or electronically. The MCO/SE is required to date stamp all claims on the date of receipt. The date of payment is the date of the check or other form of payment. An exception to this rule may be made if the MCO/SE and its providers, by mutual agreement, establish an alternative payment schedule [~~; however,~~]. However, any such alternative payment schedule shall first be incorporated into the contract between HSD and the MCO/SE. The MCO/SE shall [~~promptly pay~~] be financially responsible for paying all claims for all covered emergency and post-stabilization services that are furnished by non-contracted providers, at no more than the fee-for-service rate, including medically or clinically necessary testing to determine if a physical or behavioral health emergency exists.

(1) An MCO/SE shall pay contracted and noncontracted providers interest on the MCO's/SE's liability at the rate of 1 1/2 % per month on the amount of a clean claim (based upon the current medicaid fee schedule) submitted by the participating provider and not paid within 30 days of the date of receipt of an electronic claim and 45 days of receipt of a manual claim. Interest shall accrue from the 31st day for electronic claims and from the 46th day for manual claims. The MCO/SE shall be required to report the number of claims and the amount of interest paid, on a timeframe determined by HSD/MAD.

(2) No contract between the MCO/SE and a participating provider shall include a clause that has the effect of relieving either party of liability for its actions or inactions.

(3) If the MCO/SE is unable to determine liability for, or refuses to pay, a claim of a participating provider within the times specified above, the MCO/SE shall make a good-faith effort to notify the participating provider by fax, electronic or other written communication within 30 days of receipt of the claim, stating specific reasons why it is not liable for the claim or request specific information necessary to determine liability for the claim.

D. **Rate setting:** Capitation rates paid by HSD to the MCO/SE for the provision of the managed care medicaid benefit package shall be calculated through actuarial analysis, be actuarially sound and meet the standards set by 42 CFR 438.6(c).

E. **Payment on risk basis:** The MCO/SE is at risk of incurring losses if its costs of providing the managed care medicaid benefit package exceed its capitation payment. HSD shall not provide retroactive payment adjustments to the MCO/SE to reflect the actual cost of services furnished by the MCO/SE.

F. **Change in capitation rates:** HSD shall review the capitation rates 12 months from the effective date of the contract and annually thereafter. HSD may adjust the capitation rates based on factors such as the following: changes in the scope of work; CMS requiring a modification of the state's waiver; if new or amended federal or state laws or regulations are implemented; inflation; or if significant changes in the demographic characteristics of the member population occur.

G. **Solvency requirements and risk protections:** An MCO/SE that contracts with HSD to provide medicaid physical or behavioral health services shall comply with, and be subject to, all applicable state and federal laws and regulations, including solvency and risk standards. In addition to requirements imposed by state and federal law, the MCO/SE shall be required to meet specific medicaid financial requirements and to provide to HSD the information and records necessary to determine the MCO's/SE's financial condition. Requests for information and records shall be delivered to HSD, at no cost to HSD, in a reasonable time after the date of request or as specified in the contract.

(1) **Reinsurance:** An [~~MCO/SE~~] MCO participating in medicaid managed care shall purchase reinsurance at a minimum of one million dollars ($1,000,000.00) in reinsurance protection against financial loss due to outlier (catastrophic) cases. The [~~MCO/SE~~] MCO shall document for HSD that reinsurance is in effect through the term of the contract and that the amount of reinsurance is sufficient to cover probable outlier cases or overall member utilization at an amount greater than expected. Pursuant to 42 CFR 438.6(e)(5), contract provisions for reinsurance, stop-loss limits, or other risk sharing methodologies shall be computed on an actuarially sound basis.

(2) **Third party liability (TPL):** By federal law medicaid is the payer of last resort. The MCO/SE shall be responsible for identifying a member's third party coverage and coordinating of benefits with third parties. The MCO/SE shall inform

HSD when a member has other health care insurance coverage. The MCO shall have the sole right of subrogration, for twelve (12) months, from when the MCO incurred the cost on behalf of the members, to initiate recovery or to attempt to recover any third-party resources available to medicaid members and shall make records pertaining to third party collections (TPL) for members available to HSD/MAD for audit and review. If the MCO has not initiated recovery or attempted to recover any third-party resources available to medicaid members within twelve (12) months, HSD will pursue the member's third party resources. The MCO/SE shall provide to HSD for audit and review all records pertaining to TPL collections for members.

(3) **Fidelity bond requirement:** The MCO/SE shall maintain a fidelity bond in the maximum amount specified under the Insurance Code.

(4) **Net worth requirement:** The MCO/SE shall comply with the net worth requirements of the Insurance Code.

(5) **Solvency cash reserve requirement:** The MCO/SE shall have sufficient reserve funds available to ensure that the provision of services to medicaid members is not at risk in the event of MCO/SE insolvency.

(6) **Per enrollee cash reserve:** The MCO/SE shall maintain three (3) percent of the monthly capitation payments per member with an independent trustee during each month of the first year of the agreement [~~; provided, however, that if this agreement replaces or extends a previous agreement with HSD to provide medicaid managed care, then continued maintenance of the per member cash reserve established and maintained by the MCO/SE pursuant to such previous agreement shall be the agreement~~]. HSD shall adjust this cash reserve requirement annually, or as needed, based on the number of the MCO's/SE's members and shall notify the MCO/SE of the cash reserve requirement. Each MCO/SE shall maintain its own cash reserve account. This account may be accessed solely for payment for services to the MCO's/SE's members in the event that the MCO/SE becomes insolvent. Money in the reserve account remains the property of the MCO/SE, and any interest earned (even if retained in the account) shall be the property of the MCO/SE.

H. **Inspection and audit for solvency requirements:** The MCO/SE shall meet all requirements for state licensure with respect to inspection and auditing of financial records. The MCO/SE shall [~~cooperate with HSD, or its designee to~~] provide to HSD or its designee all financial records required by HSD. HSD, or [~~their~~] its designees may inspect and audit the MCO's/SE's financial records at least annually [~~, or more frequently, if deemed necessary~~] or at HSD discretion.

I. **Special payment requirements:** This section lists special payment requirements by provider type.

(1) **Reimbursement for FQHCs:** Under federal law, FQHCs shall be reimbursed at 100% of reasonable cost under a medicaid fee-for-service or managed care program. The FQHC may waive its right to 100% of reasonable cost and elect to receive a rate negotiated with the MCO/SE. HSD shall provide a discounted wrap-around payment to FQHCs that have waived a right to 100% reimbursement of reasonable cost from the MCO/SE.

(2) **Reimbursement for providers furnishing care to Native Americans:** If an Indian health service (IHS) or tribal 638 provider delivers services to an MCO/SE member who is Native American, the MCO/SE shall reimburse the provider at the rate [~~currently~~] established by the office of management and budget (OMB) for specified services for the IHS facilities, or the medicaid fee-for-service rate for all other services or at a fee negotiated between the provider and the MCO/SE.

(3) **Reimbursement for family planning services:** The MCOs shall reimburse out-of-network family planning providers for services provided to MCO members at a rate at least equal to the medicaid fee-for-service rate for the provider type.

(4) **Reimbursement for women in the third trimester of pregnancy:** If a woman in the third trimester of pregnancy at the time of her enrollment in managed care has an established relationship with an obstetrical provider and desires to continue that relationship and the provider is not contracted with the MCO, the MCO shall reimburse the out-of-network provider for care directly related to the pregnancy, including delivery and a six-week post-partum visit.

(5) **Reimbursement for members who disenroll while hospitalized:** If a medicaid member is hospitalized at the time of disenrollment, the organization MCO/SE or FFS exempt, which was originally responsible for the hospital impatient placement, shall remain financially responsible for payment of all covered inpatient facility and professional services from the date of admission to the date of discharge, or upon transfer to a lower level of care. Upon discharge, the member will then become the financial responsibility of the organization receiving capitation payments.

(6) **Sanctions for noncompliance:** The department may impose sanctions against an MCO/SE that fails to meet the financial requirements specified in this section or additional requirements specified in the terms of the medicaid managed care contract or federal medicaid law.

J. **Recoupment payments:** HSD shall [~~have the discretion to~~] recoup payments for MCO members who are incorrectly enrolled with more than one MCO, including members categorized as newborns or X5; payments made for MCO/SE members who die prior to the enrollment month for which payment was made; [~~and/or~~] or payments to the MCO/SE for members whom HSD later determines were not eligible for medicaid during the enrollment month for which payment was made. Any duplicate payment identified by either the MCO/SE or HSD shall be recouped upon identification. [~~HSD periodically shall recoup capitations for individuals who should not have been enrolled with the MCO/SE.~~] In the event of an error, which causes payment(s) to the MCO/SE to be issued by HSD, [~~the MCO/SE shall reimburse HSD within thirty (30) days of written notice of such error for~~] HSD shall recoup the full amount of the payment[~~, subject to the provisions of Section 5.6 (4) of the agreement~~]. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the thirtieth (30^{th}) day following the notice. Any process that automates the recoupment procedures shall be discussed in advance by HSD and the MCO/SE and documented in writing, prior to implementation of the new automated recoupment process. The MCO/SE has the right to dispute any recoupment [~~request~~] action in accordance with [~~Article 15 (DISPUTES)~~] contractual provisions.

K. HSD shall pay interest at 9% per annum on any capitation payment due to the MCO/SE that is more than 30 days late. No interest or penalty shall accrue for any other late payments or reimbursements.

L. HSD may initiate alternate payment methodology for specified program services or responsibilities.

[8.305.11.9 NMAC - Rp 8 NMAC 4.MAD.606.10, 7-1-01; A, 7-1-04; A, 71/05; A, 9-1-06; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.12 NMAC, Sections 9 through 13 and 16 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements. Section 9 will be repealed.

8.305.12.9 [~~GRIEVANCE SYSTEM:~~]

~~A. The MCO/SE shall have a grievance system in place for members that includes a grievance process relat-~~

~~ed to dissatisfaction and an appeals process related to an MCO/SE action, including the opportunity to request an HSD fair hearing.~~

~~B. A grievance is a member's expression of dissatisfaction about any matter or aspect of the MCO/SE or its operation, other than an MCO/SE action, as defined below.~~

~~C. An appeal is a request for review by the MCO/SE of an MCO/SE action. An action is the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, 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.~~

~~D. The member, legal guardian of the member for a minor or an incapacitated adult, or a representative of the member as designated in writing to the MCO/SE, has the right to file a grievance or an appeal of an MCO/SE action on behalf of the member. A provider acting on behalf of the member, with the member's written consent, may file a grievance and/or an appeal of an MCO/SE action.~~

~~E. In addition to the MCO/SE grievance and appeal process described above, a member, legal guardian of the member for a minor or an incapacitated adult, or the representative of the member has the right to request a fair hearing on behalf of the member with HSD directly as described in 8.352.2. NMAC, *Fair Hearings,* if an MCO/SE decision results in termination, modification, suspension, reduction, or denial of services to the member or if the member believes the MCO/SE has taken an action erroneously. A fair hearing may be requested prior to, concurrent with, subsequent to, or in lieu of a grievance or appeal to the MCO/SE.]~~

[RESERVED]

[8.305.12.9 NMAC - Rp 8.305.12.9 NMAC, 7-1-04; A, 7-1-05; Repealed, 7-1-07]

8.305.12.10 GENERAL REQUIREMENTS FOR GRIEVANCE AND APPEALS:

A. The MCO/SE shall have a grievance system in place for members that includes a grievance process related to dissatisfaction and an appeals process related to an MCO/SE action, including the opportunity to request an HSD fair hearing.

[~~A.~~] B. The MCO/SE shall implement written policies and procedures describing how the member may submit a request for a grievance or an appeal with the MCO/SE or submit a request for a fair hearing with HSD. The policy shall include a description of how the MCO/SE resolves the grievance or appeal.

[~~B.~~] C. The MCO/SE shall provide to all service providers in the [~~MCO's/SE's~~] MCO/SE's network a written description of the [~~MCO's/SE's~~] MCO/SE's grievance and appeal process and how the provider can submit a grievance [~~and/or~~] or appeal.

[~~C.~~] D. The MCO/SE shall have available reasonable assistance in completing forms and taking other procedural steps. This includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

[~~D.~~] E. The MCO/SE shall name a specific individual(s) designated as the [~~MCO's/SE's~~] MCO/SE's medicaid member grievance or appeal coordinator with the authority to administer the policies and procedures for resolution of a grievance [~~and/or~~] or an appeal, to review patterns/trends in grievances [~~and/or~~] or appeals, and to initiate corrective action.

[~~E.~~] F. The MCO/SE shall ensure that the individuals who make decisions on grievances [~~and/or~~] or appeals are not involved in any previous level of review or decision-making. The MCO/SE shall also ensure that health care professionals with appropriate clinical expertise shall make decisions for the following:

(1) an appeal of an MCO/SE denial that is based on lack of medical necessity;

(2) an MCO/SE denial that is upheld in an expedited resolution;

(3) a grievance or appeal that involves clinical issues.

[~~F.~~] G. Upon enrollment, the MCO/SE shall provide members, at no cost, with a member information sheet or handbook that provides information on how they [~~and/or~~] or their representative(s) can file a grievance [~~and/or~~] or an appeal, and the resolution process. The member information shall also advise members of their right to file a request for an administrative hearing with the HSD hearings bureau, upon notification of an MCO/SE action, or concurrent with [~~or following an appeal~~], subsequent to or in lieu of an appeal of the MCO/SE action. The information shall meet the standards specified in Paragraph (15) of Subsection C of 8.305.8.15 NMAC.

[~~G.~~] H. The MCO/SE shall ensure that punitive or retaliatory action is not taken against a member or a provider that files a grievance [~~and/or~~] or an appeal, or a provider that supports a member's grievance [~~and/or~~] or appeal.

[8.305.12.10 NMAC - Rp 8.305.12.10 & 11 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.12.11 GRIEVANCE: A grievance is [~~a member's~~] an expression of dissatisfaction about any matter or aspect of the MCO/SE or its operation other than an MCO/SE action.

A. A member may file a grievance either orally or in writing with the MCO/SE within 90 calendar days of the date of the event causing the dissatisfaction [~~occurred~~]. The legal guardian of the member for a minor or an incapacitated adult, a representative of the member as designated in writing to the MCO/SE, and a provider acting on behalf of the member and with the member's written consent, have the right to file a grievance on behalf of the member.

B. Within five [~~(5)~~] working days of receipt of the grievance, the MCO/SE shall provide the grievant with written notice that the grievance has been received and the expected date of its resolution.

C. The investigation and final MCO/SE resolution process for grievances shall be completed within thirty (30) calendar days of the date the grievance is received by the MCO/SE and shall include a resolution letter to the grievant.

D. The MCO/SE may request an extension from HSD of up to [~~fourteen (14)~~] 14 calendar days if the member requests the extension, or the MCO/SE 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/SE shall give the member written notice of the reason for the extension within two [~~(2)~~] working days of the decision to extend the timeframe.

E. Upon resolution of the grievance, the MCO/SE shall mail a resolution letter to the member. The resolution letter shall include, but not be limited to, the following:

(1) all information considered in investigating the grievance;

(2) findings and conclusions based on the investigation; and

(3) the disposition of the grievance.

[8.305.12.11 NMAC - Rp 8.305.12.9 NMAC, 7-1-04; A. 7-1-05; A, 7-1-07]

8.305.12.12 APPEALS: An appeal is a request for review by the MCO/SE of an MCO/SE action.

A. An 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/SE to

provide services in a timely manner, as defined by HSD; or

(5) the failure of the MCO/SE to complete the authorization request in a timely manner as defined in 42 CFR 438.408.

B. **Notice of MCO/SE action:** The MCO/SE shall mail a notice of action to the member [~~and/or~~] or provider within 10 days of the date of the action [~~except for denial~~] for previously authorized services as permitted under 42 CFR 431.213 and 431.214 and within 14 days of the action for newly requested services. Denials of claims that may result in member financial liability [~~, which requires~~] require immediate notification. The notice shall contain, but not be limited to, the following:

(1) the action the MCO/SE has taken or intends to take;

(2) the reasons for the action;

(3) the member's or the provider's right, as applicable, to file an appeal of the MCO/SE action through the MCO/SE;

(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;

(7) the member's right to have benefits continue pending resolution of an appeal or fair hearing, 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/SE action within 90 calendar days of receiving the [~~MCO's/SE's~~] MCO/SE's notice of action. The legal guardian of the member for a minor or an incapacitated adult, a representative of the member as designated in writing to the MCO/SE, 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/SE has [~~thirty (30)~~] 30 calendar days from the date the initial oral or written appeal is received by the MCO/SE to resolve the appeal. The MCO/SE shall appoint at least one person to review the appeal who was not involved in the initial decision and who is not the subordinate of any person involved in the initial decision.

E. The MCO/SE shall have a process in place that ensures that an oral or written 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 shall be followed by a written appeal within 10 calendar days that is signed by the member. The MCO/SE shall use its best efforts to assist members as needed with the written appeal.

F. Within five [~~(5)~~] working days of receipt of the appeal, the MCO/SE shall provide the grievant with written notice that the appeal has been received and the expected date of its resolution. The MCO/SE shall confirm in writing receipt of oral appeals, unless the member or the provider requests an expedited resolution.

G. The MCO/SE may extend the 30-day timeframe by 14 calendar days if the member requests the extension, or the MCO/SE 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/SE shall 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.

H. The MCO/SE shall provide the member [~~and/or~~] or the member's representative a reasonable opportunity to present evidence of the facts or law, in person as well as in writing.

I. The MCO/SE shall provide the member [~~and/or~~] or the representative the opportunity, before and during the appeals process, to examine the member's case file, including medical or clinical records (subject to HIPAA requirements), and any other documents and records considered during the appeals process. The MCO/SE shall include as parties to the appeal the member and his or her representative, or the legal representative of a deceased member's estate.

J. For all appeals, the MCO/SE shall provide written notice within the 30-calendar-day timeframe for resolutions to the member or the provider, if the provider filed the appeal.

(1) The written notice of the appeal resolution shall include, but not be limited to, the following information:

(a) the results 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 shall 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 continuing benefits if the hearing decision upholds the [~~MCO's/SE's~~] MCO/SE's action.

K. The MCO/SE may continue benefits while the appeal [~~and/or~~] or the HSD fair hearing process is pending.

(1) The MCO/SE shall 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/SE action [~~and/or~~] 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/SE shall provide benefits until one of the following occurs:

(a) the member withdraws the appeal;

(b) [~~ten~~] 13 days have passed since the date of the resolution letter, provided 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;

(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~~] MCO/SE's action is upheld, the MCO/SE 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 policy in 42 CFR 431.230(b).

(4) If the MCO/SE or HSD reverses a decision to deny, limit, or delay services, and these services were not furnished while the appeal was pending, the MCO/SE shall authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires.

(5) If the MCO/SE 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/SE shall pay for these services.

[8.305.12.12 NMAC - Rp 8.305.12.12 NMAC, 7-1-04; A. 7-1-05; A, 9-1-06; A, 7-1-07]

8.305.12.13 EXPEDITED RESOLUTION OF APPEALS: An expedited

resolution of an appeal is an expedited review by the MCO/SE of an MCO/SE action.

A. The MCO/SE shall establish and maintain an expedited review process for appeals when the MCO/SE determines that allowing 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/SE's~~] MCO/SE's independent determination.

B. The MCO/SE shall ensure that the expedited review process is convenient and efficient for the member.

C. The MCO/SE shall resolve the appeal within three [~~(3)~~] working days of receipt of the request for an expedited appeal, if the request meets the definition of expedited in Subsection A of 8.305.12.13 NMAC. In addition to written resolution notice, the MCO/SE shall also make reasonable efforts to provide and document oral notice.

D. The MCO/SE may extend the timeframe by up to 14 calendar days if the member requests the extension, or the MCO/SE 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/SE shall give the member written notice of the reason for the delay.

E. The MCO/SE 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/SE shall provide an 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/SE shall inform the member of the limited time available to present evidence and allegations in fact or law.

H. If the MCO/SE 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/SE received the original request for appeal; and

(2) make reasonable efforts to give the member prompt oral notice of the denial, and follow up with a written notice within two [~~(2)~~] 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/SE's decision to deny an expedited resolution~~].

I. The MCO/SE shall document in writing all oral requests for expedited resolution and shall maintain the documentation in the case file.

[8.305.12.13 NMAC - Rp 8.305.12.12 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07]

8.305.12.16 MCO/SE PROVIDER GRIEVANCE AND APPEAL PROCESS: The MCO/SE 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/SE. Provider grievances or appeals shall be resolved within 30 calendar days. If the grievance or appeal is not resolved within 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. A provider shall have the right to file an appeal with the MCO/SE regarding provider payment or contractual issues. See 8.305.12.13 NMAC for special rules for certain expedited service authorizations.

[8.305.12.16 NMAC - Rp 8.305.12.17 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.13 NMAC, Section 10 which will be effective on July 1, 2007. The Medical Assistance Division amended the section to clarify existing policy and to update physical health screening requirements.

8.305.13.10 MANAGED CARE ORGANIZATION AND SINGLE STATEWIDE ENTITY REQUIREMENTS: The MCO/SE shall have in place internal controls, policies and procedures for the prevention, detection, investigation and reporting of potential fraud and abuse activities concerning providers and members. The MCO/SE specific internal controls, policies and procedures shall be described in a comprehensive written plan submitted to HSD, or its designee, for approval. Substantive amendments or modifications to the plan shall be approved by HSD. The [~~MCO~~] MCO/SE shall maintain procedures for reporting potential and actual fraud and abuse by clients or providers to HSD. The MCO/SE shall:

A. have internal procedures that facilitate preliminary investigating and reporting of potential and actual fraud and abuse to HSD, or its designee, for further investigation;

B. [~~a description of the~~] have specific controls in place for prevention and detection of potential cases of fraud and abuse, such as claims edits, post processing review of claims, provider [~~profiling~~] profiling/exception reporting and credentialing prior authorizations, utilization/quality management monitoring;

C. have a mechanism to work with HSD, or its designee, to further develop prevention and detection methods and best practices and to monitor outcomes for medicaid managed care;

D. have internal procedures to prevent, detect and investigate program violations to [~~help~~] recover funds misspent due to fraudulent or abusive actions; [~~and~~]

E. [~~a~~] report to HSD [~~of~~] the names of all providers identified with aberrant utilization, according to provider profiles, regardless of the cause of the aberrancy;

F. designate a compliance officer and a compliance committee who are accountable to senior management;

G. provide effective fraud and abuse detection training, administrative remedies for false claims and statements and whistleblower protection under such laws to the MCO/SE's employees that includes:

(1) written policies for all employees, agents or contractors that provide detailed information regarding the New Mexico Medicaid False Claims Act, NMSA 1978, and the federal False Claims Act established under sections 3729 through 3733 of Title 31, United States Code, administrative remedies for false claims and statements established under Chapter 38 of Title 31, United States code, including but not limited to, preventing and detecting fraud, waste and abuse in federal health care programs (as defined in section 1128B (f) of the Social Security Act);

(2) include as part of such written policies, detailed provision regarding the MCO/SE's policies and procedures for detecting and preventing fraud, waste and abuse; and

(3) include in any employee handbook, a specific discussion of the laws described in Paragraph (1) above, the rights of employees to be protected as whistle-

blowers, and the contractor's or subcontractor's policies and procedures for detecting and preventing fraud, waste and abuse;

H. implement effective lines of communication between the compliance officer and the MCO/SE's employees;

I. require enforcement of standards through well-publicized disciplinary guidelines; and

J. have a provision for prompt response to detected offenses and for development of corrective action initiatives relating to the MCO/SE's contract.

[8.305.13.10 NMAC - Rp 8 NMAC 4.MAD.606.12.1, 7-1-01; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.14 NMAC, Sections 9 through 12 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements.

8.305.14.9 REPORTING REQUIREMENTS: The MCO/SE shall provide to HSD managerial, financial, delegation, suspicious activity, utilization and quality reports. The content, format and schedule for submission shall be determined by HSD in writing. HSD may require the MCO/SE to prepare and submit ad hoc reports.

[8.305.14.9 NMAC - Rp 8 NMAC 4.MAD.606.13, 7-1-01; A, 7-1-05; A, 7-1-07]

8.305.14.10 REPORTING STANDARDS:

A. Reports submitted by the MCO/SE to HSD shall meet certain standards.

(1) The MCO/SE shall verify the accuracy of data and other information on reports submitted.

(2) Reports or other required data shall be received on or before scheduled due dates.

(3) Reports or other required data shall conform to HSD's defined standards as specified in writing.

(4) All required information shall be fully disclosed in a manner that is responsive and with no material omission.

(5) The MCO/SE shall analyze all required reports internally before submitting them to HSD. The MCO/SE shall analyze the report for any early patterns of change, identified trend, or outlier (catastrophic case), and shall submit this analysis with the required report. The MCO/SE shall send a written narrative for specified reports with the report documenting the [~~MCO's/SE's~~] MCO/SE's interpretation of the early pattern of change, identified trend, or outlier.

B. **Consequences of violation of reporting standards:** The submission of late, inaccurate or otherwise incomplete reports shall be considered failure to report. Sanctions may be imposed by HSD, or its designee on the MCO/SE for failure to submit accurate and timely reports.

C. **Changes in requirements:** HSD's requirements regarding reports, report content and frequency of submission may change during the term of the contract. The MCO/SE shall comply with changes specified by HSD.

[8.305.14.10 NMAC - Rp 8 NMAC 4.MAD.606.13.1, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.14.11 MANAGERIAL REPORTS: Managerial reports demonstrate compliance with operational requirements of the contract. These reports shall include, but not be limited to, information on such topics as:

A. MCO/SE: composition of current provider networks and capacity to take new medicaid members;

B. MCO/SE: changes in the composition and capacity of provider networks;

C. MCO: PCP-to-member ratios;

D. MCO/SE: identification of third-party liability;

E. MCO/SE: grievance [~~resolution~~] system activity;

F. MCO/SE: fraud and abuse detection activities;

G. MCO/SE: delegation oversight activities; and

H. MCO/SE: member satisfaction.

[8.305.14.11 NMAC - Rp 8 NMAC 4.MAD.606.13.2, 7-1-01; A, 7-1-05; A, 7-1-07]

8.305.14.12 FINANCIAL REPORTS: Financial reports demonstrate the [~~MCO's/SE's~~] MCO/SE's ability to meet its commitments under the terms of the contract. The format, content and frequency for submitting financial reports shall be determined by HSD. The MCO/SE shall meet the following general requirements:

A. The MCO shall submit annual audited financial statements, including, but not limited to, its income statement, a statement of changes in financial condition or cash flow and a balance sheet, and shall include an audited schedule of managed care physical health revenues and expenses. The SE shall submit annual audited financial statements, including, but not limited to, its income statement, a statement of changes in financial condition or cash flow and a balance sheet, and shall include an audited schedule of managed care behavioral health revenues and expenses. The result of the [~~MCO's/SE's~~] MCO/SE's annual audit and related management letters shall be submitted no later than 150 days following the close of the [~~MCO's/SE's~~] MCO/SE's fiscal year. The audit shall be performed by an independent certified public accountant. The MCO/SE shall submit for examination any financial reports requested by HSD.

B. The MCO/SE and their subcontractors shall maintain their accounting systems in accordance with statutory accounting principles, generally accepted accounting principles, or other generally accepted system of accounting. The accounting system shall clearly document all financial transactions between the MCO/SE and its subcontractors and the MCO/SE and HSD. These transactions shall include, but not be limited to, claim payments, refunds and adjustment of payments.

C. The MCO/SE and their subcontractors shall make available to HSD, and other authorized state or federal agencies, all financial records required to examine compliance by the MCO/SE, in so far as those records are related to MCO/SE performance under the contract. The MCO/SE and their subcontractors shall provide HSD access to its facilities for the purpose of examining, reviewing and inspecting the [~~MCO's/SE's~~] MCO/SE's records.

D. The MCO/SE and their subcontractors shall retain all records and reports relating to agreements with HSD for a minimum of [~~six~~] 10 years after the date of final payment. In cases involving incomplete audits and unresolved audit findings, administrative sanctions or litigation, the minimum [~~six~~] 10 year retention period shall begin on the date such actions are resolved.

E. The MCO/SE is mandated to notify HSD immediately when any change in ownership is anticipated. The MCO/SE shall submit a detailed work plan to the department of insurance during the transition period no later than the date of the sale, that identifies areas of the contract that may be impacted by the change in ownership, including management and staff. The MCO/SE shall submit records involving any business restructuring when changes in ownership interest in the MCO/SE of 5% or more have occurred. These records shall include, but shall not be limited to, an updated list of names and addresses of all persons or entities having ownership interest in the MCO/SE of [~~five percent (5%)~~] 5% or more. These records shall be provid-

ed no later than 60 days following the change in ownership.
[8.305.14.12 NMAC - Rp 8 NMAC 4.MAD.606.13.3, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.15 NMAC, Sections 10, 20 and 21 which will be effective on July 1, 2007. The Medical Assistance Division amended the sections to clarify existing policy and to update physical health screening requirements.

8.305.15.10 MANAGED CARE ENROLLMENT FOR ISHCN:

A. **Switch enrollment:** The MCO shall have policies and procedures to facilitate a smooth transition of a member who switches enrollment to another MCO. See Subsection F of 8.305.5.9 NMAC, *Member Switch Enrollment*. Members, including ISHCN, may request to break a lock-in and be switched to membership in another MCO, based on cause. The member, the member's family or legal guardian shall contact HSD to request that the member be switched to another MCO. [~~The MCO shall have policies and procedures to facilitate a smooth transition of a member who switches enrollment to another MCO. See Subsection F of 8.305.5.9 NMAC, *Member Switch Enrollment*.~~]

B. **ISHCN information and education:**

(1) The MCO/SE shall develop and distribute to ISHCN members, caregivers, parents [~~and/or~~] or legal guardians, as appropriate, information and materials specific to the needs of this population. This includes information, such as items and services that are provided or not provided by the managed care program, information about how to arrange transportation, and which services require a referral from the PCP. The individual, family, caregiver, or legal guardian shall be informed on how to present an individual for care in an emergency room that is unfamiliar with the individual's special health care needs and about the availability of care coordination. See 8.305.9 NMAC, *Coordination of Services*. This information may be included either in a special member handbook or in an ISHCN insert to the MCO/SE member handbook.

(2) The MCO/SE shall provide health education information to assist an ISCHN [~~and/or~~] or caregivers in understanding how to cope with the day-to-day stress caused by chronic illness, including chronic behavioral health conditions.

(3) The MCO/SE shall provide [~~ISHCNs and/or~~] ISHCN or caregivers a list of key MCO/SE resource people and their telephone numbers. The MCO/SE shall designate a single point of contact that an ISHCN, family member, caregiver, or provider may call for information.
[8.305.15.10 NMAC - Rp 8.305.15.10 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.15.20 ADDITIONS TO CONSUMER ASSESSMENT OF HEALTH PLANS SURVEY (CAHPS) FOR (ISHCN): An [~~MCO/SE~~] MCO shall add questions about ISHCN to the most current HEDIS CAHPS survey.
[8.305.15.20 NMAC - Rp 8.305.15.20 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

8.305.15.21 ISHCN PERFORMANCE MEASURES: The MCO/SE shall initiate a quality strategy related to ISHCN within the QM annual plan utilizing a performance measure specific to ISHCN. See 8.305.8 NMAC, *Quality Management*.
[8.305.15.21 NMAC - Rp 8.305.15.21 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.16 NMAC, Section 9 which will be effective on July 1, 2007. The Medical Assistance Division amended the section to clarify existing policy and to update physical health screening requirements.

8.305.16.9 MEMBER TRANSITION OF CARE: [~~The MCO/SE shall actively assist with transition of care issues.~~] The MCO/SE shall have the resources and policies and procedures in place to ensure continuity of care without disruption in service to members and to assure the service provider of payment. The MCO/SE shall actively assist members, in particular ISHCN. Members transitioning from institutional levels of care such as hospitals, nursing homes, residential treatment facilities or ICF/MRs back to community services with transition of care needs shall be offered care coordination services as indicated. Medicaid-eligible clients may initially receive physical and behavioral health services under fee-for-service medicaid prior to enrollment in managed care. During the member's medicaid eligibility period, enrollment status with a particular MCO may change and the member may switch enrollment to a different MCO. Certain members covered under managed care may become exempt and other members may lose their medicaid eligibility while enrolled in an MCO/SE. A member changing from MCO to MCO, fee-for-service to managed care coverage and vice versa shall continue to receive medically necessary services in an uninterrupted manner. [~~The MCO/SE shall have the resources and policies and procedures in place to ensure continuity of care without disruption in service to members and to assure the service provider of payment.~~]

A. **Member transition:** The MCO/SE shall have policies and procedures that address member identification and the clinical transition and transfer of members into or out of the MCO.

(1) The MCO shall have policies and procedures that cover potentially large or mass transfer of members into or out of the MCO, including the identification of members currently receiving services, and the SE shall be notified.

(2) The MCO shall have policies and procedures covering the transition into the MCO of an individual member, which shall include member and provider education about the MCO and the review and update of existing courses of treatment. The SE shall be notified and coordination of care shall occur.

(3) The MCO shall have policies and procedures that identify members transferring out of the MCO and ensure the provision of member data and clinical information to the future MCO necessary to avoid delays in member treatment. The MCO shall have written policies and procedures to facilitate a smooth transition of a member to another MCO [~~and/or SE,~~] when a member chooses and is approved to switch to another MCO.

(4) The MCO/SE shall have policies and procedures regarding provider responsibility for discharge planning upon the member's discharge from an inpatient or residential treatment facility, and the MCO/SE shall help coordinate for a seamless transition of post-discharge care.

B. **Prior authorization and provider payment requirements:**

(1) For newly enrolled members, the MCO/SE shall honor all prior [~~approvals~~] authorizations granted by HSD through its contractors for the first 30 days of enrollment or until the MCO/SE has made other arrangements for the transition of services. Providers who delivered services approved by HSD through its contractors shall be reimbursed by the MCO/SE.

(2) For members who recently became exempt from managed care, HSD shall honor prior authorization of fee-for-service covered benefits granted by the MCO/SE for the first 30 days under fee-for-service medicaid or until other arrangements for the transition of services have been made. Providers who deliver these services and are eligible and willing to enroll as medicaid fee-for-service providers

shall be reimbursed by HSD.

(3) For members who had transplant services approved by HSD under fee-for-service, the MCO shall reimburse the providers approved by HSD if a donor organ becomes available for the member during the first 30 days of enrollment.

(4) For members who had transplant services approved by the MCO, HSD shall reimburse the providers approved by the MCO if a donor organ becomes available for the member during the first 30 days under fee-for-service medicaid. Providers who deliver these services shall be eligible and willing to enroll as medicaid fee-for-service providers.

(5) For newly enrolled members, the MCO/SE shall pay for prescriptions for drug refills for the first 30 days or until the MCO/SE has made other arrangements. All drugs prescribed by a licensed behavioral health provider shall be paid for by the SE.

(6) For members who recently became exempt from managed care, HSD shall pay for prescriptions for drug refills for the first 30 days under the fee-for-service formulary. The pharmacy provider shall be eligible and willing to enroll as a medicaid fee-for-service provider.

(7) The MCO shall pay for DME costing $2,000 or more, approved by the MCO but delivered to the member after disenrollment from managed care.

(8) HSD shall pay for DME costing $2,000 or more, approved by HSD but delivered to the member after enrollment in the MCO. The DME provider shall be eligible for and willing to enroll as a medicaid fee-for-service provider. DME is not covered by the SE unless it has been prescribed by a behavioral health provider.

C. **Special payment requirement.** The MCO shall be responsible for payment of covered physical health services, provided to the member for any month the MCO receives a capitation payment. The SE shall be responsible for payment of covered behavioral health services provided to the member for any month the SE receives a capitation payment.

D. **Claims processing and payment:** In the event that an MCO's/SE's contract with HSD or the collaborative has ended, is not renewed or is terminated, the MCO/SE shall remain responsible for processing and paying claims for services delivered through the contract period, but submitted after the MCO's/SE's contract has ended.

(1) The MCO/SE shall be required to inform providers in writing, at least 30 days prior to the end of the contract, of the termination of the contract and of the process for providers to submit claims for services provided through the contract end date. The letter shall include the telephone, fax numbers, and the billing address for claims submissions as well as the names of persons to contact with questions.

(2) The MCO/SE shall allow six months to process claims for services provided prior to the contract termination date.

(3) The MCO/SE shall continue to meet timeframes established for processing all claims.

[8.305.16.9 NMAC - N, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07]

NEW MEXICO BOARD OF PODIATRY

16.21.5 NMAC, Temporary License (filed 09-15-2004) repealed, 7-15-07 and replaced by 16.21.5 NMAC, Temporary License and Emergency License, effective 7-15-07.

NEW MEXICO BOARD OF PODIATRY

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

16.21.5.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry.
[16.21.5.1 NMAC - Rp, 16.21.5.1 NMAC, 7-15-07]

16.21.5.2 SCOPE: Applicants for a temporary license to practice podiatry in New Mexico.
[16.21.5.2 NMAC - Rp, 16.21.5.2 NMAC, 7-15-07]

16.21.5.3 STATUTORY AUTHORITY: The Podiatry Act, Section 61-8-6(E) and 61-8-14(B) and (C) NMSA 1978.
[16.21.5.3 NMAC - Rp, 16.21.5.3 NMAC, 7-15-07]

16.21.5.4 DURATION: Permanent.
[16.21.5.4 NMAC - Rp, 16.21.5.4 NMAC, 7-15-07]

16.21.5.5 EFFECTIVE DATE: July 15, 2007, unless a later date is cited at the end of a section.
[16.21.5.5 NMAC - Rp, 16.21.5.5 NMAC, 7-15-07]

16.21.5.6 OBJECTIVE: This part provides the circumstances under which a temporary license and or temporary emergency license will be issued and lists the requirements and documentation that must be submitted to the board in a complete application. It provides the procedure by which the board may approve the application and provides for expiration of the temporary license and or temporary emergency license.
[16.21.5.6 NMAC - Rp, 16.21.5.6 NMAC, 7-15-07]

16.21.5.7 DEFINITIONS:

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

B. "Complaint/review committee" an ad hoc committee established by the board to review all complaints and applicants with background findings. Complaint committee shall consist of one (1) professional board member; the board's executive director and boards compliance liaison. Recommendations regarding the complaints and licensure of the applicants may be given to the board at its next scheduled meeting.

C. "Background findings" the board may deny, stipulate, or otherwise limit a license if it is determined the applicant hold or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the Podiatric Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.
[16.21.5.7 NMAC - Rp, 16.21.5.7 NMAC, 7-15-07]

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

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

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

(1) a participant in a residency training program located in New Mexico accredited by the council on podiatric medical education and insure that at all times

throughout the program the temporary license holder is supervised by a New Mexico licensed podiatrist; or

(2) a participant in a residency program that is located in a bordering state accredited by the council on podiatric medical education and insure that at all times the temporary license holder is supervised by a New Mexico licensed podiatrist, if the program offers part of its program residency in New Mexico.

C. In cases to assist or perform surgical procedures with a licensed New Mexico podiatrist which is beyond the training and experience available in New Mexico.

[16.21.5.8 NMAC - Rp, 16.21.5.8 NMAC, 7-15-07]

16.21.5.9 TEMPORARY EMERGENCY LICENSE: Podiatric physician currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost.

[16.21.5.9 NMAC - N, 7-15-07]

16.21.5.10 REQUIREMENTS FOR TEMPORARY LICENSURE AND TEMPORARY EMERGENCY LICENSURE: The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.

A. Applicants for temporary license or temporary emergency license due to situations defined under 16.21.5.8 NMAC A or C must meet the following qualifications:

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

(2) passed the podiatric medical examiners national board exams Part 1 and 2;

(3) completed a residency program as defined in the Podiatry Act, Section 61-8-8,(A),(4); and

(4) passed the New Mexico jurisprudence examination with a score of 75% or higher.

B. Applicants for temporary licensure to facilitate an educational or residency program must meet the following qualifications:

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

(2) passed the podiatric medical examiners national board exams Part 1 and 2; and

(3) passed the jurisprudence examination with a score of 75% or higher.

[16.21.5.10 NMAC - Rp, 16.21.5.9 NMAC, 7-15-07]

16.21.5.11 TEMPORARY LICENSE DOCUMENTATION REQUIREMENTS: Each applicant for a temporary license must submit the required fees and submit or provide for the following documentation:

A. a completed application signed and notarized with a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

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

C. proof that the applicant has passed the podiatric medical examiners national board examinations; unless still in the first two (2) years of a residency program;

D. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office by the licensing state and attest to the status, issue date, license number of the licensee;

E. in addition, applicants obtaining temporary licensure to work in an existing practice due to an emergency must provide a certified copy of a certificate of completion of a residency program approved by the "CPME" council on podiatric medical education;

F. applicants for temporary licensure to facilitate an educational or residency program must submit proof of enrollment in the educational or residency training program.

[16.21.5.11 NMAC - Rp, 16.21.5.10 NMAC, 7-15-07]

16.21.5.12 TEMOPARY EMERGENCY LICENSE DOCUMENTION REQUIREMENTS:

A. Podiatric physicians currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost, upon satisfying the following requirements:

(1) proof applicant resides and is in active practice in the federally declared disaster areas in the form of a signed and notarized affidavit, accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity.

(2) official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

(3) one letter of recommendation from a practicing podiatrist who is personally acquainted with the applicant and who can attest that the applicant is of good moral character;

(4) a certified copy of a certificate of completion of a residency program accredited by the council on pediatric medical education "CPME".

(5) proof that the applicant has passed the American podiatric medical examiners national board examination;

(6) proof that the applicant has passed the PM lexis or equivalent examination;

(7) the board may waive the specific forms required under Paragraphs (1) through (6) of Subsection A of 16.21.5.12 NMAC if the applicant is unable to obtain documentation from the federally declared disaster areas.

(8) other required verification may be obtained online by board staff to include: current licensure status, national practitioner's data bank, federation of podiatric medical board's disciplinary database.

(9) the board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources.

(10) nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.21.5 NMAC.

B. Upon receipt of a completed application, including all required documentation, the secretary-treasurer or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be reviewed by the complaint/review committee. The board may formally accept the recommendation of the complaint/review committee at the next scheduled meeting.

[16.21.5.12 NMAC - N, 7-15-07]

16.21.5.13 REPORTS: The board requires obtainment of reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed as a podiatrist in another state.

[16.21.5.13 NMAC - Rp, 16.21.5.11

NMAC, 7-15-07]

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

A. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board shall ratify the approval of the application at the next scheduled board meeting. Any application which cannot be approved by the designee of the board will be reviewed by the board at the next scheduled meeting. The board's decision in regard to the issuance of a temporary license shall be final.

B. When issued, a temporary license shall state on its face that the license only authorizes the individual to practice podiatry at the location or locations stated on the license and shall expire automatically on the date of the next board meeting or on the date the applicant's educational program terminates.

[16.21.5.14 NMAC - Rp, 16.21.5.12 NMAC, 7-15-07]

16.21.5.15 EMERGENCY LICENSE PROCEDURE

A. The emergency licensee shall expire at the next board meeting or four (4) months, whichever comes first. A request for an extension of the emergency license may be made to the board or its designee and may be extended until January 1. The emergency licensee may obtain permanent license status upon submission of a renewal application, all fees and CE's approved by the board as outlined in 16.21.7 NMAC. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal.

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

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

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

(3) the results of the background check indicate negative findings.

[16.21.5.15 NMAC - N, 7-15-07]

HISTORY of 16.21.5 NMAC:

Pre-NMAC History:

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

Rule IV, Temporary Licenses, filed 7-21-80;
Rule IV, Temporary License, filed 10-6-87;
Rule IV, Temporary License, filed 8-18-89;
Rule IV, Temporary License, filed 11-29-90.

History of the Repealed Material:

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

16.21.5 NMAC, Temporary License (filed 09-15-2004), repealed 7-15-07.

Other History:

Rule IV, Temporary License (filed 11-29-90) was renumbered, reformatted and replaced by 16 NMAC 21.5, Podiatry - Application for Temporary License, effective 7-01-1996.

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

16.21.5 NMAC, Temporary License (filed 09-15-2004) was replaced by 16.21.5 NMAC, Temporary License and Emergency License, effective 7-15-07.

NEW MEXICO BOARD OF PODIATRY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 21 PODIATRISTS
PART 12 MANAGEMENT OF MEDICAL RECORDS

16.21.12.1 ISSUING AGENCY: Regulation and Licensing Department, NM Board of Podiatry hereafter called the board.

[16.21.12.1 NMAC - N, 7-15-07]

16.21.12.2 SCOPE: This part governs the use management of medical records that are created and maintained as part of the practice of a podiatrist who has physical possession or ownership of the records.

[16.21.12.2 NMAC - N, 7-15-07]

16.21.12.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to and in accordance with the Podiatry Act, Section 61-8-9 NMSA 1978.

[16.21.12.3 NMAC - N, 7-15-07]

16.21.12.4 DURATION: Permanent

[16.21.12.4 NMAC - N, 7-15-07]

16.21.12.5 EFFECTIVE DATE: July 15, 2007, unless a later date is cited at the end of a section.

[16.21.12.5 NMAC - N, 7-15-07]

16.21.12.6 OBJECTIVE: This part establishes requirements and procedures for management of medical records.

[16.21.12.6 NMAC - N, 7-15-07]

16.21.12.7 DEFINITIONS: "Medical record" means all information maintained by a podiatrist relating to the past, present or future physical health or condition of a patient, and for the provision of health care to a patient. This information includes, but is not limited to, the podiatrist's notes, reports and summaries, and x-rays and laboratory and other diagnostic test results. A patient's complete medical record includes information generated and maintained by the podiatrist, as well as information provided to the podiatrist by the patient, by any other podiatrist who has consulted with or treated the patient, and other information acquired by the podiatrist about the patient in connection with the provision of health care to the patient.

[16.21.12.7 NMAC - N, 7-15-07]

16.21.12.8 RELEASE OF MEDICAL RECORDS: Podiatrists must provide complete copies of medical records to a patient or to another podiatrist in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient. This should occur with a minimum of disruption in the continuity and quality of medical care being provided to the patient. If the medical records are the property of a separate and independent organization, the podiatrist should act as the patient's advocate and work to facilitate the patient's request for records.

A. Medical records may not be withheld because an account is overdue or a bill for treatment, medical records, or other services is owed.

B. A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is $1.00 per page for the first 25 pages, and $0.10 per page thereafter. Patients may be charged the actual cost of reproduction for electronic records and record formats other than paper, such as x-rays. The board will review the reasonable charge periodically. Podiatrists charging for the cost of reproduction of medical records shall give consideration to the ethical and professional duties owed to other podiatrists and their patients.

[16.21.12.8 NMAC - N, 7-15-07]

16.21.12.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE: Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current podiatrist to the new treating podiatrist. This should occur with a minimum of disruption in the continuity and quality of med-

ical care being provided to the patient. Whenever possible, notification of patients is the responsibility of the current treating podiatrist.

A. Active patients and patients seen within the previous three years must be notified at least 30 days before closing, selling, relocating or leaving a practice.

B. Whenever possible, patients should be notified within at least 30 days after the death of their podiatrist.

C. Notification shall be through a notice in newspaper in the local practice area, and should include responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address. To reach a maximum number of patients, the notification must run a minimum of two times per month for three months. In addition to a notice in the newspaper, notification may also be through an individual letter to the patient's last known address. Notification shall also be sent to the board.

D. Notification should include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records, telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed; and

(4) cost of recovering/transferring records.

E. A podiatrist or podiatrist group should not withhold patient lists or other information from a departing podiatrist that is necessary for notification of patients.

F. Patients of a podiatrist who leaves a group practice must be notified the podiatrist is leaving, notified of the podiatrist's new address and offered the opportunity to have their medical records transferred to the departing podiatrist at their new practice.

G. When a practice is sold, all active patients must be notified that the podiatrist is transferring the practice to another podiatrist or entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another podiatrist or entity of their choice.

[16.21.12.9 NMAC - N, 7-15-07]

History of 16.21.12 NMAC: [RESERVED]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.1 NMAC Sections 7, 8, 14, 15, and 16, effective 7-15-07.

16.21.1.7 DEFINITIONS: [~~**"APMA"** means the American podiatric medical association.~~] "CPME" means the council on podiatric medical education.

[16.21.1.7 NMAC - N, 10-15-04; A, 7-15-07]

16.21.1.8 SCOPE OF PRACTICE: For the purpose of clarification of the Podiatry Act, Section 61-8-2(C) NMSA 1978, the practice of podiatry:

A. in regard to surgical treatment shall [~~be limited to the tuberosity of the tibia and the area distal thereto, excepting~~] include the skin and subcutaneous tissues of the thigh and all structures distal to the tuberosity of the tibia;

B. does [~~not include amputation of the foot, however, it does allow removal of any part thereof~~] include amputation of any portion of the foot;

C. [~~does not include the personal administration of a general anesthetic, however, it~~] does allow the use of the services of a certified registered nurse anesthetist; and

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

[16.21.1.8 NMAC - Rp, Rule IX, 10-15-04; A, 7-15-07]

16.21.1.14 PUBLIC RECORDS: Except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following "formal disciplinary proceedings" conducted pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978) are matters of public record as of the time of filing with or by the board.

[~~A. Unless otherwise provided by law, or excepted by the Inspection of Public Records Act, all records in the board's custody are public record available for inspection. Requests for inspection of public records shall follow the requirements of the Inspection of Public Records Act, Section 14-2-1 NMSA 1978.~~

~~B. No person shall be permitted to remove documents from the board office.~~]

[16.21.1.14 NMAC - Rp, Rule XII, 10-15-04; A, 7-15-07]

16.21.1.15 NON PUBLIC RECORDS: The contents of any examination used to test for an individual's knowledge or competence, investigative files, and matters of opinion are confidential and not subject to public inspection. Complaints made to the board shall be confidential communications and are not public records for the purposes of the Public Records Act. Complaints, settlement agreements and information contained in complaint files, except investigative files and report, becomes public information and subject to disclosure, pursuant to the Public Records Act upon the decision of the board to take formal action.

[16.21.1.15 NMAC - Rp, Rule XI, 10-15-04; 16.21.1.15 NMAC - N, 7-15-07]

[~~16.21.1.15~~] 16.21.1.16 ADVERTISING GUIDELINES:

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

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

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

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

[~~(3) the licensee is "board eligible", as that term is defined by the recognized specialty board.~~]

[16.21.1.16 NMAC - Rn, 16.21.1.15 NMAC & A, 7-15-07]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.2 NMAC Section 8, effective 7-15-07.

16.21.2.8 FEES:

A. Application fee for licensure by examination is [~~$325~~] $400.00.

B. Application fee for licensure by reciprocity is [~~$525~~] $600.00.

C. Duplicate license fee is $25.00.

D. Temporary license fee is $100.00.

E. Annual renewal fee is [~~$200.00~~] $300.00.

F. Late fee for license renewal applications that are received but

not complete, or not received or postmarked by December 31, is $50 per month for each month or part thereof.

G. Reinstatement fee is [~~$25~~] $200.00 for the first twelve months of delinquency and $500.00 for a license that has lapsed more than one year but not more than three years.

H. Fees for requests for copies of public records will be charged [~~in accordance with the regulation and licensing department's standard charges~~] reasonable administrative fees.

[16.21.2.8 NMAC - N, 10-15-04; A, 7-15-07]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.3 NMAC Sections 8, 9, 10, and 11, effective 7-15-07.

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

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

B. passed the podiatric medical examiners national board exams part 1 and 2;

C. completed a residency program as defined in the Podiatry Act, Section 61-8-8,(A),(4);

D. passed the podiatric medical licensing examination for states (PMLexis) within the past five years; and

E. passed the New Mexico jurisprudence examination with a score of 75% or higher.

[16.21.3.8 NMAC - Rp, 16 NMAC 21.3.8, 10-15-04; A, 7-15-07]

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

A. completed application, signed and notarized with a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

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

C. a certified copy of a certificate of completion of a residency program approved by the [~~American podiatric medical association~~] "CPME" council on podiatric medical education;

D. proof that the applicant has passed the American podiatric medical examiners national board examination;

E. proof that the applicant has passed the PM Lexis examination; and

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

[16.21.3.9 NMAC - Rp, Rule V, 10-15-04; A, 7-15-07]

16.21.3.10 REPORTS: The board [~~will obtain~~] requires obtainment of reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank [~~if the applicant is currently licensed as a podiatrist in another state~~].

[16.21.3.10 NMAC - Rp, 16 NMAC 21.3.8, 10-15-04; A, 7-15-07]

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

[16.21.3.11 NMAC - Rp, 16 NMAC 21.3.8, 10-15-04; A, 7-15-07]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.4 NMAC Sections 9, 10, and 11, effective 7-15-07.

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

A. completed application, signed and notarized with a passport quality photo taken within the past 6 months; applications are valid for one year from the date of receipt;

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

C. one letter of recommendation from a practicing podiatrist who is personally acquainted with the applicant and who can attest that the applicant is of good moral character;

D. a certified copy of a certificate of completion of a residency program accredited by the [~~American podiatric medical association~~] "CPME" council on podiatric medical education;

E. proof that the applicant has passed the American podiatric medical examiners national board examination;

F. proof that the applicant has passed the PM lexis or equivalent examination;

G. proof of active practice for the five consecutive years immediately preceding the date of application (proof may include a letter from an accountant, the professional society, tax forms, or other documentation approved by the board);

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

[16.21.4.9 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04; A, 7-15-07]

16.21.4.10 REPORTS: The board [~~will obtain~~] requires obtainment of reports from the national practitioners data bank, or other national reporting organization, and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed, or has previously been licensed, as a podiatrist in another state.

[16.21.4.10 NMAC - Rp, 16 NMAC 21.4.8, 10-15-04; A, 7-15-07]

16.21.4.11 LICENSURE PROCEDURE: [~~The application for licensure by reciprocity will be reviewed by the board at the next regular meeting following receipt of the completed application~~] Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

[16.21.4.11 NMAC - Rp, 16 NMAC 21.4.8,

10-15-04; A, 7-15-07]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.8 NMAC Sections 8, and 15, effective 7-15-07.

16.21.8.8 HOURS REQUIRED: Fourteen (14) hours of continuing education are required annually, [~~if the licensed podiatrist is practicing within the state~~] or twenty-eight (28) hours bi-annually. Initial licenses issued for a period of less than six months do not require any continuing education for the initial licensing period. Licenses issued for more than six months but less than twelve months require eight hours of continuing education for the initial licensing period.

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

B. One hour of credit will be granted for every contact hour of instruction. This credit shall apply to either academic or clinical instruction.

[16.21.8.8 NMAC - Rp, Rule VII.A, 10-15-04; A, 7-15-07]

16.21.8.15 WAIVER OF REQUIREMENTS: Waivers of the continuing education requirement shall be given only for prolonged illness or physical incapacity.

A. For purposes of this rule, a prolonged illness or physical incapacity is one which is defined as lasting for a period of more than six months.

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

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

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

(2) Upon return to the United States, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply for an emergency deferral.

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

[16.21.8.15 NMAC - Rp, Rule VII.E, 10-15-04; A, 7-15-07]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.10 NMAC Section 9, effective 7-15-07.

16.21.10.9 REINSTATEMENT OF SUSPENDED LICENSE: A podiatrist may request reinstatement of a lapsed license within three (3) years from the date the license expired by notifying the board in writing. Upon receipt of the request for reinstatement, board staff will send a reinstatement application. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. The following information is required for the request to be considered:

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

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

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

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

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

F. upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

[16.21.10.9 NMAC - Rp, Rule VI.A&B, 10-15-04; A, 7-15-07]

NEW MEXICO BOARD OF PODIATRY

This is an amendment to 16.21.11 NMAC Sections 8, and 10, effective 7-15-07.

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

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

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

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

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

[16.21.11.8 NMAC - Rp, Rule XV.A, 10-15-04; A, 7-15-07]

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

A. "Gross malpractice" or "gross incompetency" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence

on the part of the podiatrist as to render the podiatrist unfit to hold himself out to the public as a licensed podiatrist.

B. "Unprofessional conduct" means, but is not limited to:

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

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

(3) the use of false, fraudulent or misleading advertising;

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

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

(6) failure to release to a patient copies of that patient's records and x-rays; in a reasonable period of time;

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

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

(9) failure to obtain informed consent prior to incisional surgical treatment;

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

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

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

(13) sexual misconduct;

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

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

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

(17) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(18) obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;

(19) cheating on an examination for licensure;

(20) violation of any order of the board, including any probation order;

(21) treating patients when the podiatrist is under the influence of alcohol or illegal drugs; or

(22) failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(23) willful abandonment of a patient;

(24) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation.

[16.21.11.10 NMAC - Rp, Rules VIII, X, & XV, 10-15-04; A, 7-15-07]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

6.31.2 NMAC, Children with Disabilities/Gifted Children, filed August 1, 2000 is repealed and replaced by 6.31.2 NMAC, Children with Disabilities/Gifted Children, effective June 29, 2007.

6.80.4 NMAC, Charter School Application and Appeal Requirements, filed December 3, 2001 is repealed and replaced by 6.80.4 NMAC, Charter School Application and Appeal Requirements, effective June 29, 2007.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 31 SPECIAL EDUCATION
PART 2 CHILDREN WITH DISABILITIES/GIFTED CHILDREN

6.31.2.1 ISSUING AGENCY: Public Education Department
[6.31.2.1 NMAC - Rp, 6.31.2.1 NMAC, 6/29/07]

6.31.2.2 SCOPE: The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide special education and related services, regardless of whether that agency is receiving funds under the Individuals with Disabilities Education Improvement Act of 2004 and regardless of whether it provides special education and related services directly, by contract or through other arrangements such as referrals by the agency to private schools or facilities. Each public agency is responsible for ensuring that all rights and protections under these rules are afforded to children referred to or placed in private schools or facilities including residential treatment centers, day treatment centers, hospitals, or mental health institutions by that public agency.
[6.31.2.2 NMAC - Rp, 6.31.2.2 NMAC, 6/29/07]

6.31.2.3 STATUTORY AUTHORITY: Section 22-13-5 NMSA 1978 authorizes the public education department to develop and establish regulations and standards for the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partially supported by the state and to monitor and enforce those regulations and standards. Section 22-13-6.1 NMSA 1978 authorizes the public education department to adopt standards pertaining to the determination of who is a gifted child as part of the educational standards for New Mexico schools. Section 22-13-5 NMSA 1978 directs the public education department to establish rules and standards under Public Law 108-446, now the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The IDEA at 20 USC Sec. 1412(a)(11) requires the state educational agency in each participating state to ensure that the requirements of the IDEA and state educational standards are met in all educational programs administered by any state or local educational agency for children with disabilities aged 3 through 21.
[6.31.2.3 NMAC - Rp, 6.31.2.3 NMAC, 6/29/07]

6.31.2.4 DURATION: Permanent
[6.31.2.4 NMAC - Rp, 6.31.2.4 NMAC, 6/29/07]

6.31.2.5 EFFECTIVE DATE: June 29, 2007, unless a later date is specified at the end of a section.
[6.31.2.5 NMAC - Rp, 6.31.2.5 NMAC, 6/29/07]

6.31.2.6 OBJECTIVE: The following rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational serv-

ices for children with disabilities and gifted children. The purposes of this rule is (a) to ensure that all children with disabilities and gifted children have available a free appropriate public education which includes special education and related services to meet their unique needs; (b) to ensure that the rights of children with disabilities and gifted children and their parents are protected; (c) to assist public agencies to provide for the education of all children with disabilities and gifted children; and (d) to evaluate and ensure the effectiveness of efforts to educate those children.

[6.31.2.6 NMAC - Rp, 6.31.2.6 NMAC, 6/29/07]

6.31.2.7 DEFINITIONS:

A. Terms defined by federal laws and regulations. All terms defined in the following federal laws and regulations and any other federally defined terms that are incorporated there by reference are incorporated here for purposes of these rules.

(1) The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC Secs. 1401 and following.

(2) The IDEA regulations at 34 CFR Part 300 (governing Part B programs for school-aged children with disabilities), 34 CFR Part 301 (governing programs for preschool children with disabilities).

(3) Pursuant to the paperwork reduction provisions of IDEA 20 USC Sec. 1408, all definitions, with the exception of those found in Subsection B of 6.31.2.7 below, contained in the IDEA Parts 300 and 301 at 34 CFR Secs. 300.1 through 300.45, will be adopted by reference.

B. The following terms shall have the following meanings for purposes of these rules.

(1) "CFR" means the code of federal regulations, including future amendments.

(2) "Child with a disability" means a child who meets all requirements of 34 CFR Sec. 300.8 and who:

(a) is aged 3 through 21 or will turn 3 at any time during the school year;

(b) has been evaluated in accordance with 34 CFR Secs. 300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf-blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and

(c) at the discretion of each local educational agency and subject to the additional requirements of Subsection 2 of Paragraph F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

(3) "Department" means the public education department.

(4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education or related services in at least one of the following five areas: receptive or expressive language, cognitive abilities, gross or fine motor functioning, social or emotional development or self-help/adaptive functioning. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC.

(5) The **"educational jurisdiction"** of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements including joint powers agreements (JPA) or memoranda of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

(6) A **"free appropriate public education (FAPE)"** means special education and related services which meet all requirements of 34 CFR Sec. 300.17 and which, pursuant to Sec. 300.17(b), meet all applicable department rules and standards, including but not limited to these rules (6.31.2 NMAC), the Standards for Excellence (6.30.2 NMAC) and department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC).

(7) The **"general education curriculum"** pursuant to 34 CFR Sec. 300.320, means the same curriculum that a public agency offers for nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (6.30.2 NMAC) and any other department rules defining curricular requirements.

(8) "LEA" means a local educational agency as defined in 34 CFR Sec. 300.28.

(9) "Individualized education program" or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324;

(10) The **"IDEA"** means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC Secs. 1401 and following, including future amendments.

(11) "NMAC" means the New Mexico administrative code, including future amendments.

(12) "NMSA 1978" means the 1978 Compilation of New Mexico Statutes Annotated, including future amendments.

(13) "Parent" includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child's behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child's foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)

(14) "Puente para los ninos fund" in New Mexico means a risk pool

fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i).

(15) "SAT" means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.

(16) "SEB" means the special education bureau of the public education department.

(17) As authorized by 34 CFR Sec. 300.8 and 300.39, **"special education"** in New Mexico may include speech-language pathology services.

(18) A **"state-supported educational program"** means a publicly funded program that:

(a) provides special education and related services to children with disabilities who come within the program's educational jurisdiction;

(b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and

(c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

(19) "USC" means the United States code, including future amendments.

C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

(1) "Complaint assistance IEP (CAIEP) meeting" means an IEP meeting that is facilitated by the representative of the public agency who directs special education programs within the public agency, and who has decision-making authority on behalf of such agency.

(2) "Facilitated IEP (FIEP) meeting" means an IEP meeting that utilizes an independent, state-approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP.

(3) "Mediation" means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues.

D. The definitions in Subsection D apply only to Section 12 (*educational services for gifted children*).

(1) Gifted child defined. As used in 6.31.2.12 NMAC, "**gifted child**" means a school-age person as defined in Sec. 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

(2) Qualifying areas defined.

(a) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.

(b) "**Subject matter aptitude/achievement**" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(c) "**Creativity/divergent thinking**" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(d) "**Problem-solving/critical thinking**" means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

E. The definitions in Subsection E apply only to Section 13, Subsection I (*additional rights of parents, students, and public agencies - due process hearings*).

(1) "**Expedited hearing**" means a hearing that is available on request by a parent or a public agency under 34 CFR Secs. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).

(2) "**Gifted services**" means special education services to gifted children as defined in Subsection A of 6.31.2.12 NMAC.

(3) "**Summary due process hearing**" means a hearing designed to proceed more quickly and incur less expense than a standard due process hearing, as explained under Paragraph (15) of Subsection I of 6.31.2.13 NMAC.

(4) "**Transmit**" means to mail, send by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:

(a) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent;

(b) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;

(c) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;

(d) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or

(e) a final decision to any party not represented by counsel for a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the articles was delivered and the date of delivery.

[6.31.2.7 NMAC - Rp, 6.31.2.7 NMAC, 6/29/07]

6.31.2.8 RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

A. All children with disabilities aged 3 through 21 or who will turn 3 at any time during the school year who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a free appropriate public education that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR Secs. 300.101 and 300.120 and these or other department rules and standards. Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR Secs. 300.129-300.148 and Subsection L of 6.31.2.11 NMAC.

B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of the IDEA.

[6.31.2.8 NMAC - Rp, 6.31.2.8 NMAC, 6/29/07]

6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers,

day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.

B. Public agency funding and staffing.

(1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.

(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.

(3) Placement of students in private or public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team. The sending school shall be responsible for the provision of special education and related services. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education or related services.

(4) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.154(b) and 300.154(d) through (g), and any laws, regulations, executive orders, contractual arrangements or other requirements governing the noneducational payor's obligations.

(5) Risk pool fund. (Puente para los ninos fund.)

(a) Local educational agency high cost fund.

(i) In compliance with 34 CFR Sec. 300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.

(ii) Funds distributed under this program will be on a reimbursable basis.

(b) Application of funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's puente para los ninos fund as described on the department's website.

(6) Pursuant to 34 CFR Sec. 300.154(d), a public agency may use the medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below.

(a) With regard to services required to provide FAPE to an eligible child, the public agency:

(i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;

(ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations, but pursuant to 34 CFR Sec. 300.154(f)(2), may pay the cost that the parent otherwise would be required to pay; and

(iii) may not use a child's benefits under a public benefits or insurance program if that use would: (A) decrease available lifetime coverage or any other insured benefit; (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) increase premiums or lead to the discontinuation of benefits or insurance; or (D) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(b) Pursuant to 34 CFR Sec. 300.142 (f), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Pursuant to 34 CFR Sec. 300.154(f):

(i) if a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service; and

(ii) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(7) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA.

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:

(1) provide all information requested by the department;

(2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards;

(3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;

(4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or suc-

cessive responsibilities to meet the educational needs of a particular child during a single fiscal year; and

(5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

D. Early intervening services set aside funds. Fifteen percent set aside.

(1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.266, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.

(2) Prior to the implementation or use of these set aside funds, the LEA must have on record with the department an approved plan for use of these funds as described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable.

(3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan must be submitted for approval 60 days before the implementation of the plan.

(4) Each LEA that develops and maintains coordinated, early intervening services must report annually to the department as provided in 34 CFR Sec. 300.226(d).

E. Significant disproportionality.

(1) Pursuant to CFR 34 Sec. 300.646, LEAs must provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:

(a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 300.8;

(b) the placement in particular educational settings of these children; and

(c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.

(2) Each public agency must reserve the fifteen percent early intervening funds if they are identified for having data that is significantly disproportionate in any one of the following categories:

(a) suspension of students with disabilities;

(b) over identification of students with disabilities;

(c) over identification of students in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; and

(d) placement of students with disabilities in a particular setting.

(3) Review and revision of policies, practices and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the LEA must:

(a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and

(b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR Sec. 300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over-identified under Paragraph (1) of this subsection; and

(c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.

F. Notification of public agency in case of ineligibility. Pursuant to 34 CFR Sec. 300.221, if the department determines that a public agency is not eligible under Part B of the act, the department shall notify the affected agency of that determination and provide the agency with reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d).

G. Withholding of funds for noncompliance. Pursuant to 34 CFR Sec. 300.222, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR Secs. 300.201-300.213 and 34 CFR Sec. 300.608, the department must reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.

H. Reallocation of funds. Pursuant to 34 CFR Sec. 300.705(c) if the department determines that a public agency is adequately providing FAPE to all children with disabilities residing in the area served by that public agency with state and local funds, the department may reallocate any portion of the funds under this part that are not needed by that public agency to provide FAPE to other LEAs in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs.

[6.31.2.9 NMAC - Rp, 6.31.2.9 NMAC, 6/29/07]

6.31.2.10 IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS:

A. Child find. Each public agency shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are schooled at home, highly mobile children and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are located, evaluated and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301-306 and these or other department rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 NMAC.

B. The public agency shall follow a three tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning.

(1) In tier I, the public agency must ensure that adequate universal screening in the areas of general health and well-being, language proficiency status, and academic levels of proficiency has been completed for each student enrolled. If universal screening a referral from a parent, a school staff member, or other information available to a public agency suggests that a particular student needs educational support for learning, then the student shall be referred to the student assistance team (SAT) for consideration of interventions at the tier II level.

(2) In tier II, a properly constituted SAT at each school, which includes the student's parents and student, as appropriate, must conduct the child study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. In addition, the SAT must address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and

learning styles in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis which may include a referral for a multidisciplinary evaluation to determine possible eligibility for special education and related services consistent with the requirements of 34 CFR Sec. 300.300.

(3) In tier III, a student has been identified as a student with a disability and deemed eligible for special education and related services, and an IEP is developed by a properly constituted IEP team pursuant to 34 CFR Sec. 300.321.

C. Criteria for identifying children with perceived specific learning disabilities.

(1) In identifying children with specific learning disabilities, the public agency may use the dual discrepancy model as defined and described in the New Mexico Technical Evaluation and Assessment Manual (New Mexico T.E.A.M.) or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

(2) Effective July 1, 2009, public agencies must implement the dual discrepancy model in kindergarten through third grade.

D. Evaluations and reevaluations.

(1) Initial evaluations.

(a) Each public agency must conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.

(b) Request for initial evaluation. Consistent with the consent requirement in 34 CFR Sec. 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation.

(i) The initial evaluation must be conducted within 60 calendar days of receiving parental consent for evaluation.

(ii) Each public agency must follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR Sec. 300.8; and (2) if the child requires special education and related services to benefit from their education program.

(iii) Each public agency shall maintain a record of the receipt, processing and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multi-disciplinary team or IEP team.

(d) Exception to the 60 day time frame. The requirements of this subsection do not apply:

(i) if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) if the child enrolls in a school of another LEA after the 60 day time frame in this subsection has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR Sec. 300.8.

(e) The exception to the 60 day time frame in Item (ii) of Subparagraph (d) of Paragraph (1) of Subsection D of 6.31.2.10 NMAC applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(f) The multi-disciplinary team including the parent and child, if appropriate, must meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.

(g) Each public agency must use the three tiered model for students suspected of having a specific learning disability, consistent with the department rules, policies and standards to ensure that lack of instruction in reading or math, is not the primary cause of learning difficulties for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307.

(2) Reevaluations.

(a) Each LEA must ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR Secs. 300.303-300.311, and any other applicable department rules and standards.

(b) Reevaluations may be conducted more often if:

(i) the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii) the child's parent or teacher requests a reevaluation.

(c) Reevaluations may not occur more than once a year, unless the parent and public agency agree otherwise.

(d) Procedures for conducting evaluations and reevaluations.

(i) The public agency must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct in compliance with 34 CFR Sec. 300.503;

(ii) The initial evaluation (if appropriate) and any reevaluations must begin with a review of existing information by a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, to determine what further evaluations and information are needed to address the question in 34 CFR Sec. 300.305(a)(2). Pursuant to 34 CFR Sec. 300.305(b), the group may conduct its review without a meeting.

(iii) If it is determined that a child requires an individualized evaluation or reevaluation the public agency is required to follow the procedures established by the department.

(iv) Each public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the child's family that may assist in determining if the child is a child with a disability, the content of the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities.

(e) Each public agency shall maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation. Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the multidisciplinary team or IEP team.

(f) The parents of a child with a disability who disagree with an evaluation obtained by the public agency have the right to obtain an independent educational evaluation of the child at public expense pursuant to 34 CFR Sec. 300.502.

E. Procedural requirements for the assessment and evaluation of culturally and linguistically diverse children.

(1) Each public agency must ensure that tests and other evaluation materials used to assess children are selected, provided and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as American sign lan-

guage, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide or administer pursuant to 34 CFR Sec. 300.304(c)(1).

(2) Each public agency must ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.

(3) Each public agency must consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the public agency with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR Sec. 300.306(b)(1).

(4) Each public agency must ensure that the child is assessed in all areas related to the suspected disability.

(5) Policies for public agency selection of assessment instruments include:

(a) assessment and evaluation materials that are tailored to assess specific areas of educational need; and

(b) assessments that are selected ensure that results accurately reflect the child's aptitude or achievement level.

(6) Public agencies in New Mexico shall devote particular attention to the foregoing requirements in light of the state's cultural and linguistic diversity. Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not discriminatory and should include appropriate references to such standards and concerns in their written reports.

F. Eligibility determinations.

(1) General rules regarding eligibility determinations

(a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child must determine whether the child is a child with a disability, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR Sec. 300.306 and these or other department rules and standards and, for a child suspected of having a specific learning disability, in compliance with the additional procedures of 34 CFR Secs. 300.307-300.311, and these or other department rules, policies and standards.

(b) The public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) Optional use of developmentally delayed classification for children aged 3 through 9

(a) The developmentally delayed classification may be used at the option of individual local education agencies but may only be used for children who do not qualify for special education under any other disability category.

(b) Children who are classified as developmentally delayed must be reevaluated during the school year in which they turn 9 and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services.

[6.31.2.10 NMAC - Rp, 6.31.2.10 NMAC, 6/29/07]

6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged 2 through 5.

(1) Each public agency shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of the IDEA is in effect by that date in compliance with 34 CFR Secs. 300.101, 300.124 and 300.323(b).

(2) A child who will turn three at any time during the school year who is determined eligible may enroll in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(3) Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the ninety day transition planning conferences arranged by local Part C providers.

(4) In particular:

(a) Each LEA shall survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.

(b) Each LEA shall promote parent and family involvement in transition planning with Part C programs, community programs and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

(c) Each LEA shall establish and implement procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.

(d) Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.

(e) Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

(f) Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program.

(g) Each LEA shall initiate a meeting to develop an eligible child's IFSP, IEP or IFSP-IEP, in accordance with 34 CFR Sec. 300.323, no later than 15 days prior to the first day of the school year of the LEA where the child is enrolled or no later than 15 days prior to the child's entry into Part B preschool services if the transition process is initiated after the start of the school year, whichever is later, to ensure uninterrupted services. This IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321 that includes parents and appropriate early intervention providers who are knowledgeable about the child.

(h) In compliance with 34 CFR Sec. 300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.

(i) Each public agency shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

B. Individualized education programs (IEPs).

(1) Except as provided in 34 CFR Secs. 300.130-300.144 for children enrolled by their parents in private schools, each public agency (1) shall develop, implement, review and revise an IEP in compliance with all applicable requirements of 34 CFR Secs. 300.320-300.328 and these or other department rules and standards for each child with a disability (within its educational jurisdiction); and (2) shall ensure that an IEP is developed, implemented, reviewed and revised in compliance with all applicable requirements of 34 CFR Sec. 300.320-300.328, and these or other department rules and standards for each child with a disability who is placed in or referred to a private school or facility by the public agency.

(2) Each IEP or amendment shall be developed at a properly convened IEP meeting for which the public agency has provided the parent and, as appropriate, the child, with proper advance notice pursuant to 34 CFR Sec. 300.322 and Paragraph (1) of Subsection D of 6.31.2.13 NMAC and at which the parent and, as appropriate, the child have been afforded the opportunity to participate as members of the IEP team pursuant to 34 CFR Secs. 300.321, 300.322 and 300.501(b) and (c) and Subsection C of 6.31.2.13 NMAC.

(3) Except as provided in 34 CFR Sec. 300.324(a)(4), each IEP shall include the signature and position of each member of the IEP team and other participants in the IEP meeting to document their attendance. Written notice of actions proposed or refused by the public agency shall also be provided in compliance with 34 CFR Sec. 300.503 and Paragraph (2) of Subsection D of 6.31.2.13 NMAC and shall be provided at the close of the IEP meeting. Informed written parental consent must also be obtained for actions for which consent is required under 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC. An amended IEP does not take the place of the annual IEP conducted pursuant to CFR Sec. 300.324(a)(4) which requires that members of a child's IEP team must be informed of any changes made to the IEP without a meeting.

(4) Agreement to modify IEP meeting requirement.

(a) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(b) If changes are made to the child's IEP in accordance with subparagraph (4)(a) of this paragraph, the public agency must ensure that the child's IEP team is informed of those changes.

C. Least restrictive environment.

(1) Except as provided in 34 CFR Sec. 300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR Secs. 300.114-300.120.

(2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.

(a) The requirements of 34 CFR Sec. 300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) The required continuum of alternative placements as specified in 34 CFR Sec. 300.115.

(c) The requirement of 34 CFR Sec. 300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.

(d) The requirement of 34 CFR Sec. 300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(e) The requirements of 34 CFR Sec. 300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.

(f) The requirement of 34 CFR Sec. 300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP team, must assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with Sec. 300.320(a)(4).

(g) The requirement of 34 CFR Sec. 300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in Sec. 300.320(a)(4) and 300.117.

(h) The requirements of 34 CFR Sec. 300.503 that a public agency give the parents written notice a reasonable time before the agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected.

(i) The requirement of 34 CFR Sec. 300.120 that the department carry out activities to ensure that Sec. 300.114 is implemented by each agency and that, if there is evidence that a public agency makes placements that are inconsistent with Sec. 300.114, the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

D. Performance goals and indicators. Pursuant to the requirements of 34 CFR Sec. 300.157(a), the content standards and benchmarks from the department's Standards for Excellence (6.30.2 NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum. The IEP academic goals must align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks. Unless waivers or modifications covering individual public agencies' programs have been allowed by the department or the secretary of education, the general education curriculum and the content standards and benchmarks shall only be adapted to the extent necessary to meet the needs of individual children with disabilities as determined by IEP teams in individual cases.

E. Participation in statewide and district-wide assessments. Each local educational agency and other public agencies when applicable shall include all children with disabilities in all statewide and district-wide assessment programs. Each public agency shall collect and report performance results in compliance with the requirements of 34 CFR Sec. 300.157 and Sec. 1111(h) of the Elementary

and Secondary Education Act, and any additional requirements established by the department. Students with disabilities may participate:

(1) in the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the department; or

(2) in the appropriate general assessment with appropriate accommodations in administration if necessary; public agencies shall use the current guidance from the department about accommodations as specified in the student's IEP; or

(3) in alternate assessments for the small number of students for whom alternate assessments are appropriate under the department's established participation criteria; the IEP team must agree and document that the student is eligible for participation in an alternate assessment based on alternate achievement standards according to 34 CFR Sec. 300.320(a)(6).

F. Behavioral management and discipline.

(1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal regulations.

(2) Suspensions, expulsions and disciplinary changes of placement. Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all applicable requirements of 34 CFR Secs. 300.530-300.536, and these or other department rules and standards, including particularly 6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities.

(3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR Sec. 300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR Sec. 300.536.

(4) LEAs must keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.

G. Graduation planning and post-secondary transitions.

(1) The IEP for each child with a disability in grades 8 through 12 is developed, implemented and monitored in compliance with all applicable requirements of the department's Standards for Excellence, 6.30.2 NMAC, and these or other department rules and standards. The graduation plan shall be integrated into the transition planning and services provided in compliance with 34 CFR Secs. 300.320(b), 300.324(c).

(a) Graduation plans must include the course of study, projected date of graduation and if the child is not on target for the graduation plan, the strategies and responsibilities of the public agency, child and family must be identified in the IEP.

(b) Graduation options for children with disabilities at Paragraph (9) of Subsection J of 6.30.2.10 NMAC must align with state standards with benchmarks when appropriate.

(c) An alternative degree that does not fully align with the state's academic standards, such as a certificate or general educational development credential (GED), does not end a child's right to FAPE pursuant to 34 CFR Sec. 300.102(a)(3).

(2) Appropriate post-secondary transition planning for children with disabilities is essential. Public agencies shall integrate transition planning into the IEP process pursuant to 34 CFR Secs. 300.320(b), 300.324(c) and shall establish and implement appropriate policies, procedures, programs and services to promote successful post-secondary transitions for children with disabilities. Transition services for students 14-21 include the following.

(a) Transition services are a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare them for future education, employment and independent living.

(b) Transition services are designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation.

(c) Transition services must be based on the individual child's needs, taking into account the child's strengths, preferences and interests and includes:

(i) instruction;

(ii) related services;

(iii) community experiences;

(iv) the development of employment and other post-school adult living objectives; and

(v) when appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation.

(d) Transition services for children with disabilities may be considered special education, if provided as individually designed instruction, aligned with the state standards with benchmarks, or related service, if required to assist a child with a disability to benefit from special education as provided in 34 CFR Sec. 300.43.

(3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR Sec. 300.320(b), the IEP must include:

(a) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills;

(b) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(c) beginning not later than one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.

(4) Measurable post school goals refer to goals the child seeks to achieve after high school graduation. The goals themselves must be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities and wishes of each individual child.

(5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching his twenty-second birthday, the public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals pursuant to 34 CFR Sec. 300.305(e)(3).

(6) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to September 1 of the school year, the student is no longer eligible to receive special education and related services.

H. Transfers and transmittals. When IEPs must be in effect.

(1) IEPs for children who transfer public agencies in the same state. If a child with a disability (who had an IEP that was in effect in a previous public agency in New Mexico) transfers to a new public agency in New Mexico, and enrolls in a new school within the same school year the new public agency must provide FAPE to the child. The IEP must include services comparable to those described in the child's IEP from the previous public agency, until the new public agency either:

(a) adopts and implements the child's IEP from the previous public agency; or

(b) develops and implements a new IEP that meets the applicable requirements in 34 CFR Secs. 300.320 through 300.324.

(2) IEPs for children who transfer from another state. If a child with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in New Mexico, and enrolls in a new school within the same school year, the new public agency must provide the child with FAPE. The IEP must include services comparable to those described in the child's IEP from the previous agency, until the new public agency:

(a) conducts an evaluation pursuant to 34 CFR Secs. 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(b) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR Secs. 300.320 through 300.324.

(3) Transmittal records. To facilitate the transition for a child described in Paragraphs (1) and (2) of this section:

(a) the new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled; and

(b) the previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

I. Children in charter schools.

(1) Pursuant to 34 CFR Sec. 300.209, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA.

(2) Charter schools that are public schools of the LEA:

(a) the LEA must serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(b) the LEA must provide funds under Part B of IDEA to those charter schools on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law; and

(c) if the public charter school is a school of an LEA that receives funding under 34 CFR Sec. 300.705 and includes other public schools:

(i) the LEA is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and

(ii) the LEA must meet the requirements of Paragraph (2) of this subsection.

(3) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR Sec. 300.28, that receives funding under 34 CFR Sec. 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity. Charter schools who are LEAs authorized under the public education commission must satisfy child find requirements for children enrolled in the charter school.

(4) Public charter schools that are not an LEA or a school that is part of an LEA.

(a) If the public charter school is not an LEA receiving funding under 34 CFR Sec. 300.705, or a school that is part of an LEA receiving funding under 34 CFR Sec. 300.705, the department is responsible for ensuring that the requirements of this part are met.

(b) Subparagraph (a) of this paragraph does not preclude the governor from assigning initial responsibility for ensuring the requirements of this part are met to another entity, however, the department must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR Sec. 300.149.

J. Children in state-supported educational programs.

(1) Children placed or referred by other public agencies.

(a) Applicability. The rules in this Paragraph (1) of Subsection J apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.

(b) Responsibility. Each public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a child with a disability who is served by any other public agency, including being provided special education and related services:

(i) in conformance with an IEP;

(ii) at no cost to the child's parents; and

(iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health.

(c) Service delivery. With informed parent consent pursuant to 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR Sec. 300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.

(d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.

(e) Annual review. At least annually, the referring public agency, the state-supported educational program and the parent shall jointly review the child's IEP and revise it as the joint IEP team deems appropriate.

(2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child

with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without appropriate participation by the public agency that has primary responsibility for serving the child, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other agency and, if appropriate, the parent.

K. Children in detention and correctional facilities.

(1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility must provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.

(2) Juvenile or adult detention or correctional facilities must take reasonable steps to promptly obtain needed educational records from a child's last known school or educational facility. Record requests and transfers are subject to the regulations under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational program of a juvenile or adult detention or correctional facility is an educational agency for purposes of the FERPA.

(a) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.

(b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, districts must provide summer emergency contact information of a person who has access to special education records, to the state's superintendent of juvenile justice services division of the children, youth and family department.

(3) A detention or correctional facility that is unable to obtain adequate records from other agencies, the child or the parents within a reasonable time after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.

(4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR Sec. 300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

(5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.

(6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the agencies involved.

(7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their IDEA rights while in state custody.

(8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.

(9) Children placed in juvenile or adult detention or correctional facilities must be provided learning opportunities and instruction that meet the state standards with benchmarks.

L. Children in private schools.

(1) Children enrolled by parents in private schools or facilities.

(a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR Secs. 300.145 through 300.147.

(b) Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the LEA, in accordance with 34 CFR Secs. 300.131 and 300.111.

(c) Each public agency must develop a "service plan" that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR Sec. 300.132 and that is developed and implemented in accordance with 34 CFR Secs. 300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.

(d) Pursuant to 34 CFR Sec. 300.133, each LEA is obligated to spend a portion of its federal IDEA Part B funds to assist private school children with disabilities. In doing so, LEAs must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.

(e) No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR Sec. 300.137, the LEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

(f) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the LEA must follow the procedures outlined in 34 CFR Sec. 300.136.

(g) Pursuant to 34 CFR Secs. 300.140, the due process provisions of Subsection I of 6.31.2.13 NMAC are not applicable except for child find complaints which must be filed in compliance with 34 CFR Sec. 300.140(b). Any complaint that the department or any LEA has failed to meet the requirements in 34 CFR Secs, 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the provisions described in Subsection H of 6.31.2.13 NMAC.

(2) Children placed in or referred to private schools or facilities by public agencies. Each public agency shall ensure that a child with a disability who is placed

in or referred to a private school or facility by the agency as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR Secs. 300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency.

(3) Children placed in private schools or facilities by other public authorities. Educational decisions involving children with disabilities shall not be made unilaterally and shall not exclude public agencies having educational jurisdiction from the decision-making process. Educational decisions made by other public authorities are not the responsibility of the public agency if the agency has not been appropriately included in the decision-making process. For children placed in private schools or facilities by other public authorities, the financial responsibility will be governed by interagency agreements pursuant to 34 CFR Sec. 300.103. A public authority that places a child with a disability in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, without appropriate participation by the responsible public agency or agencies becomes financially responsible for providing the child with FAPE unless a public agency with educational jurisdiction agrees to assume all or part of that responsibility.

(4) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the LEA failed to offer FAPE is governed by the requirements of 34 CFR Sec. 300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.

(5) Children schooled at home. Each LEA shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to Secs. 22-2-2(H) NMSA 1978.

[6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, 6/29/07]

6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

A. Gifted child defined. As used in 6.31.2.12 NMAC, "gifted child" means a school-age person as defined in Sec. 22-13-6(D) NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child's educational needs.

B. Qualifying areas defined.

(1) "Intellectual ability" means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.

(2) "Subject matter aptitude/achievement" means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(3) "Creativity/divergent thinking" means outstanding performance on a test of creativity/ divergent thinking, or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(4) "Problem-solving/critical thinking" means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources as specified in Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

(5) For students with "factors" as specified in Paragraph (2) of Subsection E of 6.31.2.12 NMAC, the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility.

C. Evaluation procedures for gifted children.

(1) Each district must establish a child find procedure that includes a screening and referral process for students in public school who may be gifted.

(2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:

(a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and

(b) information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.

(3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.

D. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

E. Alternative method for identification.

(1) A district may apply to the public education department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving /critical thinking.

(2) If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all districts to determine the student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.

(3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

F. Applicability of rules to gifted children.

(1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

(a) the requirements of 6.31.2.8

NMAC through 6.31.2.10 NMAC and Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;

(b) the requirements of 34 CFR Secs. 300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.10 and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and

(c) the requirements of 34 CFR Secs. 300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

G. Advisory committees.

(1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a district-wide advisory committee.

(2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. Representation from all schools the committee is advising is required.

(3) Purposes. The advisory committee shall:

(a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery;

(b) demonstrate support for the gifted program;

(c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes;

(d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and

(e) meet three or more times per year at regular intervals.

(4) Formal documentation of committee membership, activities and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Subsection G(3) of 6.31.2.12 NMAC, they shall be submitted in writing to the district administration. The administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.

[6.31.2.12 NMAC - Rp, 6.31.2.12 NMAC, 6/29/07]

6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS AND PUBLIC AGENCIES:

A. General responsibilities of public agencies. Each public agency shall establish, implement and maintain procedural safeguards that meet the requirements of 34 CFR Secs. 300.500-300.536, and all other applicable requirements of these or other department rules and standards.

B. Examination of records. Each public agency shall afford the parents of a child with a disability an opportunity to inspect and review all education records related to the child in compliance with 34 CFR Secs. 300.501(a), 300.613-300.620, 34 CFR Part 99, and any other applicable requirements of these or other department rules and standards.

C. Parent and student participation in meetings. Each public agency shall afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation and educational placement or the provision of FAPE to the child, in compliance with 34 CFR Secs. 300.322, 300.501(b) and (c), and any other applicable requirements of these or other department rules and standards.

D. Notice requirements.

(1) Notice of meetings. Each public agency shall provide the parents of a child with a disability with advance written notice that complies with 34 CFR Sec. 300.322 for IEP meetings and any other meetings in which the parent has a right to participate pursuant to 34 CFR Sec. 300.501.

(2) Notice of agency actions proposed or refused. A public agency must give written notice that meets the requirements of 34 CFR Sec. 300.503 to the parents of a child with a disability a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child. If the notice relates to a proposed action that also requires parental consent under 34 CFR Sec. 300.300, the agency may give notice at the same time it requests parental consent.

(3) Notice of procedural safeguards. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, only one time a school year, except that a copy must be given to the parents, (a) upon initial referral for evaluation; (b) upon receipt of the first state complaint under 34 CFR Secs. 300.151-300.153; (c) upon receipt of the first due process complaint under 34 CFR Sec. 300.507 of the school year; (d) in accordance with the discipline procedures in 34 CFR Sec. 300.530(h); and (e) upon request of the parents. The notice must meet all requirements of 34 CFR Sec. 300.504, including the requirement to inform the parents of their obligation under 34 CFR Sec. 300.148 to notify the public agency if they intend to enroll the child in a private school or facility and seek reimbursement from the public agency. A public agency may place a current copy of the procedural safeguards notice on its internet website if a website exists.

E. Communications in understandable language. Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c) and 300.504(d), each public agency must communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices and in obtaining consent where consent is required.

F. Parental consent.

(1) Informed parental consent as defined in 34 CFR Sec. 300.9 must be obtained in compliance with 34 CFR Sec. 300.300 before (a) conducting an initial evaluation or reevaluation; and (b) initial provision of special education and related services to a child with a disability. Consent for initial evaluation must not be construed as consent for initial provision of special education and related services. If parental consent is not provided for the initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC.

(2) Pursuant to 34 CFR Sec. 300.300(d)(1), parental consent is not required before (a) reviewing existing data

as part of an evaluation or a reevaluation; or (b) administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(3) Pursuant to 34 CFR Sec. 300.300(b), if the parents of a child with a disability refuse consent for the initial provision of special education and related services, the public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that the services may be provided to the child. If the parent refuses consent or fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency will not be considered to be in violation of the requirement to make FAPE available to the child and is not required to convene an IEP team meeting or develop an IEP under 34 CFR Secs. 300.320 and 300.324. All provisions of 34 CFR Sec. 300.300 must be followed with respect to parental consent.

(4) Pursuant to 34 CFR Sec. 300.300(c)(2), informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent by using procedures consistent with those in 34 CFR Sec. 300.322(d) and the child's parent has failed to respond.

(5) Pursuant to 34 CFR Sec. 300.300(d)(3), a public agency may not use a parent's refusal to consent to one service or activity for which consent is required to deny the parent or child any other service, benefit or activity of the public agency, except as required by 34 CFR Part 300.

G. Conflict management and resolution.

(1) Each public agency shall seek to establish and maintain productive working relationships with the parents of each child the agency serves and to deal constructively with disagreements. Toward that end, each public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management and dispute resolution, and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable.

(2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel.

(a) Informal dispute resolution option. If a disagreement arises between parents and a public agency over a student's IEP or educational program, either the parents or the public agency may convene a new IEP meeting at any time to attempt to resolve their differences at the local level, without state-level intervention.

(b) Third-party assisted intervention. The special education bureau (SEB) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SEB will honor a request for mediation that:

(i) is in writing;

(ii) is submitted to the SEB;

(iii) is a mutual request signed by both parties or their designated representatives;

(iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and

(v) any request that does not contain all of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

(c) Formal dispute resolution.

(i) A state-level complaint may be filed with the SEB of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the responding public agency must offer in writing to convene a CAIEP meeting with the parents(s) and other relevant members of the IEP team to address any IEP-related issues raised in the complaint. The parent may accept or decline this offer, or the parties may agree to convene a FIEP meeting or mediation instead, as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.

(ii) A request for a due process hearing may be filed by parents or their authorized representative, or by a public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties must be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a FIEP meeting or mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(d) The Mediation Procedures Act does not apply to mediations conducted under 6.31.2 NMAC.

H. State complaint procedures.

(1) Scope. This Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the department or a public agency to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA or with state statutes or regulations governing educational services for gifted children.

(2) Requirements for complaints.

(a) The SEB of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint must: (i) be in writing; (ii) be submitted to the SEB (or to the secretary of education, in the case of a complaint against the department); (iii) be signed by the complainant or a designated representative and have the complainant's contact information; (iv) include a statement that the department or a public agency has violated a requirement of an applicable state or federal law or regulation; and (v) contain a statement of the facts on which the allegation of violation is based, and a description of any efforts the complainant has made to resolve the complaint issue(s) with the agency (for a complaint against a public agency). Any complaint that does not contain each of these elements will be declined, with an explanation for the SEB's decision and further guidance, as appropriate.

(b) If the complaint alleges violations with respect to a specific child, the complaint must include the information required by 34 CFR 300.153(b)(4).

(c) The party filing the complaint must forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with the SEB of the department.

(d) Pursuant to 34 CFR Sec. 300.153(c), the complaint must allege a violation that occurred not more than one year before the date the complaint is received by the SEB in accordance with Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMSAC.

(3) Preliminary meeting.

(a) CAIEP meeting. Upon receipt of a complaint that meets the requirements of Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the SEB of the department shall acknowledge receipt of the complaint in writing and notify the public agency against which the violation has been alleged. Once a state-level complaint has been filed, the public agency shall offer in writing to convene a CAIEP meeting to address IEP-related issues raised in the complaint. The parent(s) may accept or decline this offer, or the parties may agree in

writing instead to convene a FIEP meeting or mediation, as described in Subparagraph (b) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC. The public agency must (and the parent(s) may) notify the SEB within one business day of agreeing to convene (or not to convene) one of these alternative dispute resolution (ADR) options. If the parties agree to convene a CAIEP meeting, as described at Paragraph D(1) of 6.31.2.7 NMAC, the following requirements apply:

(i) it must take place within 14 days of the date of the SEB's receipt of the complaint;

(ii) it must include the relevant members of the IEP team who have specific knowledge of the facts identified in the complaint; and

(iii) it may not include an attorney of the public agency unless the parent is accompanied by an attorney.

(b) FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation instead of a CAIEP meeting. To do so, the public agency must (and the parent may) notify the SEB of the department in writing within 1 business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days from the date of the SEB's written acknowledgement of the complaint, unless a brief extension is granted by the SEB based on exceptional circumstances. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the complaint.

(c) Mediation requirements. If the parties choose to use mediation, the following requirements apply.

(i) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

(ii) Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

(iii) If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

(iv) The mediator shall transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.

(v) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(vi) Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.

(4) Complaints and due process hearings on the same issues. Pursuant to 34 CFR Sec. 300.152(c).

(a) The SEB of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action. Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SEB as provided in Subsection H of 6.31.2.13 NMAC.

(b) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SEB must inform the complainant to that effect.

(c) A complaint alleging a public agency's failure to implement a due process decision will be resolved by the SEB as provided in this Subsection H of 6.31.2.13 NMAC.

(5) Complaints against public agencies.

(a) Impartial review. Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC above, the SEB of the department shall:

(i) undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the SEB;

(ii) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(iii) provide the public agency with the opportunity to respond to the allegations in the complaint; and

(iv) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of an applicable state or federal statute or regulation.

(b) Decision. A written decision which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint shall be issued by the SEB and mailed to the parties within sixty (60) days of receipt of the written complaint, regardless of whether or not the parties agree to convene a CAIEP meeting, a FIEP meeting, or mediation. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.

(c) Failure or refusal to comply. If the public agency fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal laws or regulations. The department shall retain jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over the implementation of any corrective action required.

(6) Complaints against the department. If the complaint concerns a violation by the department and: is submitted in writing to the secretary of education; is signed by the complainant or a designated representative; includes a statement that the department has violated a requirement of an applicable state or federal law or regulation; contains a statement of facts on which the allegation of violation is based, and otherwise meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation.

(a) Investigation. The person or persons appointed shall: acknowledge receipt of the complaint in writing; undertake an impartial investigation which shall include a complete review of all documentation presented and may include an independent onsite investigation, if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the department with the opportunity to respond to the complaint; and review all relevant information and make an independent determination as to whether the department is violating a requirement of an applicable state or federal statute or regulation.

(b) Decision. A written decision, including findings of fact, conclusions, rec-

ommendations for corrective action, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or persons appointed pursuant to this paragraph and mailed to the parties within sixty (60) days of receipt of the written complaint. The person appointed pursuant to this paragraph has no authority to order rulemaking by the department.

(7) Extension of time limit. An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SEB of the department only if exceptional circumstances exist with respect to a particular complaint or if the parent or any other party filing a complaint and the public agency involved agree to extend the time to engage in mediation or a CAIEP or FIEP meeting.

(8) Conflicts with federal laws or regulations. If any federal law or regulation governing any federal program subject to this regulation affords procedural rights to a complainant which exceed those set forth in Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the SEB shall set forth the procedures applicable to that complaint.

I. Due process hearings.

(1) Scope. This Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases:

(a) requests for due process in IDEA cases governed by 34 CFR Secs. 300.506-300.518 and 300.530-300.532; and

(b) claims for gifted services.

(2) Definitions. In addition to terms defined in 34 CFR Part 300 and 6.31.2.7 NMAC, the following definitions apply to this Subsection I of 6.31.2.13 NMAC.

(a) "Expedited hearing" means a hearing that is available on request by a parent or a public agency under 34 CFR Secs. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).

(b) "Gifted services" means special education services to gifted children as defined in Subsection A of 6.31.2.12 NMAC.

(c) "Summary due process hearing" means a hearing designed to proceed more quickly and incur less expense than a standard due process hearing, as explained under Paragraph (15) of Subsection I of 6.31.2.13 NMAC.

(d) "Transmit" means to mail, send by electronic mail or telecopier (facsimile machine) or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:

(i) an electronic mail system's confirmation of a completed transmission to an e-mail address that is shown to be valid for the individual to whom the transmission was sent;

(ii) a telecopier machine's confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;

(iii) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;

(iv) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or

(v) a due process final decision to any party not represented by counsel in a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the articles was delivered and the date of delivery.

(3) Bases for requesting hearing. A parent or public agency may initiate an impartial due process hearing on the following matters:

(a) the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

(b) the public agency refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child;

(c) the public agency proposes or refuses to initiate or change the identification, evaluation or educational placement of, or services to, a child who needs or may need gifted services;

(d) an IDEA due process hearing provides a forum for reviewing the appropriateness of decisions regarding the identification, evaluation, placement or provision of a free appropriate public education for a particular child with a disability by the public agency that is or may be responsible under state law for developing and implementing the child's IEP or ensuring that a FAPE is made available to the child; the IDEA does not authorize due process hearing officers to consider claims asserting that the department should be required to provide direct services to a child with a disability pursuant to 20 USC Sec. 1413(g)(1) and 34 CFR Sec. 300.227 because the responsible public agency is unable to establish and maintain appropriate programs of FAPE, or that the department has failed to adequately perform its duty of general supervision over educational programs for children with disabilities in New Mexico; accordingly, a due process hearing is not the proper forum for consideration of such claims and the department will decline to refer such claims against it to a hearing officer; such claims may be presented through the state-level complaint procedure under Subsection H of 6.31.2.13 NMAC above.

(4) Bases for requesting expedited hearing.

(a) Pursuant to 34 CFR Sec. 300.532 and 20 USC Sec. 1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR Secs. 300.530-300.531.

(b) Pursuant to 34 CFR Sec. 300.532(c) and 20 USC Sec. 1415(k)(3), a public agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.

(5) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the public agency whose actions are in question and to the SEB of the department. A public agency requesting a due process hearing shall transmit written notice of the request to the parent(s) and to the SEB of the department. The written request shall state with specificity the nature of the dispute and shall include:

(a) the name of the child;

(b) the address of the residence of the child (or available contact information in the case of a homeless child);

(c) the name of the school the child is attending;

(d) the name of the public agency, if known;

(e) the name, address and telephone number(s) of the party making the request (or available contact information in the case of a homeless party) and, if the party is represented by an attorney or advocate, the name, address and telephone number(s) of the attorney or advocate;

(f) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;

(g) a description of efforts the parties have made to resolve their dispute at the local level before filing a request for due process; and

(h) a proposed resolution of the problem to the extent known and available to the party requesting the hearing at the time;

(i) a request for an expedited hearing must also include a statement of facts sufficient to show that a requesting parent or public agency is entitled to an expedited hearing under 34 CFR Secs. 300.532(c) or 20 USC Sec. 1415(k)(3);

(j) a request for a hearing must be

in writing and signed and dated by the parent or the authorized public agency representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the public agency and signed by the parent;

(k) a request for hearing filed by or on behalf of a party who is represented by an attorney or advocate shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; representation by other advocates must be specifically authorized in a writing signed by the party being represented; and

(l) a party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this paragraph.

(6) Response to request for hearing.

(a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.

(b) Public agency response.

(i) In general. If the public agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, such public agency shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 34 CFR Sec. 300.508(e) and 20 USC Sec. 1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify and potentially resolve their dispute(s).

(ii) Sufficiency. A response filed by a public agency pursuant to (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude such public agency from asserting that the parent's due process hearing request was insufficient where appropriate.

(c) Other party response. Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.

(d) A party against whom a due process hearing request is filed shall have a maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15 day timeline for the public agency to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13 NMAC below runs at the same time as the 15 day timeline for filing notice of insufficiency.

(e) Determination. Within five days of receipt of a notice of insufficiency under Subparagraph (d) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC above, the hearing officer shall make a determination on the face of the due process request of whether it meets the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC, and shall immediately notify the parties in writing of such determination.

(f) Amended due process request. A party may amend its due process request only if:

(i) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or

(ii) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

(g) Applicable timeline. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(7) Duties of the SEB of the department. Upon receipt of a written request for due process, the SEB shall:

(a) appoint a qualified and impartial hearing officer who meets the requirements of 34 CFR Sec. 300.511(c) and 20 USC Sec. 1415(f)(3)(A);

(b) arrange for the appointment of a qualified and impartial mediator or IEP facilitator pursuant to 34 CFR Sec. 300.506 to offer ADR services to the parties;

(c) inform the parent in writing of any free or low-cost legal and other relevant services available in the area; the SEB shall also make this information available whenever requested by a parent; and

(d) inform the parent that in any action or proceeding brought under 20 USC Sec. 1415, a state or federal court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(g)(3)(b) and 34 CFR Sec. 300.517, may award reasonable attorneys' fees as part of the costs to a prevailing party;

(e) the SEB shall also:

(i) keep a list of the persons who serve as hearing officers and a statement of their qualifications;

(ii) appoint another hearing officer if the initially appointed hearing officer excuses himself or herself from service;

(iii) ensure that mediation and FIEP meetings are considered as voluntary and are not used to deny or delay a parent's right to a hearing; and

(iv) ensure that within forty-five (45) days of commencement of the timeline for a due process hearing, a final written decision is reached and a copy transmitted to the parties, unless one or more specific extensions of time have been granted by the hearing officer at the request of either party (or at the joint request of the parties, where the reason for the request is to allow the parties to pursue an ADR option);

(f) following the decision, the SEB shall, after deleting any personally identifiable information, transmit the findings and decision to the state IDEA advisory panel and make them available to the public upon request.

(8) Preliminary meeting.

(a) Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC above, the public agency shall convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the public agency agree in writing to waive such a meeting, or agree to use the FIEP or mediation process instead. The resolution session:

(i) shall occur within 15 days of the respondent's receipt of a request for due process;

(ii) shall include a representative of the public agency who has decision-making authority on behalf of that agency;

(iii) may not include an attorney of the public agency unless the parent is accompanied by an attorney; and

(iv) shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;

(v) if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions can not later be used as evidence in the due process hearing or any other proceeding; and

(vi) if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent

and a representative of the agency who has the authority to bind that agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement's execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

(b) FIEP meeting; mediation. Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing must (and the responding party may) notify the hearing officer in writing within one business day of the parties' decision to jointly request one of these options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SEB, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC, apply to mediation in this context, as well.

(c) Applicable timelines.

(i) If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SEB (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC above.

(ii) If the parties agree to convene a FIEP meeting or mediation, the public agency shall contact the person or entity identified by the SEB to arrange for mediation or a FIEP meeting, as appropriate. Except for expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific extension of time for the prehearing conference and for completion of the hearing beyond the 45 day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 45 day deadline in an expedited case.

(iii) If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of 6.31.2.13 NMAC.

(d) Resolution. Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SEB that the matter has been resolved and withdrawing the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SEB.

(e) Hearing. If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SEB in a non-expedited case, the public agency shall (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing shall proceed and all applicable timelines for a hearing under this part shall commence as of the date of such notice.

(f) Further adjustments to the timelines may be made as provided in 34 CFR Sec. 300.510(b) and (c).

(g) The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during or after an ADR meeting, a due process hearing or a civil action.

(9) Hearing officer responsibility and authority. Hearing officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public agencies, parents and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings and the hearing officer's own practices as he deems appropriate to further those ends under the circumstances of each case. In particular, and without limiting the generality of the foregoing, the hearing officer, at the request of a party or upon the hearing officer's own initiative and after the parties have had a reasonable opportunity to express their views on disputed issues:

(a) shall ensure by appropriate orders that parents and their duly authorized representatives have timely access to records and information under the public agency's control which are reasonably necessary for a fair assessment of the IDEA issues raised by the requesting party;

(b) shall limit the issues for hearing to those permitted by the IDEA which the hearing officer deems necessary for the protection of the rights that have been asserted by the requesting party in each case;

(c) may issue orders directing the timely production of relevant witnesses, documents or other information within a party's control, protective orders or administrative orders to appear for hearings, and may address a party's unjustified failure or refusal to comply by appropriate limitations on the claims, defenses or evidence to be considered;

(d) shall exclude evidence that is irrelevant, immaterial, unduly repetitious or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in federal courts or the courts of New Mexico; and

(e) may issue such other orders and make such other rulings, not inconsistent with express provisions of these rules or the IDEA, as the hearing officer deems appropriate to control the course, scope and length of the proceedings while ensuring that the parties have a fair opportunity to present and support all allowable claims and defenses that have been asserted.

(10) Duties of the hearing officer. The hearing officer shall excuse himself or herself from serving in a hearing in which he or she believes a personal or professional bias or interest exists which conflicts with his or her objectivity. The hearing officer shall:

(a) make a determination regarding the sufficiency of a request for due process within 5 days of receipt of any notice of insufficiency, and notify the parties of this determination in writing;

(b) schedule an initial prehearing conference within 14 days of commencement of the timeline for a due process hearing, or as soon as reasonably practicable in an expedited case pursuant to Paragraph (12) of Subsection I of 6.31.2.13 NMAC below;

(c) reach a decision, which shall include written findings of fact, conclusions of law, and reasons for these findings and conclusions and shall be based solely on evidence presented at the hearing;

(d) transmit the decision to the parties and to the SEB within 45 days of the commencement of the timeline for the hearing, unless a specific extension of time has been granted by the hearing officer at the request of a party to the hearing, or at the joint request of the parties where the reason

for the request is to permit the parties to pursue an ADR option; for an expedited hearing, no extensions or exceptions beyond the 45 day deadline are permitted;

(e) the hearing officer may reopen the record for further proceedings at any time before reaching a final decision after transmitting appropriate notice to the parties; the hearing is considered closed and final when the written decision is transmitted to the parties and to the SEB; and

(f) the decision of the hearing officer is final, unless a party brings a civil action as set forth in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.

(11) Withdrawal of request for hearing. A party may unilaterally withdraw a request for due process at any time before a decision is issued. A written withdrawal that is transmitted to the hearing officer, and the other party at least two business days before a scheduled hearing, shall be without prejudice to the party's right to file a later request on the same claims, which shall ordinarily be assigned to the same hearing officer. A withdrawal that is transmitted or communicated within two business days of the scheduled hearing shall ordinarily be with prejudice to the party's right to file a later request on the same claims unless the hearing officer orders otherwise for good cause shown. A withdrawal that is entered during or after the hearing but before a decision is issued shall be with prejudice. In any event, the hearing officer shall enter an appropriate order of dismissal.

(12) Prehearing procedures. Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the public agency to:

(a) identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought;

(b) establish the hearing officer's jurisdiction over IDEA and gifted issues;

(c) determine the status of the resolution session, FIEP meeting or mediation between the parties, and determine whether an additional prehearing conference will be necessary as a result;

(d) review the hearing rights of both parties, as set forth in Paragraphs (16) and (17) of Subsection I of 6.31.2.13 NMAC below, including reasonable accommodations to address an individual's need for an interpreter at public expense;

(e) review the procedures for conducting the hearing;

(f) set a date, time and place for the hearing that is reasonably convenient to the parents and child involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented;

(g) determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public;

(h) set the date by which any documentary evidence intended to be used at the hearing by the parties must be exchanged; the hearing officer shall further inform the parties that, not less than 5 business days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s) or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party;

(i) as appropriate, determine the current educational placement of the child pursuant to Paragraph (27) of Subsection I of 6.31.2.13 NMAC below;

(j) exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing;

(k) address other relevant issues and motions; and

(l) determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the public agency shall be responsible for arranging for the verbatim record of the hearing; and

(m) the hearing officer shall transmit to the parties and the SEB of the department a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time and place of the hearing, any prehearing decisions, and any orders from the hearing officer.

(13) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(14) In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

(15) Summary due process hearing. These summary due process hearing procedures are designed to afford parents and public agencies an alternative, voluntary dispute resolution process that requires less time and expense than a traditional due process hearing. The use of summary due process hearing procedures shall not alter the requirement that the public agency convene a resolution session within 15 days of its receipt of the request for the hearing, unless the parties agree to waive that option in writing or choose to use a FIEP meeting or mediation instead.

(a) Any party requesting a due process hearing may request that the dispute be assigned to a summary due process hearing track. A request for a summary due process hearing may be submitted simultaneously with the request for due process hearing, at the prehearing scheduling conference, or at a later time by agreement of all parties.

(b) Any party opposing a request for summary due process shall state its objection within 5 days of the date of receipt of the request for a summary due process hearing. The summary due process hearing option is voluntary. If a party timely states its opposition to this option, the matter will be placed on a traditional due process hearing track.

(c) On or before 10 days before the date of the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

(d) On or before 5 days before the summary due process hearing, each party shall produce to the opposing party and to the hearing officer a copy of all documents that the party seeks to introduce into evidence at the hearing and identify all witnesses that the party intends to call to testify at the hearing.

(e) Each party shall have one half (1/2) day to present its case. In the event that extensive cross examination, arguments or other factors impede a party's ability to complete its case in one half day, the hearing officer shall have discretion to extend the time for the hearing, as needed.

(f) The hearing officer shall issue a decision to the parties within 7 days of the completion of the summary due process hearing.

(g) Except as modified herein, the procedural rules and procedures applicable to due process hearings as stated in Subsection I of 6.31.2.13 NMAC shall also apply to summary due process hearings.

(16) Any party to a hearing has

the right to:

(a) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(b) present evidence and confront, cross-examine and compel the attendance of witnesses;

(c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing;

(d) obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and

(e) obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(17) Parents involved in hearings also have the right to:

(a) have the child who is the subject of the hearing present; and

(b) open the hearing to the public.

(18) The record of the hearing and the findings of fact and decisions described above must be provided at no cost to the parents.

(19) Limitations on the hearing.

(a) The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not raised in the request for a due process hearing (including an amended request, if such amendment was previously permitted) filed under Paragraph (5) of Subsection I of 6.31.2.13 NMAC, unless the other party agrees otherwise.

(b) Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within two years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the due process request.

(c) Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC above shall not apply to a parent if the parent was prevented from requesting the hearing due to:

(i) specific misrepresentations by the public agency that it had resolved the problem that forms the basis of the due process request; or

(ii) the public agency's withholding of information from the parent that was required under this part to be provided to the parent.

(20) Rules for expedited hearings. The rules in Paragraphs (4) through (19) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions.

(a) The SEB of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SEB, and a written decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.

(b) The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above, and shall expedite the proceedings with due regard for any progress in a resolution session, FIEP meeting or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.

(c) The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC, and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC above. The timeline for resolution sessions provided in 34 CFR Sec. 300.532(c)(3) shall be observed.

(d) The hearing officer may shorten the five business-day rule for exchanging evidence before the hearing to not less than two business days and shall set the deadline and indicate the consequences of the parties' failure to meet that deadline in the written summary of the prehearing conference.

(e) The hearing officer may shorten the 15 day timeline for providing notice of insufficiency of a request for an expedited due process hearing to 10 school days.

(f) The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as he deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.

(g) Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (25) of Subsection I of 6.31.2.13 NMAC below.

(21) Decision of the hearing officer.

(a) In general. Subject to Subparagraph (b) of Paragraph (21) of Subsection I of 6.31.2.13 NMAC below, a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

(b) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(i) impeded the child's right to a FAPE;

(ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or

(iii) caused a deprivation of educational benefits.

(c) Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a public agency to comply with procedural requirements under this section.

(22) Rule of construction. Nothing in this Subsection I shall be construed to affect the right of a parent to file a complaint with the SEB of the department, as described under Subsection H of 6.31.2.13 NMAC.

(23) Modification of final decision. Clerical mistakes in final decisions, orders or parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time on the hearing officer's own initiative or on the request of any party and after such notice, if any, as the hearing officer orders. Such mistakes may be corrected after a civil action has been brought pursuant to Paragraph (25) of Subsection I of 6.31.2.13 NMAC below only with leave of the state or federal district court presiding over the civil action.

(24) Expenses of the hearing. The public agency shall be responsible for paying administrative costs associated with a hearing, including the hearing officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SEB, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action. Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (26) of Subsection I of 6.31.2.13 NMAC below.

(25) Civil action.

(a) Any party aggrieved by the decision of a hearing officer in an IDEA matter has the right to bring a civil action in a state or federal district court pursuant to 20 USC Sec. 1415(i) and 34 CFR Sec. 300.516. Any civil action must be filed within 30 days of the receipt of the hearing officer's decision by the appealing party.

(b) A party aggrieved by the decision of a hearing officer in a matter relating solely to the identification, evaluation, or educational placement of or services to a child who needs or may need gifted services may bring a civil action in a state court of appropriate jurisdiction within 30 days of receipt of the hearing officer's decision by the appealing party.

(26) Attorney fees.

(a) In any action or proceeding brought under 20 USC Sec. 1415, the court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(i) and 34 CFR Sec. 300.517, may award reasonable attorney fees as part of the costs to:

(i) the parent of a child with a disability who is a prevailing party;

(ii) a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) a prevailing public agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Any action for attorney fees must be filed within 30 days of the receipt of the last administrative decision.

(c) Opportunity to resolve due process complaints. A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered:

(i) a meeting convened as a result of an administrative hearing or judicial action; or

(ii) an administrative hearing or judicial action for purposes of this paragraph.

(d) Hearing officers are not authorized to award attorney fees.

(e) Attorney fees are not recoverable for actions or proceedings involving services to gifted children or other claims based solely on state law.

(27) Child's status during proceedings.

(a) Except as provided in 34 CFR Sec. 300.533 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the public agency and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved must remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary.

(b) If the case involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parents for purposes of Subparagraph (a) of Paragraph (27) of Subsection I of 6.31.2.13 NMAC.

(28) Computation of time. In computing any period of time prescribed or allowed by Subsection I of 6.31.2.13 NMAC, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday. As used in this rule, "legal holiday" includes any day designated as a state holiday.

(29) Effective date and transitional provisions.

(a) The procedures in this Subsection I of 6.31.2.13 NMAC shall govern due process requests received by the SEB after July 29, 2005.

(b) The provisions of the IDEA 2004 that took effect on July 1, 2005, shall apply to due process cases filed between July 1 and July 29, 2005, in the event of irreconcilable conflicts with the state rules as they existed during that time.

(c) The parties to due process cases that were pending on July 29, 2005, may enter into a written agreement to waive the administrative review process that would otherwise be available under the former state rules and proceed directly from a final decision by a hearing officer to a civil action in a state or federal district court. The parties to cases in which administrative appeals were pending on July 29, 2005, and in which the administrative appeal officer has not yet ruled on the merits of any substantive issue may likewise agree to waive the administrative review process but shall decide whether to do so within a reasonable time to be established by the administrative appeal officer.

(d) The parties to cases pending on July 29, 2005, may likewise enter into a written agreement to dismiss any claims under Section 504 of the federal Rehabilitation Act that would otherwise be hearable or administratively reviewable under the former state rules, provided that the hearing or appeal officer has not yet ruled on the merits of any substantive issue raised under an affected Section 504 claim.

(e) Upon receipt of a timely and sufficient motion incorporating an agreement under Subparagraphs (c) or (d) of Paragraph (29) of Subsection I of 6.31.2.13 NMAC above, the authority before whom the case is pending shall enter an appropriate order to implement the agreement.

J. Surrogate parents and foster parents.

(1) Each public agency shall ensure that a qualified surrogate parent is appointed in compliance with 34 CFR Sec. 300.519 when needed to protect the rights of a child with a disability who is within the agency's educational jurisdiction. A surrogate parent need not be appointed if a person who qualifies as a parent under 34 CFR Sec. 300.30(b) and Paragraph (13) of Subsection B of 6.31.2.7 NMAC can be identified.

(2) A foster parent who meets all requirements of 34 CFR Sec. 300.30 may be treated as the child's parent pursuant to that regulation. A foster parent who does not meet those requirements but meets all requirements of 34 CFR Sec. 300.519 may be appointed as a surrogate parent if the public agency that is responsible for the appointment deems such action appropriate.

(3) Pursuant to 34 CFR Sec. 300.519, a surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of FAPE to the child.

K. Transfer of parental rights to students at age 18.

(1) Pursuant to Secs. 12-2A-3 and 28-6-1 NMSA 1978, a person's age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR Sec. 300.520, when a child with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian or other person who has been authorized by a court to make educational decisions on the student's behalf or who has not signed a power of attorney as provided under New Mexico law:

(a) a public agency shall provide any notices required by 34 CFR Part 300 to the child and the parents;

(b) all other rights accorded to parents under Part B of the IDEA, New Mexico law or department rules and standards transfer to the child; and

(c) the public agency shall notify the individual and the parents of the transfer of rights.

(2) Pursuant to 34 CFR Sec. 300.320(c), each annual IEP review for a child who is 16 or older must include a discussion of the rights that will transfer when the child turns 18 and, as appropriate, a discussion of the parents' plans for obtaining a guardian before that time. Each child's IEP beginning not later than when the child turns 17 must include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

L. Confidentiality of information.

(1) Confidentiality requirements. Each public agency collecting, using or maintaining any personally identifiable information on children under Part B of the IDEA shall comply with all applicable requirements of 34 CFR Secs. 300.610-300.626, and the Family Educational Rights and Privacy Act, 34 CFR Part 99.

(2) Parental rights to inspect, review and request amendment of education records. Each public agency shall permit parents or their authorized representatives to inspect and review any education records relating to their children that are collected, maintained or used by the agency under Part B of the IDEA pursuant to 34 CFR Sec. 300.613. A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child may request the agency that maintains the information to amend the information pursuant to 34 CFR Sec. 300.618 and shall have the opportunity for a hearing on that request pursuant to 34 CFR Secs. 300.619-300.621 and 34 CFR Sec. 99.22.

(3) Transfer of student records.

(a) Pursuant to 34 CFR Sec. 99.31(a)(2), an educational agency may transfer child records without parental consent when requested by another educational agency in which a child seeks or intends to enroll as long as the sending agency has included the proper notification that it will do so in its required annual FERPA notice to children and parents. In view of the importance of uninterrupted educational services to children with disabilities, each New Mexico public agency is hereby directed to include such language in its annual FERPA notice and to ensure that it promptly honors each proper request for records from an educational agency that has become responsible for serving a child with a disability.

(b) State-supported educational programs and the educational programs of juvenile or adult detention or correctional facilities are educational agencies for purposes of the Family Educational Rights and Privacy Act (FERPA) and are entitled to request and receive educational records on children with disabilities on the same basis as local school districts. Public agencies shall promptly honor requests for records to assist such programs in providing appropriate services to children within their educational jurisdiction.

(c) Pursuant to 34 CFR Sec. 99.34(b), an educational agency that is authorized to transfer student records to another educational agency without parental consent under Sec. 99.31(a)(2) may properly transfer to the receiving agency all educational records the sending agency maintains on a child, including medical, psychological and other types of diagnostic and service information which the agency obtained from outside sources and used in making or implementing educational programming decisions for the child.

(d) Pursuant to Paragraph (3) of Subsection D of 6.30.2.10 NMAC, 34 CFR Sec. 300.229 and the federal No Child Left Behind Act at 20 USC 7165, any transfer of educational records to a private or public elementary or secondary school in which a child with disabilities seeks, intends, or is instructed to enroll must include the following:

(i) transcripts and copies of all pertinent records as normally transferred for all students;

(ii) the child's current individualized education program with all supporting documentation, including the most recent multidisciplinary evaluations and any related medical, psychological or other diagnostic or service information that was consulted in developing the IEP; and

(iii) disciplinary records with respect to current or previous suspensions or expulsions of the child.

(4) Parental refusals of consent for release of information. If parental consent is required for a particular release of information regarding a child with a disability and the parent refuses consent, the sending or receiving public agency may use the impartial due process hearing procedures specified in Subsection I of 6.31.2.13 NMAC to determine if the information may be released without parental consent. If the hearing officer determines that the proposed release of information is reasonably necessary to enable one or more public agencies to fulfill their educational responsibilities toward the child, the information may be released without the parent's consent. The hearing officer's decision in such a case shall be final and not subject to further administrative review.

(5) Destruction of information.

(a) Pursuant to 34 CFR Sec. 300.624, each public agency shall inform parents when personally identifiable information collected, maintained, or used under 34 CFR Part 300 is no longer needed to provide educational services to the child. As at other times, the parents shall have the right to inspect and review all educational records pertaining to their child pursuant to 34 CFR Sec. 300.613. The information must be destroyed at the request of the parents or, at their option the records must be given to the parents. When informing parents about their rights to destruction of personally identifiable records under these rules, the public agency should advise them that the records may be needed by the child or the parents for social security benefits and other purposes.

(b) If the parents do not request the destruction of personally identifiable information about their children, the public agency may retain that information permanently. In either event, a permanent record of a student's name, address and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. Additional information that is not related to the student's IDEA services may be maintained if allowed under 34 CFR Part 99.

(6) Educational records retention and disposition schedules.

(a) Definitions as used in this paragraph:

(i) "Destruction" means physical destruction or removal of personal identifiers from educational records so that the information is no longer personally identifiable; and

(ii) "Educational records" means the type of records covered under the definition of "educational records" in 34 CFR Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA).

(b) Pursuant to 1.20.2.102 NMAC, the public agency must notify the parents that the public agency must retain specific information for five years to include:

(i) most recent IEP;

(ii) most recent 2 years child progress reports or referral form;

(iii) related services reports;

(iv) summary of academic achievement and functional performance;

(v) parent communication;

(vi) agency community action;

(vii) writing sample; and

(viii) staff reports on behavior.

(c) Federal regulation and department rules require public agencies to inform parents of proposed destruction of special

education records (34 CFR Sec. 300.624 and 6.30.2 NMAC).

(d) Pursuant to 34 CFR Sec. 300.624, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, address and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limit. Notice of destruction of child records must include:

(i) informing parents at the last IEP meeting of personally identifiable information that is no longer needed to provide special education and related service and information that must be retained according to the state for five years under 1.20.1.102 NMAC;

(ii) documentation at the last IEP meeting and prior written notice of the information that is required to be maintained indefinitely;

(iii) documentation at the last IEP meeting and the prior written notice that the parent accepted or rejected the proposed action to maintain records;

(iv) if the parent requests that the agency destroy information not required indefinitely, the agency must maintain the last IEP and prior written notice that states the parent required the public agency to destroy allowable information that must be maintained for 5 years; and

(v) the public agency must inform the parents of the proposed date of destruction of records at the last IEP meeting and document on the prior written notice of action the proposed date of destruction of records.

[6.31.2.13 NMAC - Rp, 6.31.2.13 NMAC, 6/29/07]

6.31.2.14 RULES OF CONSTRUCTION:

A. U.S. department of education interpretations. The U.S. department of education's (USDE) interpretations of the provisions of 34 CFR Part 300 as set forth in its Analysis of Comments and Changes to Part 300 at 71 Federal Register 46547-46753 (August 14, 2006), and other interpretations that are published or announced by the USDE in the federal register are recognized as the federal government's official positions regarding the requirements of the IDEA. Such interpretations shall be followed by the department to the extent that they do not conflict with express provisions of the IDEA or case law from the federal courts.

B. Uniform Statute and Rule Construction Act. The Uniform Statute and Rule Construction Act, Secs. 12-2A-1 through 20 NMSA 1978, applies to the interpretation of 6.31.2 NMAC except to the extent that these rules incorporate permissible variations under the New Mexico version of the Uniform Statute and Rule Construction Act. References in 6.31.2 NMAC to state or federal laws, rules or regulations are intended to incorporate future amendments unless a provision in these rules is irreconcilable with a future amendment under the standards of the Uniform Statute and Rule Construction Act.

C. Conflicts with state or federal laws or regulations. If any state law, a state rule or regulation adopted by the department or a federal law or regulation grants greater rights to an individual or agency than these rules provide, the provision(s) granting greater rights shall control to the extent necessary to avoid a conflict.

[6.31.2.14 NMAC - Rp, 6.31.2.14 NMAC, 6/29/07]

HISTORY OF 6.31.2 NMAC:

Pre-NMAC History:

Material in this Part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

SBE Regulation 85-4, Educational Standards for New Mexico Schools Basic, Special Education, Vocational Programs, 10/21/85

SBE Regulation 86-7, Educational Standards for New Mexico Schools, 9/2/86

SBE Regulation 87-8, Educational Standards For New Mexico Schools, 2/2/88

SBE Regulation 88-9, Educational Standards For New Mexico Schools, 10/28/88

SBE Regulation 89-8, Educational Standards For New Mexico Schools, 11/22/89

SBE Regulation 90-2, Educational Standards For New Mexico Schools, 9/7/90

History of Repealed Material:

6 NMAC 5.2, Children with Disabilities/Gifted Children, filed 9/17/97 - Repealed, 8/14/2000

6.31.2 NMAC, Children with Disabilities/Gifted Children, filed 8/1/2000 - Repealed, 6/29/07

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 80 ALTERNATIVE EDUCATION - CHARTER SCHOOLS

PART 4 CHARTER SCHOOL APPLICATION AND APPEAL REQUIREMENTS

6.80.4.1 ISSUING AGENCY: Public Education Department

[6.80.4.1 NMAC - Rp, 6.80.4.1 NMAC, 6/29/07]

6.80.4.2 SCOPE: This rule shall apply to applicants and operators of start-up charter schools and previously authorized conversion schools.

[6.80.4.2 NMAC - Rp, 6.80.4.2 NMAC, 6/29/07]

6.80.4.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-8-1 through 22-8-47 and 22-8B-1 through 22-8B-17, NMSA, 1978

[6.80.4.3 NMAC - Rp, 6.80.4.3 NMAC, 6/29/07]

6.80.4.4 DURATION: Permanent

[6.80.4.4 NMAC - Rp, 6.80.4.4 NMAC, 6/29/07]

6.80.4.5 EFFECTIVE DATE: June 29, 2007, unless a later date is cited at the end of a section.

[6.80.4.5 NMAC - Rp, 6.80.4.5 NMAC, 6/29/07]

6.80.4.6 OBJECTIVE: To establish the initial application and renewal process for charter schools, whether locally or state chartered, the appeal process of charter schools to the secretary of education and the secretary of education's review process.

[6.80.4.6 NMAC - Rp, 6.80.4.6 NMAC, 6/29/07]

6.80.4.7 DEFINITIONS:

A. "Applicant" means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

B. "Authorizer" means either a local school board or the commission that permits the operation of a charter school.

C. "Charter school" means a conversion school or start-up school authorized by a chartering authority to operate as a public school.

D. "Chartering authority" means either a local school board or the commission.

E. "Commission" means the public education commission.

F. "Conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school prior to July 1, 2007.

G. "Department" means the public education department.

H. "Division" means the charter schools division of the department which maintains offices in both Santa Fe

and Albuquerque.

I. "Governing body" means the governing body of a charter school as set forth in the school's charter.

J. "Head administrator" means the duly licensed school administrator who is the chief executive officer of the charter school.

K. "Locally chartered charter school" means a charter school authorized by a local school board.

L. "MEM" means membership, which is the total enrollment of qualified students on the current roll of a class or school on a specified day.

M. "Organizer" means one or more persons or entities who seek to arrange, form or otherwise put together a charter school.

N. "Secretary" means the New Mexico secretary of public education.

O. "Start-up school" means a public school developed by one or more parents, teachers or community members who applied to and were authorized by a chartering authority to become a charter school.

P. "Special education plan" means a comprehensive written design, scheme or method that includes specific details on how the charter school shall:

(1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;

(2) provide educational services, related services and supplementary aids and services to children with disabilities in accordance with each child's individualized education program; and

(3) address a continuum of alternative educational placements to meet the needs of the students with disabilities, in accordance with applicable law.

Q. "State chartered charter school" means a charter school authorized by the commission.

[6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/07]

6.80.4.8 NOTICE OF INTENT TO ESTABLISH A CHARTER SCHOOL:

A. At least one hundred eighty (180) calendar days prior to initial application, the organizers of a proposed charter school shall provide a signed written notification to the commission and the school district in which the charter school is to be located of the organizers' intent to establish a charter school. The date for submitting a notice shall be no later than January 1 of the year in which the charter plans to submit an application.

B. Written notification to the commission shall be made to the division at its Albuquerque office; written notification to a local school board shall be made to the superintendent of that district who shall provide copies of the notification to the local school board during a duly noticed board meeting.

C. If the one hundred eightieth day falls on a Saturday, Sunday, or legal holiday, the notification shall be timely if faxed, hand delivered or otherwise received on the first day following the Saturday, Sunday or legal holiday that the division or office of the pertinent superintendent is open for business. Notice will also be considered timely if it is postmarked four (4) calendar days prior to January 1, regardless of the date on which it is received. Failure to provide timely notification shall result in an application being rejected unless the organizers can demonstrate good cause why timely notification was not given.

[6.80.4.8 NMAC - N, 6/29/07]

6.80.4.9 CONTENTS OF APPLICATION FOR START-UP CHARTER SCHOOL: A charter school application shall be a proposed agreement between the chartering authority and the charter school and shall include the following assurances, descriptions, outlines and plans.

A. The mission statement of the charter school. The mission statement must answer the following questions: "Who do you serve?", "What do you seek to accomplish?", "What methods will you use?", and "How will we know if you are achieving your mission?"

B. The goals, objectives and student performance standards to be achieved by the charter school which address how the charter school will comply with the department's required content standards, benchmarks, and performance standards, state accreditation, standardized testing and school report card in accordance with Sections 22-2C-1 et seq. NMSA, 1978. The goals and objectives must be measurable and student-centered.

C. A description of the charter school's educational program and curriculum that meets or exceeds the department's educational standards and must be designed to enable each student to achieve those standards and addresses the following:

(1) documentation, research or rationale that supports a particular curricular approach;

(2) a description of the curriculum including scope and sequence and student performance standards;

(3) a timeline for alignment of the curriculum with the department's content standards, benchmarks and performance standards, if alignment has not been completed at the time the application is submitted;

(4) strategies and methods to be used in delivering the curriculum and how the curriculum will address students' needs and assist each student in reaching those standards;

(5) length of school day and school year;

(6) total number of grades the charter school proposes to provide, either immediately or phased, class size and total projected student enrollment and, if the charter school will be located in a school district that has a total enrollment of not more than one thousand three hundred (1,300) students, a statement that the proposed charter school's proposed enrollment for all grades, in combination with any other charter school's enrollment for all grades, will neither equal nor exceed ten (10) percent of the total MEM of that school district;

(7) proposed requirements for graduation, if applicable.

D. A description of the way a charter school's educational program will meet the individual needs of students, including those students determined to be at risk, and which will address the following:

(1) suggested modifications to the proposed educational program to meet individual student needs, such as bilingual, limited English proficient, and special education;

(2) an outline of a special education plan, the final plan of which must be completed and submitted to the charter authorizer by the end of the planning year;

(3) how the charter school will provide access to other services including but not limited to counseling and health.

E. A description or outline of a plan the charter school considers adopting for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards and the school's student performance standards, the timeline for achievement of the standards, and the procedures for taking corrective action in the event that student performance falls below the standards, and which description or outline addresses the following:

(1) remediation for students not achieving standards, including a timeline for implementation of the remediation plan;

(2) assessments that might be considered in addition to the statewide mandated testing;

(3) documentation and reporting of student data.

F. Assurances that the charter school will be economically sound,

including the submission of a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted, and addresses the following:

(1) a proposed budget for year one and the following four (4) years based on the current unit value;

(2) a description of the administrative operations of the charter school.

G. An assurance that the fiscal management of the charter school will comply with all applicable federal and state laws, regulations and rules relative to fiscal procedures. In addition to this basic assurance, the applicant shall clearly state in its assurance that the following information will be provided to the chartering authority by the sooner of the end or the planning year or within ten (10) days of receipt of any federal or state stimulus funds:

(1) a detailed plan indicating how the charter school will manage its fiscal responsibilities;

(2) a description of its internal control procedures that the charter school will utilize to safeguard assets, segregate its payroll and other check disbursement duties, provide reliable financial information, promote operational efficiency, and ensure compliance with all applicable federal statutes and regulations and state statutes and rules relative to fiscal procedures.

H. A description of the governing body and operation of the charter school, including:

(1) the method of selecting the governing body;

(2) the qualifications and terms of members, the filling of vacancies, and the procedures for changing governing body membership;

(3) an assurance that the governing body will meet and conduct its meetings in accordance with the Open Meetings Act, Sections 10-15-1 et seq., NMSA 1978;

(4) the nature and extent of parental, professional educator and community involvement and how they will be notified;

(5) an assurance that the charter school will adopt policies and procedures of the governing body, that address governance, relationship to staff, professional development, the role of the governing body in policy-making, personnel decisions, budgeting, and operation of the charter school, including how decisions will be made;

(6) for locally chartered charter schools, an assurance that it will amend its charter within one (1) year of approval to include procedures agreed upon with its chartering authority for the resolution of disputes between them;

(7) a description on how the charter school proposes to account to the chartering authority with respect to the charter schools' compliance with applicable statues, regulations, rules and charter provisions.

I. An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any, and which address the following:

(1) personnel policies and procedures that comply with all applicable federal statutes and regulations, the School Personnel Act, Sections 22-10-1 et seq., NMSA 1978, and the Charter Schools Act, Sections 22-8B-1 et seq. NMSA 1978 or, if personnel polices and procedures have not been developed at the time of the application a statement that the policies and procedures developed will comply with applicable federal and state labor laws, regulations and rules implementing them and will be submitted to the chartering authority for comment prior to the hiring of any employees;

(2) a description of the evaluation process for staff which shall include evaluation of teachers by a licensed school administrator;

(3) the discipline process for staff, that provides for due process and demonstrates and understanding of applicable state and federal laws, regulations and rules;

(4) an assurance that the governing body or head administrator will recognize and work with employee labor representatives, if any;

(5) a proposed salary schedule;

(6) proposed job descriptions of staff;

(7) a proposed pupil-teacher ratio; and

(8) a statement declaring whether the governing body or the head administrator will be making the employment decisions for the proposed charter school.

J. The student discipline policy of the proposed charter school that complies with the department's rule on students' rights and responsibilities.

K. For locally chartered charter schools, a proposed agreement between the charter school and the local school board regarding their respective legal liability and applicable insurance coverage. For all applicants, they shall submit a statement that the charter school will participate in or seek a waiver from coverage by the public school insurance authority and comply with all applicable rules of that authority. Any applicant seeking to obtain a waiver of coverage from the public school insurance authority shall:

(1) comply with all requirements of Section 22-29-9, NMSA 1978 and 6.50.7 NMAC, as well as any other applicable rules promulgated by the public school insurance authority;

(2) obtain a temporary, comprehensive policy of liability coverage that insures the charter school in an amount of at least five million dollars ($5,000,000) per occurrence and is risk-related coverage as that term is used in Section 6.50.7.10 NMAC, while the charter school is engaged in the waiver request process; and

(3) within fourteen (14) days of receipt of any stimulus, flow-through or funding formula funds, provide an insurance binder or certificate to its chartering authority that demonstrates it holds the required level of temporary coverage.

L. A description of how the charter school plans to meet the transportation and food service needs of its students. The description shall address whether the applicant intends to contract with a school district or other party for the provision of transportation and food services; the identity of the school district or that other party, if known, with whom the applicant proposes to contract; a description of the proposed terms of any contract; and for these services a description of the status of any preliminary negotiations with any school districts or other parties regarding the provision of transportation or food service.

M. A description of the waivers that the charter school is requesting from either the local school board or the department or both and the charter school's plan for addressing these waiver requests that:

(1) lists the specific waivers by number and title that are requested from local school board policy;

(2) describes the process the charter school will use to request waivers from local school board policy;

(3) lists the specific waivers that are requested from the department's requirements, rules, and provisions of the Public School Code, Sections 22-1-1 et seq., NMSA 1978, pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties, driver education and graduation requirements; and

(4) describes how the charter school will address the requested waivers from the department.

N. A description of the facilities the charter school plans to use, taking phase-in and availability into account. The charter school shall provide a detailed description of its proposed capital outlay needs, including projected requests for capital outlay assistance for the charter

school. Additionally, the charter school shall provide an assurance that:

(1) the facility it seeks to use is safe and suitable for use as a school;

(2) it will develop and maintain a plan for addressing code, accessibility requirements and any other health and safety requirements, if necessary;

(3) it will develop and maintain a plan for operation, maintenance and repair of a facility;

(4) it will produce a certificate of occupancy for use of the facility; and

(5) prior to opening that the facility to be used meets all applicable federal and state health, safety and code requirements.

O. A description of the enrollment procedures to be used by the charter school that complies with Section 22-8B-4.1, NMSA, 1978 and 6.80.4.12 NMAC.

P. An explanation of how approval of the charter school would be in the best interest of students, school district and community where it intends to locate, and serves a purpose in that community.

[6.80.4.9 NMAC - Rp, 6.80.4.8 NMAC, 6/29/07]

6.80.4.10 TERM OF A CHARTER:

A. A charter may be approved for an initial term of six (6) years, provided that the first year shall be used exclusively for planning and not for completing the application. The planning year shall be the fiscal year in which the charter is authorized, beginning on the July 1 date on which applications were due and ending on June 30, regardless of the number of months that may be available to a charter school for planning activities.

B. A charter may be renewed for successive periods of five (5) years each unless a lesser period is agreed to in writing by the charter school and its authorizer. The five (5) years of the charter will commence on July 1 of the fiscal year after the charter was approved by its authorizer and shall align with the dates of the fiscal year.

[6.80.4.10 NMAC - N, 6/29/07]

6.80.4.11 REQUIREMENTS DURING THE PLANNING YEAR:

A. For charter schools approved prior to July 1, 2010, prior to the end of its planning year, a newly authorized charter school shall demonstrate to the authorizer that its facilities meet the educational occupancy standards required by applicable New Mexico construction codes. For charters approved on or after July 1, 2010, prior to the end of its planning year, the charter school shall demonstrate to its authorizer that its facilities meet the relevant requirements for schools as set forth in Section 22-8B-4.2C, NMSA 1978.

B. A charter school shall simultaneously notify the public school capital outlay council and its authorizer in writing of its readiness to demonstrate that its facilities meet the referenced educational occupancy standards.

C. The public school capital outlay council shall determine whether a charter school's facilities meet established educational occupancy standards, and if not, whether specific requirements are inappropriate or unreasonable for a charter school. If the public school capital outlay council determines that specific requirements of the referenced educational occupancy standards are neither inappropriate nor unreasonable for a charter school, it may grant a variance. The public school capital outlay council shall provide written notification of its decision and the reasons thereto simultaneously to the charter school and its authorizer.

D. Prior to the end of its planning year, a state chartered charter school shall demonstrate that it has qualified as a board of finance and that it has satisfied any conditions imposed by the commission before commencing full operation for the remainder of its charter term.

[6.80.4.11 NMAC - N, 6/29/07]

6.80.4.12 INITIAL REQUIREMENTS AND REVIEW PROCESS FOR START-UP SCHOOLS:

A. A chartering authority shall have the authority to approve the establishment of a charter school within the geographic boundaries of a local school district in which it is to be located. Local school boards may approve the establishment of charter schools to be located in their respective districts. The commission may approve the establishment of a charter school to be located anywhere in the state.

B. An applicant shall apply to only one chartering authority at a time. An applicant whose application has been denied by a chartering authority or approved with amendments unacceptable to the applicant may file the same application the following year with a different chartering authority.

C. Applications for start-up schools shall be submitted by July 1 to be eligible for consideration for the following fiscal year. The July 1 submission deadline may be waived upon agreement of the applicant and the chartering authority. If July 1 falls on a Saturday or a Sunday, the deadline for filing applications shall be extended to the close of business of the very next Monday, even in the case of a school district closed for summer break. Failure to submit a timely application shall result in an application being rejected by the authorizer, unless the parties agree to waive the filing deadline in accordance with Section 22-8B-6 NMSA 1978. Any such waiver shall be in writing and signed by a person authorized to take such action.

D. Enrollment in a start-up charter school shall be guided by the following.

(1) A charter applicant must determine whether it will enroll students on a first-come, first-serve basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available.

(2) If, in the event the total number of applicants exceeds the number of spaces available, the applicant intends to forego a lottery selection process, the applicant may not be eligible for federal funds under certain federal programs, including the federal charter schools grant program.

(3) A charter applicant shall advertise its enrollment process using newspapers, bulletin boards and other methods designed to disseminate its availability to seek student enrollment and to ensure that there is equal opportunity for all parents and students to learn about the school and apply.

(4) A charter school shall not charge tuition or have admission requirements, except as otherwise provided in the Public School Code, Sections 22-1-1 et seq., NMSA 1978.

(5) In subsequent years of its operation, a charter school will give enrollment preference to previously properly admitted students who remain in attendance and siblings of students already admitted to or attending the school.

E. Any revision or amendment to the terms of the charter contract may be made only with the written approval of the authorizer.

F. A charter school shall be a nonsectarian, nonreligious, and non-home-based public school that operates within the geographic boundaries of a public school district.

G. A charter school shall comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act.

H. A charter school shall comply with the same federal and state audit requirements as do other public schools in the state.

I. A charter school shall meet all applicable federal, state, and local health and safety requirements.

J. A charter school shall

operate in accordance with and under authority of state law.

K. A charter school shall provide equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

L. A charter school shall have an admissions process that does not discriminate against anyone on the basis of race, gender, national origin, color, disability, or age.

M. A charter school's head administrator or governing body shall not employ or approve the employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-in-law, daughter or daughter-in-law of a member of the governing body or the head administrator or any governing body members.

N. Applications to the commission for establishment of a state chartered charter school shall be made to the division at its Albuquerque office. Applications to a local school board for establishment of a locally chartered charter school shall be made to the superintendent of that district.

O. An application for a start-up school may be made by one or more teachers, parents, community members, by a public post-secondary educational institution or a nonprofit organization.

P. The chartering authority shall be responsible for reviewing all applications for charter schools. The chartering authority shall not charge application fees.

Q. A review coordinator may be used to assist the chartering authority in reviewing charter school applications. When using a review coordinator, the assistant secretary for the division shall designate a review coordinator for the commission. When using a review coordinator, unless the superintendent of a school district performs this duty, the superintendent shall appoint a review coordinator for the local school board. The review coordinator, or chartering authority if no review coordinator has been designated, shall:

(1) identify any concerns regarding noncompliance with requirements of the Charter Schools Act (Sections 22-8B-1 et seq., NMSA 1978), this rule or other applicable state or federal laws or regulations which would arise from the establishment or operation of the proposed charter school;

(2) identify any licensure, curriculum, or other educational concerns which would arise from the establishment or operation of the proposed charter school;

(3) identify any interests of the students, the school district or the community which would be adversely affected by the establishment or operation of the proposed charter school and describe the apparent adverse effects;

(4) identify any additional information necessary or helpful to complete the charter school application and make arrangements to obtain the additional information, if possible; and

(5) identify any other concerns which present obstacles to the approval of the proposed charter school.

R. When using a review coordinator, the review coordinator shall ensure that the appropriate staff members respond to requests from applicant for information on school operations, policies or practices which an applicant or prospective applicant regards as necessary to enable it to present an approvable application. Applicants may request information using the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978). Applicants are discouraged from contacting school district or department employees directly to obtain information; a review coordinator may require that requests for information not made pursuant to the Inspection of Public Records Act be in a format or directed to a specific person or office in the school district or department.

S. A charter applicant or prospective applicant shall respond to requests for information the chartering authority or the review coordinator regard as necessary to resolve concerns about the charter proposal; each shall negotiate in good faith in an attempt to resolve any concerns raised about the application.

T. The chartering authority shall hold at least one (1) public meeting to obtain information and community input to assist it in its decision whether to grant a charter school application. At any such meeting, which shall be duly noticed and held pursuant to the Open Meetings Act (Chapter 10, Article 15 NMSA 1978), members of the chartering authority may ask questions of the charter applicant and that applicant shall have an opportunity, subject to reasonable time limitations, to respond to any questions or concerns raised by any members of the chartering authority, and to advise the chartering authority of any additional information the applicant believes will assist the chartering authority in making its decision. Community input may include written or oral comments in favor of or in opposition to the application by the applicant, members of the local community and other interested individuals.

U. The chartering authority shall rule on the application in a subsequent public meeting. The public meeting at which the decision is made shall be held within sixty (60) days after receipt of the application unless the applicant and chartering authority agree in writing to extend this deadline. A subsequent public meeting shall be held on or before the extended deadline. If not ruled upon within sixty (60) days, the charter application will be automatically reviewed by the secretary pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978, 6.80.4.11 NMAC and 6.80.4.12 NMAC above. The charter applicant and the chartering authority may, however, jointly waive the deadlines set forth in this subsection, provided they do so in a signed writing.

V. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application where:

(1) the application is incomplete or inadequate;

(2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act (Chapter 22, Article 8B NMSA 1978);

(3) the proposed head administrator or other administrative or fiscal person were involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal member was discharged from a public school for fiscal mismanagement;

(4) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978;

(5) for a proposed state-chartered charter school, it does not request the governing body to be designated as a board of finance, or the governing body does not qualify as a board of finance; or

(6) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the applicant seeks to operate.

W. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or imposition of conditions in writing within fourteen (14) days of the meeting, provided that a vote is taken at the end of a public meeting and the purpose of the denial is merely to reflect in writing the record of and stated reasons for the vote of the chartering authority. If the chartering authority grants a charter, it shall deliver the approved charter to the applicant and a copy to the department within ten (10) days of the meeting. The time within which to file notice of appeal shall commence upon receipt of the written denial. The chartering authority shall maintain a copy of the charter for its files.

X. If the approved charter contains a request for release from department rules or the Public School Code the

granting of which is discretionary, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

Y. If the authorizer denies a charter school application or imposes conditions for approval that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978 and section 6.80.4.14 NMAC below.

[6.80.4.12 NMAC - Rp, 6.80.4.9 NMAC, 6/29/07]

6.80.4.13 CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS:

A. The governing body of a charter school seeking to renew its charter shall file its renewal application with a chartering authority no later that two hundred seventy (270) days prior to the date the charter expiries. Commencing with any charters that are due to expire at any time after January 1, 2008, all applications for renewal shall be submitted no later than October 1 of the fiscal year prior to the expiration of the school's charter. The chartering authority shall rule in a public meeting on the renewal application no later than January 1 of the fiscal year in which the charter expires.

B. The governing body may submit its charter renewal application to either the commission or to the local school board of the district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.

C. The application shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act (Section 22-2C-1 et seq. NMSA, 1978);

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the commission;

(3) any changes to the original charter the governing board is requesting and any amendment to the initial charter, which were previously approved;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five (65) percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by at least seventy-five (75) percent of the households whose children are enrolled in the charter school;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; and

(7) a statement of the term of the renewal requested, if less than five (5) years. If a charter school renewal application does not include a statement of the term of the renewal, it will be assumed that renewal is sought for a term of five (5) years.

D. The provisions of Subsections N through Y of 6.80.4.12 NMAC shall apply to renewal applications.

E. The chartering authority shall rule on the renewal application in a public hearing no later than one hundred eighty (180) days prior to the expiration of the charter, unless the applicant and the chartering authority agree in writing to extend this deadline. A subsequent public meeting shall be held on or before the extended deadline. If not ruled upon within sixty (60) days, the charter renewal application will be automatically reviewed by the secretary pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978, 6.80.4.13 NMAC.

F. A chartering authority may refuse to renew a charter if it determines that:

(1) the charter school committed a material violation of any of the conditions, standards or procedures set forth in the charter;

(2) the charter school failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards identified in the charter application;

(3) the charter school failed to meet generally accepted standards of fiscal management;

(4) the charter school violated any provision of law from which the charter school was not specifically exempted;

(5) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978; or for

(6) any of the reasons set forth in Paragraphs (1) - (4) of Subsection K of Section 22-8B-6 NMSA 1978.

G. If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with conditions, it shall state its reasons for the nonrenewal or imposition of conditions in writing within fourteen (14) days of the meeting; provided that if the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the department within ten (10) days of the meeting. The chartering authority shall keep a copy of the charter for its files.

H. If the approved charter contains a request for release from department rules or the Public School Code the granting of which is discretionary, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

I. If the authorizer refuses to approve a charter school renewal application or imposes conditions for renewal that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC below.

J. The provisions of this section shall apply to conversion schools.

[6.80.4.13 NMAC - Rp, 6.80.4.8 NMAC, 6/29/07]

6.80.4.14 APPEALS TO THE SECRETARY:

A. Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC ("Suspension of Authority of a Local School Board, Superintendent or Principal").

B. Notice of appeal

(1) Filing and service of notice. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal within thirty (30) days after service of the chartering authority's decision. One (1) original plus four (4) copies of the notice of appeal together with any supporting documents shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal, including exhibits and other related documents, shall be filed using compact disks, floppy disks or email; instead, paper documents must be filed with the department.

(2) Grounds of appeal. The notice

shall include a brief statement of the reasons why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Section 22-8B-7B that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, non-renewal, revocation or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

(a) a copy of the chartering authority's written decision, together with a copy of the authorizer's minutes or draft minutes of the meeting if available; and

(b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department's main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party's address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC below, by email to the secretary provided that the email includes any attachments, as well as the sender's name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures

(1) Within ten (10) days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time and location for the appeal hearing.

(2) Except for brief inquiries about scheduling, logistics, procedure or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary must disqualify himself from hearing an appeal if he determines, after learning of a prohibited communication, that he is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Subsection D of 6.80.4.14 NMAC.

(3) The deadlines in 6.80.4.14 NMAC may be extended by the secretary for good cause. Good cause may include, but shall not be limited to, an agreement between the parties or a well-reasoned request from either party based upon hardship, a scheduling conflict or an event beyond the control of the requester.

(4) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which a chartering authority may deny an application set forth in Section 22-8B-6K or the grounds for non-renewal or revocation as set forth in Subsection F of Section 22-8-12, NMSA 1978, and the standards for affirmance or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

(5) Within ten (10) days after filing the notice of appeal, the appellant shall file one (1) original and four (4) copies with the secretary and serve upon the chartering authority one (1) copy of:

(a) the appellant's arguments for reversal of the chartering authority's decision, clearly labeled accordingly;

(b) the chartering authority's written decision that the appellant is appealing;

(c) the charter or proposed charter in question, of which only two (2) copies need to be filed; and

(d) any other materials related to the issues raised by the appellant which the appellant wishes to have considered in support of its appeal.

(6) Within ten (10) days after receiving the appellant's submissions, the chartering authority shall file one (1) original and four (4) copies with the secretary and serve upon the appellant one (1) copy of:

(a) the chartering authority's response to the appellant's arguments; and

(b) any other materials the chartering authority wishes to have considered in support of its decision.

(7) If requested by the secretary, the division and other department staff as appropriate shall review each party's submissions and prepare a report for the secretary which:

(a) analyzes and outlines the parties' contentions on appeal with reference to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;

(b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.

(8) At least five (5) days before the hearing date, the division shall deliver its report and recommendations to the secretary and shall simultaneously serve a copy upon each party.

(9) While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

E. Secretary hearing and decision

(1) Unless an extension for good cause has been granted pursuant to Paragraph (4) of Subsection D of 6.80.4.14 NMAC above, within sixty (60) days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be two (2) hours. Both parties shall be allowed up to thirty (30) minutes for their presentations. Department staff shall be allowed twenty (20) minutes for their presentation. The appellant may reserve part of its thirty (30) minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their thirty (30) minutes but must include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties or the secretary's counsel at any time and may take up to one (1) hour after the staff's and the parties' presentations for further questions, discussion and its decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shell be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection K of Section 22-8B-6, Subsections B, C or E of Section 22-8B-7 and Subsection F of Section 22-8B-12.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

(a) acted arbitrarily or capriciously;

(b) rendered a decision not supported by substantial evidence; or

(c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application or revoking a charter if he finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or exiting charter school did not meet the standards required by Section 22-8B-4.2, NMSA 1978 and that the decision was:

(a) arbitrary or capriciously;

(b) not supported by substantial evidence; or

(c) otherwise not in accordance with the law.

(7) If the secretary reverses the chartering authority's decision, the secretary shall remand the decision to the chartering authority with written instructions for approval of the charter. The instructions shall include specific recommendations concerning approval of the charter and any changes the secretary directs to remedy any concerns identified under Paragraphs (5) or (6) of Subsection E of 6.80.4.14 NMAC above.

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. Implementation of secretary's decision

(1) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.

(2) If the chartering authority's decision is reversed and remanded, the chartering authority, at a public hearing, shall approve the charter with any required changes within thirty (30) days following the receipt of the notice of the decision. If the chartering authority does not comply with the secretary's order, the secretary may take appropriate administrative or judicial action.

G. The provisions of this section shall apply to conversion schools.

[6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/07]

6.80.4.15 REVIEW ON THE SECRETARY'S OWN MOTION:

A. The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter.

B. Within ten (10) days after the secretary moves to review, the secretary shall issue an appropriate order establishing procedures for the chartering authority and the charter applicant to submit information and arguments for review by the secretary and division staff.

C. Within sixty (60) days after the secretary moves to review, the secretary, at a public hearing that may be held in Santa Fe or in the district in which the proposed charter school applied for a charter, shall review the decision of the chartering authority and determine whether the decision was arbitrary and capricious or whether the establishment or operation of the proposed charter school would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978.

D. If the secretary determines that the charter would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978, the secretary shall reverse the chartering authority's decision and remand the decision to the chartering authority with instructions to deny the charter application, suspend or revoke the charter.

E. The timelines in 6.80.4.15 NMAC may be extended by the secretary for good cause. Good cause may include but shall not be limited to an agreement between the parties, a reasonable request from either party or reasonable consideration of the secretary's previously established meeting schedule.

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

G. The secretary shall promptly serve a copy of the state board's decision on the parties to the proceeding.

H. If the chartering authority's decision is reversed and remanded, the chartering authority, at a public hearing, shall deny or revoke the charter within thirty (30) days following the receipt of the state board's decision. If the chartering authority does not comply with the secretary's order, the secretary may take appropriate administrative or judicial action.

[6.80.4.15 NMAC - Rp, 6.80.4.11 NMAC, 6/29/07]

6.80.4.16 QUALIFICATION FOR BOARD OF FINANCE DESIGNATION:

A. Within ninety (90) days of approval of its charter application, the governing body of a state-chartered charter school shall file a separate application with the commission seeking approval as a board of finance. This deadline may be extended by the commission for good cause shown.

B. The application shall include:

(1) an affidavit or affidavits, signed by the personnel who will be given the responsibility of keeping the financial records of the charter school, describing the training completed, professional licensure held and degrees earned by them;

(2) a statement signed by every member of the governing body that the governing body agrees to consult with the department on any matter not covered by the manual of accounting and budgeting before taking any action relating to funds held as a board of finance;

(3) a copy of a declaration or certificate of insurance that indicates that the person who will be entrusted with handling the funds of the charter school is adequately bonded in an amount of at least the projected revenues and MEM of the charter school;

(4) a signed affidavit from each governing body member declaring that the member is not a governing body member of any other charter school and that the member was not a governing body member of another charter school that was suspended or failed to receive or maintain their board of finance designation.

C. Within thirty (30) days of filing of the application to qualify as a board of finance, the commission shall issue a decision approving or denying the application. A copy of the decision will be provided to the governing body and the commission.

[6.80.4.16 NMAC - N, 6/29/07]

6.80.4.17 SEVERABILITY: Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without affect to the remainder.

[6.80.4.17 NMAC - N, 6/29/07]

HISTORY OF 6.80.4 NMAC:

Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

6.80.4 NMAC, Charter School Application and Appeal Requirements, 12/3/01

History of Repealed Material:

6.80.4 NMAC, Charter School Application and Appeal Requirements - Repealed, 6/29/07

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.11.2 NMAC, Sections 10, 11 and 12, effective 6/29/07.

6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Formal enforcement action under the Compulsory Attendance Law, supra, and the Family in Need of Services Act, Section 32A-3-1 et seq. NMSA 1978 shall be initiated whenever a student's absences indicate that the law is being violated. An administrative authority who has reason to believe a student is violating local school board attendance policies may take whatever further disciplinary action is deemed appropriate under local policies.

B. Search and seizure: School property assigned to a student and a students person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with the requirements below.

(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.

(2) Who may search. Certified school personnel, school security personnel and school bus drivers are "authorized persons" to conduct searches when a search is permissible as set forth below. An authorized person who is conducting a search may request the assistance of some other person(s), who upon consent become(s) an authorized person for the purpose of that search only.

(3) When search permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when (s)he has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when (s)he has reasonable cause to believe that a search is necessary to help maintain school discipline.

(4) Conduct of searches; witnesses. The following requirements govern the conduct of permissible searches by authorized persons:

(a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.

(b) Student vehicles when on campus or otherwise under school control and students' personal effects which are not within their immediate physical possession may be searched in accordance with the requirements for locker searches.

(c) Physical searches of a students person may be conducted only by an authorized person who is of the same sex as the student, and except when circumstances render it impossible may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search must not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.

(5) Seizure of items: Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

(6) Notification of law enforcement authorities: Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.

C. Basis for disciplinary action: A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) for committing any act which endangers the health or safety of students, school personnel or others for whose safety the public school is responsible, or for conduct which reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;

(2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or

(3) for committing acts prohibited by this regulation, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.

(1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex or disability rather than on other differences in individual cases or students.

E. Corporal punishment. Each local school board with community input shall determine whether to permit the use of corporal punishment and shall publish and distribute a written policy either authorizing or prohibiting its use. Where corporal punishment is authorized, the written policy shall specify the allowable forms of punishment, the conditions under which it may be used and the procedures to be followed in administering it. A school board policy authorizing corporal punishment will override any parents objection to its use unless the local board also authorizes individual parents to veto corporal punishment of their children. Where a local board has not authorized a parental veto, an administrative authority may in any event decline to apply corporal punishment if (s)he has reason to believe that an individual student is physically or emotionally unable to withstand reasonable corporal punishment or if (s)he believes that corporal punishment would be ineffective or inappropriate.

F. Detention, suspension and expulsion: Where detention, suspension and/or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in Section 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection G of Section 6.11.2.10 NMAC and Section 6.11.2.11 NMAC below.

G. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary

processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term suspensions [~~of~~] or expulsions of students with disabilities shall be governed by the procedures set forth in Section 6.11.2.11 NMAC below.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of Section 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Subsection G, Paragraph (3) of 6.11.2.10 NMAC below.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with [~~the regulation~~] this rule. However, the IEP [~~committee~~] team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP [~~committee~~] team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this [~~regulation~~] rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of Section 6.11.2.12 NMAC below.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[08-15-97; 6.11.2.10 NMAC - Rn, 6 NMAC 1.4.10, 11-30-00; A, 6/29/07]

6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES: [~~Temporary rule. Until this Section 6.11.2.11 NMAC is further revised, the provisions of the Individuals with Disabilities Education Improvement Act of 2004 at 20 U.S.C. Section 1415(k) and the federal regulations implementing those provisions shall govern disciplinary removals of students with disabilities from their current educational placements. All other federal and state laws and rules governing student discipline, including 6.11.2.12 NMAC governing detention, suspension or expulsion of any student, remain in effect.~~]

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:

(1) long-term suspension or expulsion; or

(2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other department rules and standards.

B. When behavior is not a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

C. Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:

(a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.

(3) If the administrative authority, the parent and relevant members of the child's IEP team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.

D. Determination that behavior is manifestation of disability. If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR Sec. 300.530(f).

E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply.

F. Determination of setting. The student's IEP team determines the interim alternative educational setting for services under Subsections B and E of this section.

G. Change of placement because of disciplinary removals. For purposes of removals of a student with a dis-

ability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR Sec. 300.536 are met.

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d).

J. Appeal.

(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

(2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).

(3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, which ever occurs first, unless the parent and the administrative authority agree otherwise.

[08-15-97; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11-30-00; A, 9-15-05; A, 6/29/07]

6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS: The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. But it is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension and temporary, long-term or permanent removal of students from the public schools. Local school boards may adopt procedures which afford students more protection than this [~~regulation~~] rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for ten (10) consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day.

B. Students with disabilities. This Section does not apply to long-term suspension or expulsion of students who are disabled pursuant to the IDEA or Section 504 [~~, except as provided for in Subsection C, Paragraph (1) of Section 6.11.2.11 NMAC above~~]. The procedures for long-term suspension or expulsion of disabled students are set forth in Section 6.11.2.11 NMAC above. School personnel under this section may remove a student with a disability who violates a rule of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC above).

C. Immediate removal: Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.

(1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.

(2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).

(3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.

(1) A local school board may limit temporary suspensions to periods shorter than ten (10) school days.

(2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.

(a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.

(b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.

(c) A student who denies a charge of misconduct shall be told what act(s) (s)he is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although (s)he should not withhold such information without good cause. (S)he is required to disclose the substance of all evidence on which (s)he proposes to base a decision in the matter.

(d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.

(e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

E. In-school suspension.

(1) In-school suspension may be

imposed with or without further restriction of student privileges. Any student who is placed in an in-school suspension which exceeds ten (10) school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than ten (10) school days.

(2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention.

(1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that it does not entail removing the student from any of his or her regular classes.

(2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

G. Long-term suspension and expulsion.

(1) Each local school board shall authorize appropriate administrative authorities to initiate procedures leading to long-term suspension or expulsion. Where prompt action to suspend a student long-term is deemed appropriate, a temporary suspension may be imposed while the procedures for long-term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student must be returned to school pending the final outcome unless the provisions of Subsection G, Paragraph (4), Subparagraphs (j) and (k) of Section 6.11.2.12 NMAC below apply.

(2) A student who has been validly expelled or suspended is not entitled to receive any educational services from the local district during the period of the exclusion from school. A local school board may provide alternative arrangements, including correspondence courses at the student's or parent's expense pursuant to state board of education requirements, if the board deems such arrangements appropriate.

(3) Each local school board shall establish, or shall authorize appropriate administrative authorities to establish, appropriate processes for handling long-term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in the procedures below shall be construed as directing that any required decision be made by any particular person or body or at any particular level of administrative organization.

(4) The following rules shall govern the imposition of long-term suspensions or expulsions:

(a) Hearing authority; disciplinarian. The same person or group may, but need not, perform the functions of both hearing authority and disciplinarian. Where the functions are divided, the hearing authority's determination of the facts is conclusive on the disciplinarian, but the disciplinarian may reject any punishment recommended by the hearing authority.

(b) Review authority. Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian's decision, but may not impose a harsher punishment. A review authority shall be bound by a hearing authority's factual determinations except as provided in Subsection G, Paragraph (4), Subparagraph (o) of Section 6.11.2.12 NMAC below.

(c) Disqualification. No person shall act as hearing authority, disciplinarian or review authority in a case where (s)he was directly involved in or witnessed the incident(s) in question, or if (s)he has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.

(d) Local board participation. A local board may act as hearing authority, disciplinarian or review authority for any cases involving proposed long-term suspensions or expulsions. Whenever a quorum of the local board acts in any such capacity, however, the Open Meetings Act, Section 10-15-1 et seq., NMSA 1978 requires a public meeting.

(e) Initiation of procedures. An authorized administrative authority shall initiate procedures for long-term suspension or expulsion of a student by designating a hearing authority and disciplinarian in accordance with local board policies, scheduling a formal hearing in consultation with the hearing authority and preparing and serving a written notice meeting the requirements of Subsection G, Paragraph (4), Subparagraph (h) of Section 6.11.2.12 NMAC below.

(f) Service of notice. The written notice shall be addressed to the student, through his or her parent(s), and shall be served upon the parent(s) personally or by mail.

(g) Timing of hearing. The hearing shall be scheduled no sooner than five (5) nor later than ten (10) school days from the date of receipt of the notice by the parent(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of Subsection G, Paragraph (4), Subparagraph (i) of Section 6.11.2.12 NMAC below.

(h) Contents of notice. The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:

(i) the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based and a statement of the possible penalty;

(ii) the date, time and place of the hearing, and a statement that both the student and parent are entitled and urged to be present;

(iii) a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;

(iv) a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative designated in a written notice filed at least seventy-two (72) hours before the hearing with the contact person named pursuant to Subsection G, Paragraph (4), Subparagraph (h), Sub-subparagraph (vi) of Section 6.11.2.12 NMAC below;

(v) a description of the procedures governing the hearing;

(vi) the name, business address and telephone number of a contact person through whom the student, parent or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and

(vii) any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.

(i) Delay of hearing. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Such discretion may be limited or guided by local school board policies not otherwise inconsistent with this regulation.

(j) Students status pending hearing. Where a student has been suspended temporarily and a formal hearing on long-

term suspension or expulsion will not occur until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:

(i) the provisions of Subsection G, Paragraph (4), Subparagraph (k) of Section 6.11.2.12 NMAC below apply, or

(ii) the student and parent(s) have knowingly and voluntarily waived the students right to return to school pending the outcome of the formal proceedings, or

(iii) the appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.

(k) Waiver of hearing; voluntary compliance or negotiated penalty. A student and his or her parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.

(l) Procedure for hearing and decision. The formal hearing is not a trial. It is an administrative hearing designed to ensure a calm, orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following-rules govern the conduct of the hearing and the ultimate decision.

(i) The school shall have the burden of proof of misconduct.

(ii) The student and his or her parent shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.

(iii) The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a preponderance of the evidence presented at a hearing at which the student and/or a designated representative have appeared.

(iv) If no one has appeared on the students behalf within a reasonable time after the announced time for the hearing, the hearing authority shall determine whether the student, through the parent, received notice of the hearing. If so, the hearing authority shall review the schools' evidence to determine whether it is sufficient to support the charges(s) of misconduct.

(v) A hearing authority who is also a disciplinarian shall impose an appropriate sanction if (s)he finds that the allegations of misconduct have been proved under the standards of either Subsection G, Paragraph (4), Subparagraph (l), Sub-subparagraph (iii) or Sub-subparagraph (iv) of Section 6.11.2.12 NMAC above. A hearing authority who is not a disciplinarian shall report its findings, together with any recommended sanction, to the disciplinarian promptly after the hearing.

(vi) Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the administrative authority who scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the evidence presented.

(vii) The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority who is also a disciplinarian may also impose a penalty at the close of the hearing.

(viii) In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent, a written decision within five (5) working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority who is also a disciplinarian shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty. A hearing authority who is not a disciplinarian shall forward a copy of his or her written decision to the disciplinarian forthwith. The disciplinarian shall prepare a written decision, including reasons for choosing any penalty imposed, and mail or deliver it to the student, through the parent, within five (5) working days of receipt of the hearing authority's report.

(ix) A disciplinarian who is not a hearing authority may observe but not participate in the proceedings at a formal hearing. If the disciplinarian has done so and if the hearing authority announces a decision at the close of the hearing, the disciplinarian may also announce his or her decision at that time.

(x) The disciplinarian's decision shall take effect immediately upon initial notification to the parent, either at the close of the hearing or upon receipt of the written decision. If initial notification is by mail, the parent shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.

(m) Effect of decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or if the disciplinarian declines to impose a penalty despite a finding that an act or acts of misconduct have been proved, the matter shall be closed. If the disciplinarian imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent and shall continue in force during any subsequent review.

(n) Right of review. Unless the local school board was the disciplinarian, a student aggrieved by a disciplinarian's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester or a denial or restriction of student privileges for one semester or longer. A local school board may grant a right of review for less severe penalties. Local school boards shall establish appropriate mechanisms for review except where the local board was the disciplinarian, in which case its decision is final and not reviewable administratively. A student request for review must be submitted to the review authority within ten (10) school days after the student is informed of the disciplinarian's decision.

(o) Conduct of review. Unless the local board provides otherwise, a review authority shall have discretion to modify the disciplinarian's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious or unsupported by substantial evidence or that new evidence which has come to light since the hearing and which could not with reasonable diligence have been discovered in time for the hearing would manifestly change the factual determination. Upon any such finding, the review authority shall have discretion to receive new evidence, reconsider evidence introduced at the hearing or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an

inquiry into the appropriateness of the penalty imposed.

(p) Form of review. Unless the local board provides otherwise, a review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials and/or to grant a conference or hearing at which the student and his or her representative, and school authorities may present their respective views in person. Where a conference or hearing is granted, the record-keeping requirements of Subsection G., Paragraph (4), Sub-paragraph (l), Sub-sub-paragraph (vi) of Section 6.11.2.12 NMAC above apply.

(q) Timing of review. Except in extraordinary circumstances, a review shall be concluded no later than fifteen (15) working days after a student's written request for review is received by the appropriate administrative authority.

(r) Decision. A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the disciplinarian, the hearing authority and the student, through the parent, within ten (10) working days after the review is concluded.

(s) Effect of decision. Unless the local school board provides otherwise, a review authority's decision shall be the final administrative action to which a student is entitled.

[08-15-97; 6.11.2.12 NMAC - Rn, 6 NMAC 1.4.12, 11-30-00; A, 6/29/07]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 13 PUBLIC RECORDS
PART 4 RECORDS MANAGEMENT REQUIREMENTS FOR ELECTRONIC MESSAGING

1.13.4.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.13.4.1 NMAC - N, 6/29/2007]

1.13.4.2 SCOPE: all state agencies
[1.13.4.2 NMAC - N, 6/29/2007]

1.13.4.3 STATUTORY AUTHORITY: Sections 14-3-6 of the Public Records Act (Chapter 14, Article 3, NMSA 1978) gives the state records administrator the authority to establish and maintain an active, continuing program for economical and efficient management of the public records of state government and the authority to establish rules, standards, procedures and techniques for the effective management of public records.
[1.13.4.3 NMAC - N, 6/29/2007]

1.13.4.4 DURATION: Permanent
[1.13.4.4 NMAC - N, 6/29/2007]

1.13.4.5 EFFECTIVE DATE: June 29, 2007 unless a later date is cited at the end of a section.
[1.13.4.5 NMAC - N, 6/29/2007]

1.13.4.6 OBJECTIVE: To establish requirements for the management, preservation and disposition of public records sent or received through electronic messaging transmissions to ensure:

A. adequate documentation of agencies' statutory functions, policies, decisions, procedures and business transactions;

B. retention of public records in accordance with established records retention and disposition schedules promulgated by the commission of public records under Title 1, Chapters 15 through 20 of the New Mexico Administrative Code; and

C. the capture and preservation of permanent public records sent or received through e-messaging of historical and informational value.

[1.13.4.6 NMAC - N, 6/29/2007]

1.13.4.7 DEFINITIONS:

A. Adequate documentation means a record of the conduct of government business that is complete and accurate to the extent required to document functions, policies, decisions, procedures and business transactions designed to furnish the information necessary to protect the legal and financial rights of state government and of persons directly affected by an agency's activities.

B. Administrator means the state records administrator (Section 14-3-2 NMSA 1978).

C. Agency means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).

D. Archives means the New Mexico state archives, the entity responsible for appraising, preserving and making available permanent public records.

E. Authentic record means a record that is what it purports to be and whose authenticity can be established by its mode and form of transmission, security controls and procedures for the identification, filing, retrieval and access, storing, disposition, transfer, preservation, and conservation of the record by its creator or legitimate successor.

F. Business transaction means the process of responding to external and internal requests for resources, goods, services or information relating to a defined area of government responsibility or authority and the exchange of resources, goods, services or information that occurs as a result, e.g., request for birth certificate via e-mail and response by vital records bureau.

G. Computer means an electronic device designed to accept data (input) perform prescribed mathematical and logical operations at high speed (processing) and supply the results of these operations (output). This includes, but is not limited to, mainframe computers, minicomputers and microcomputers, personal computers, portable computers, pocket computers, tablet computers, telephones capable of storing information, PDAs and other devices used to conduct the business of government.

H. Custodial agency means the agency responsible for the maintenance, care or keeping of public records, regardless of whether the records are in that agency's actual physical custody and control.

I. Data is the plural for **"datum"** which means a single piece of information. Data refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures or symbols.

J. Destruction means the disposal of records of no further value by a method prescribed and authorized by the state records administrator [1.13.30 NMAC, Destruction of Public Records and Non-Records] such as: shredding, burial, incineration, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained in the record.

K. Disposition means those actions taken regarding records no longer needed for current government business. Disposition may include either destruction or the transfer of records to the state archives.

L. E-message means an electronic mail message created in or received through an electronic mail system, including all attachments, such as word processing and other electronic documents sent over a communications network, using a computer or other electronic device. E-messages include text messages sent over a cell-phone or PDA.

M. Electronic mail system means a system that enables users to compose, transmit, receive and manage electronic mail across networks and through gateways connecting to other local area networks.

N. Electronic public record means any information recorded in a form only an electronic device can process and that satisfies the definition of a public record in Section 14-3-2 NMSA 1978.

O. End-user means any person authorized by a state agency to access state IT and telecommunication resources, including a state employee, officer or contractor doing business with the agency.

P. Executive records retention and disposition schedule means a records retention and disposition schedule that identifies and establishes retention periods specific to an executive agency's program records.

Q. Filing means the process of sequencing and sorting records to make them easy to retrieve when needed.

R. General records retention and disposition schedules means a records retention and disposition schedule that specifies the disposition of support records common to many offices or agencies within government, such as general administrative, financial, or personnel records and establishes a timetable for their legal retention. See also **records retention and disposition schedule.**

S. Historical value means the value assigned to records by the state records administrator and the commission of public records because of their importance or usefulness in documenting past events in history.

T. Instant messaging (IM) means the exchange of typed messages between two or more people in real time through the internet.

U. Information technology (IT) means computer hardware and software and ancillary products and services, including: systems design and analysis; acquisition, storage and conversion of data; computer programming; information storage and retrieval; voice, radio, video and data communications; requisite systems; simulation and testing; and related interactions between users and information systems.

V. Judicial records retention and disposition schedule means records retention and disposition schedule that specifies the disposition of support records for the judiciary branch of state government.

W. Legislative records retention and disposition schedule means a records retention and disposition schedule that specifies the disposition of support records for the legislative branch of state government.

X. Legal custody means the lawful responsibility for the care, maintenance or keeping of a public body's public records, regardless of whether the records are in the public body's actual physical custody and control.

Y. Metadata means "data about data"; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. For example transmission metadata accompanies an e-message and provides information about the sender, recipient, time of transmission and its receipt. Recordkeeping metadata provides indexing and retention data on electronic records and facilitates records management actions such as discovery, preservation and disposition.

Z. Non-records or non-essential records means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading files or informational files.

AA. Permanent records means records considered being unique or so valuable in documenting the history or business of an agency or organization that they are preserved in an archive.

BB. Personal digital assistant (PDA) means a handheld device that combines computing, telephone/fax, internet and networking features.

CC. Public records as defined in the Public Records Act (Section 14-3-2 NMSA 1978) means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business, preserved or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein.

DD. Records custodian means any person responsible for the maintenance care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control.

EE. Records and information requirements means all statements in statutes, regulations, and agency directives or authoritative issuances that require an agency to create and maintain certain records or information for a specific period of time.

FF. Recordkeeping system means a manual or electronic system in which records are collected, organized and categorized to facilitate their preservation, retrieval and disposition.

GG. Records liaison officer means the individual in the custodial agency designated by the records custodian to cooperate with, assist and advise the state records administrator in the performance of the administrator's duties (Section 14-3-4 NMSA 1978). The records liaison in an agency is responsible for implementing the records retention and disposition schedules within his or her agency. The records liaison is also responsible for authorizing the storage and destruction of his or her agency's records.

HH. Records retention and disposition schedules means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

II. Records series means file units, documents or electronic records arranged according to a filing system or maintained as a unit because they relate to a particular subject or function, results from the same activity, have a particular form or share some other relationship arising from their creation, receipt or use.

JJ. Transfer means the act of moving inactive records to a records center or archives. Moving records into the state archives also includes the transfer of custody from the custodial agency to the state archives.

KK. Transitory messages means e-messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory e-messages are not required to control, support or to document the operations of government.

[1.13.4.7 NMAC - N, 6/29/2007]

1.13.4.8 ABBREVIATIONS:

A. "E-messages" means electronic mail.

B. "ERRDS" means executive records retention and disposition schedule.

C. "GRRDS" means general records retention and disposition sched-

ule.

D. "JRRDS" means a judicial records retention and disposition schedule.

E. "LRRDS" means a legislative records retention and disposition schedule.

F. "IM" means instant messaging.

G. "IPRA" means the Inspection of Public Records Act.

H. "PDA" stands for personal digital assistant.

I. "RRDS" stands for records retention and disposition schedule.

J. "SRCA" means state records center and archives.

[1.13.4.8 NMAC - N, 6/29/2007]

1.13.4.9 PUBLIC RECORDS: Electronic mail has become the communication method of choice for state government and is often used to communicate substantive information previously committed to paper and transmitted by traditional methods. This combination of communication and record creation and recordkeeping has created ambiguities on the status of e-mail messages as public records. The management of e-mail messages touches on nearly all functions for which government agencies rely on recordkeeping, to furnish accurate, timely and complete information for efficient decision making in the management and operation of the agency. The need to manage e-mail messages properly is the same as that for other records to ensure compliance with New Mexico laws concerning the creation, retention, and access to public records. E-messages classified as public records are subject to records and information management requirements promulgated as rules by the SRCA and the requirements of the Public Records Act and the Inspection of Public Records Act (IPRA).

[1.13.4.9 NMAC - N, 6/29/2007]

1.13.4.10 MANAGEMENT RESPONSIBILITIES: Agencies are required to provide guidance to employees on the proper use of the state's information technology resources, including the use of e-mail (1.12.10 NMAC, Internet, Intranet, Email and Digital Network Usage). The state maintains an enterprise electronic mail system that allows users to communicate electronically. Each agency using the system continues to have the responsibility to identify and maintain its records whether created electronically or on paper. E-mail messages that are identified as a public record shall be maintained in conformance with the agency's records retention and disposition schedule and records management plan. The management of electronic messaging is essential to ensure adequate control and retention of public records, the efficient and effective use of resources and the mitigation of legal liability to the state of New Mexico. Effective policies clearly define the roles and responsibilities of end users, managers, technical staff, records custodians, and records management staff to ensure that e-messages identified as public records by the custodial agency are:

A. managed in compliance with applicable state and federal laws and regulations;

B. maintained in an appropriate recordkeeping system;

C. complete;

D. readily available and accessible in a useable format; and

E. authentic and secure.

[1.13.4.10 NMAC - N, 6/29/2007]

1.13.4.11 RETENTION AND SCHEDULING REQUIREMENTS: E-messages may include public records or transitory information. Only those e-messages classified as public records must be retained based on established retention periods published in GRRDS, JRRDS, LRRDS and ERRDS (Title 1, Chapters 15 through 20 of the NMAC). E-messages must be categorized, filed and retained on the basis of content. The content of e-messages may vary considerably; therefore, each e-message shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act and 1.13.4 NMAC. Non-records or transitory e-messages that do not provide evidence of official agency policies or business transactions may be deleted.

A. E-messages and attachments classified as public records shall be categorized under the appropriate record series identified in a GRRDS, JRRDS, LRRDS, or ERRDS. E-messages and attachments identified as public records shall be retained and stored for as long as required under the appropriate retention period. E-messages scheduled as permanent shall be transferred to the state archives. E-messages that are public records include but are not limited to:

(1) policies and directives;

(2) correspondence or memoranda that contain final directives, determinations, instructions or guidance regarding public business;

(3) minutes of governing boards, advisory groups, ad-hoc committees or work groups developing programs;

(4) messages that authorize, establish or complete a business transaction; or

(5) final reports or recommendations such as to legislative committees or produced by task forces or study groups.

B. Non-record and transitory e-messages do not set policy, provide directives, establish guidelines or procedures nor do they certify transactions; they may be destroyed without the prior approval of the state records administrator. Non-record and transitory e-messages include but are not limited to:

(1) duplicate copies of messages sent to multiple people;

(2) personal messages and announcements not related to official agency business;

(3) preliminary drafts of letters, reports and memoranda;

(4) messages considered brainstorming or preliminary thought processes in nature, reflecting the exchange of ideas preliminary to the development of a final decision or position of the agency;

(5) transmittal e-messages that do not add substantive information to the attachment(s) being transmitted;

(6) copies of documents distributed for convenience or reference;

(7) announcements of social events, such as retirement parties;

(8) spam (unsolicited, commercial e-messages);

(9) messages to or from e-messages distributions lists (listserv) not directly related to agency business; and

(10) instant messages.

[1.13.4.11 NMAC - N, 6/29/2007]

1.13.4.12 FILING E-MESSAGES: Filing solutions shall be based on a classification solution as described above in Subsection A of 1.13.4.11 NMAC. E-messages shall be filed in a manner that enhances their accessibility and facilitates record and information management requirements. E-messages classified as public records shall be filed either in a manual, paper-based system or electronically. Placing e-messages in an organized recordkeeping system is critical for the application of records retention and disposition requirements. Procedures for filing e-messages will vary based on the agency's needs and the particular hardware and software in use. E-messages sent and received in an official capacity from a computer outside the state system that can be classified as public records shall be transferred to an agency's recordkeeping system for proper retention and disposition. Non-records or transitory messages are not required for retention by a state agency and regular deletion of such messages should be included in e-mail management procedures implemented by an agency.

A. Manual filing systems for text based messaging require that messages and attachments be printed. Once an e-message has been printed the e-message

and attachment may be deleted from the e-mail system. The printed copy shall include the name(s) of the sender and all recipients and the date the message was sent.

B. All electronic systems used to file e-messages shall ensure that:

(1) e-messages and attachments classified as public records can be accessed, retrieved and read;

(2) metadata for e-message records sent or received are captured and preserved;

(3) e-message records are retained in a useable format for their required retention period as specified by approved records retention and disposition schedules; and

(4) permanent e-message records scheduled for transfer to the state records center and archives meet the criteria established in the 1.13.3 NMAC, Management of Electronic Records.

[1.13.4.12 NMAC - N, 6/29/2007]

1.13.4.13 STORAGE OF E-MESSAGES: E-messages that are public records shall be maintained in a useable format by the agency that created or received the public record.

[1.13.4.13 NMAC - N, 6/29/2007]

1.13.4.14 DISPOSITION: Content, transactional information and attachments associated with e-messages that are public records are subject to the provisions in 1.13.10 NMAC Records Custody, Access, Storage and Disposition and 1.13.30 NMAC, Destruction of Public Records and Non-Records. E-messages potentially relevant to an audit, investigation or litigation should be preserved, even if the retention period has been met.

[1.13.4.14 NMAC - N, 6/29/2007]

1.13.4.15 ACCESS: E-messages maintained by an agency are subject to IPRA (14-2-1 through 14-2-12 NMSA 1978). Filing solutions based on a classification system as described above in Subsection A of 1.13.4.11 NMAC may provide an organized and consistent indexing system by which e-messages may be easily retrieved.

[1.13.4.15 NMAC - N, 6/29/2007]

HISTORY OF 1.13.4 NMAC: [RESERVED]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to Section 13 of 1.13.2 NMAC, effective June 30, 2007.

1.13.2.13 [~~PHOTOGRAPH AND MOTION PICTURE FILM REPRODUCTION~~] PHOTOGRAPH, MOTION PICTURE AND OVERSIZED RECORDS REPRODUCTION:

A. Requests for duplication and reproduction of photographs and film that are covered under Section 14-3-15.1 NMSA 1978 or are copyrighted or otherwise contractually restricted shall be accompanied by a letter of intent describing the proposed use and SRCA form 96-18 "conditions for publication/reproduction."

B. Prints from digital images.

(1) 5 x 7 - [~~$12.00~~] $14.00

(2) 8 x 10 - [~~$12.00~~] $14.00

(3) Larger than 8 x 10 - $7.75 per foot

C. Video copies.

(1) [~~Video~~] VHS video cassette-to-VHS video cassette copies - $30.00

(2) Motion picture film-to-VHS video cassette copies - $47.50

[~~**(3)** ¾ in. broadcast tape, 30 min. - $50.00~~

~~**(4)** ¾ in. broadcast tape, 60 min. - $60.00~~]

D. Digital copies.

(1) Motion picture film-to-DVD copies - $55.00

(2) Motion picture film-to-miniDV or DV copies - $58.00

(3) Video cassette-to-DVD copies - $37.00

(4) Video cassette-to-miniDV or DV copies - $40.00

(5) MiniDV-to-miniDV or DV copies - $40.00

E. Where items are fragile or require specialized handling, the SRCA may charge the costs of the additional labor.

F. Fees for digital restoration or enhancement or clip selection of digitized materials or motion picture films vary according to the extent of work required. The minimum fee for digital restoration or enhancement or clip selection shall be $15.00 per reproduced item, in addition to the reproduction fee set forth in Subsection B of this section. For work requiring over one hour, $15.00 per additional hour shall be charged.

[7/1/95, 4/30/96, 12/15/98; 1.13.2.13 NMAC - Rn, 1 NMAC 3.100.11 & A, 3/14/01; A, 4/30/02; A, 7/15/03; A, 6/30/05; A, 6/1/06; A, 06/30/07]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.5 NMAC, Sections 9, 12 and 17, effective June 29, 2007.

1.13.5.9 CONDITIONS FOR RECEIVING A HISTORICAL RECORDS GRANT:

A. The applicant shall demonstrate financial and programmatic need and the ability to carry out the objective of the proposal within the grant period.

B. The applicant shall describe the records covered by the proposal and their importance in documenting New Mexico's history.

C. The applicant shall have custody of, or consult with organizations that have custody of, historically significant original records.

D. Records treated in the proposed project shall be made available for public research unless specific exemption is granted by the NMHRAB. Proposals submitted by tribal governments, for example, may be excluded from this criterion.

E. An affected organization shall be committed to sound archival practices, as demonstrated through its collection policy or a statement from its governing body indicating its commitment to:

(1) support of the project; and

(2) continuation of the project's purposes beyond the grant period.

F. A person qualified by credentials or training to carry out the objectives of the proposed project shall supervise the project. If this requirement is not met at the time the proposal is submitted, the proposal shall include provisions for attending NMHRAB-sponsored or NMHRAB-approved training totaling at least 24 clock hours before the project's proposed start date, unless otherwise approved by the NMHRAB.

G. Organizations shall have a mechanism for evaluating the impact of the project on their historical records' environments.

[1.13.5.9 NMAC - N, 11/30/00; A, 09/30/02; A, 07/15/03; A, 06/30/04; A, 06/29/07]

1.13.5.12 EXCLUSIONS:

A. Grants cannot be used to replace organization budgets for staff, but grant funds can be used to hire temporary staff. Grant funds cannot be used to acquire software or equipment, or to pay the indirect costs of the applicant. However, staff committed by the organization to the project and equipment and software purchased specifically for the project can be used as in-kind match.

B. Consultant fees funded by the grant may not exceed [~~$45.00~~] $50.00 per hour. Related travel expenses shall be within state of New Mexico allowable rates. (See Per Diem and Mileage Act)

C. Proposals for digitization projects shall be acceptable only if they take into consideration the issue of migra-

tion to newer technologies. Microfilming projects shall be justified on the basis of the volume of original records, the demand for usage or the risk of loss of their content.
[1.13.5.12 NMAC - N, 11/30/00; A, 07/15/03; A, 06/30/04; A, 06/29/07]

1.13.5.17 POST-AWARD REQUIREMENTS: Successful historical record grant applicants shall comply with the following post award requirements.

A. Submit progress reports by end of seventh month for work completed in the first six months of the grant period. Progress reported shall be substantially in line with the project timeline included in the grant application. Any appreciable deviation from the timeline shall be justified in the progress report.

(1) If work has not been initiated by the due date of the progress report, the entire grant award shall be nullified.

(2) If progress reported lags substantially behind that described in the project timeline, the grant administrator shall review the project, consult with the grantee to determine whether timely completion of the project is feasible and make a recommendation to the chair of the NMHRAB on continuation of the project. Based on the recommendation, the chair reserves the right to terminate the grant or require an amended scope of work and reduced award.

(3) Failure to submit the progress report by the established deadline shall result in suspension of further reimbursements or payments until the report is submitted and accepted. If the report is not submitted within 30 days of the due date of the progress report, no further requests for reimbursements or payments shall be honored and any balance remaining in the grant award shall revert to the state records center and archives.

B. Submit final reports within 30 days of project completion or no later than June [~~30~~] 15 of the fiscal year for which the grant award is made, whichever is earlier.

C. [~~Request funds on a reimbursement basis and no more than 50 percent before substantial completion of the work.~~] Request funds for reimbursement or payment based on amount of work completed.

D. Submit proof of completion of training before project start date, if required.

E. Adhere to the state Procurement Code for purchase of goods and services.

F. Maintain grant records for at least two years after completion of the project.

G. Submit an article to the NMHRAB office for possible publication [~~in agency newsletter, the Quipu, or other publication.~~] on agency's website.

H. Complete the project within the grant period specified in the grant award. No extensions of the grant period shall be made.
[1.13.5.16 NMAC Rn to 1.13.5.17 NMAC & A, 09/30/02; A, 06/30/04; A, 06/30/05; A, 06/01/06; A, 06/29/07]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.6 NMAC, Sections 11 and 13, effective June 29, 2007.

1.13.6.11 APPLICATION FOR HISTORICAL RECORDS SCHOLARSHIPS:

A. A New Mexico historical records advisory board scholarship application shall be completed in its entirety.

B. The application shall contain a description of the original, permanent or historical records holdings of the sponsoring organization, how training will benefit the sponsoring organization or the records and demonstrate financial need for the scholarship.

C. The applicant shall provide a letter of support from the management of the sponsoring organization.

D. The applicant shall provide a one-page letter stating how the applicant and sponsoring organization will benefit from the requested training.

E. The applicant shall provide a current resume, to include all training received in the last eighteen (18) months.

F. The applicant shall provide a statement of the organization's financial need for funding.

G. The applicant shall provide a statement noting past scholarship funding received from the New Mexico historical records advisory board, to include the total amount of the award and the name of the training session attended.

[~~**D.**~~] **H.** A minimum match shall be required from the eligible entity and applicant of 20 percent of travel costs.

[~~**E.**~~] **I.** Rejection: Applications that do not comply with these criteria shall be rejected.
[1.13.6.11 NMAC - N, 06/30/04; A, 06/29/07]
[Obtain an application by calling (505) 476-7936, faxing a request to (505) 476-7893, or by e-mailing a request to nmhrab@state.nm.us. Refer to the NMHRAB web page at http://www.nmcpr.state.nm.us/nmhrab for additional information about available resources.]

1.13.6.13 POST AWARD REQUIREMENTS:

A. Submit proof of training, including:

(1) a copy of a certificate issued upon completion of the training and

(2) all receipts for appropriate travel expenses (mileage, lodging, etc.).

B. Submit an article to the NMHRAB office for possible publication [~~in agency newsletter, the Quipu or other publications.~~] on agency's website.
[1.13.6.13 NMAC - N, 06/30/04; A, 06/29/07]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.10 NMAC, Records Custody, Access, Storage and Disposition, Sections 7, 13, 15 and 18, effective June 29, 2007.

1.13.10.7 DEFINITIONS:

A. **"Accession"** means the act and procedures involved in a transfer of legal title and the taking of records or papers into the physical custody of an archival agency and the materials involved in such a transfer.

[~~A.~~] B. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

[~~B.~~] C. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).

[~~C.~~] D. "Custodial agency" means the agency responsible for the maintenance, care, or keeping of public records, regardless of whether the records are in that agency's actual physical custody and control.

E. "Electronic tracking system" means a warehouse management system designed to provide the state records center and archives with the tools necessary to efficiently manage the physical inventory and warehouse activities of the records centers.

[~~D.~~] F. "Human readable form" means information that can be recognized and interpreted without the use of technology.

G. "Inactive records" means the point during the life cycle of a record at which the record becomes inactive and thus can be transferred from the office of creation to the state records center for storage and subsequent disposition.

Inactive records are seldom used in the day-to-day operations of an agency however they must be maintained for the duration of their lifecycle.

H. "ID" means a string of numerals, letters and characters that is used for identification.

I. "Life cycle" means the life span or time period from the creation or receipt of a record through its useful life to its final disposition. The five stages of the life cycle of a record include: creation; distribution and use; storage and maintenance; retention and disposition; and archival preservation for records of historical or information value.

[E.] J. "Master microfilm" means the original microform produced from which duplicates or intermediates can be obtained.

[F.] K. "Pick-up only personnel" means personnel authorized by a records custodian or record liaison officer only pick-up records from the state records center and archives (state records center).

[G.] L. "Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. (Section 14-3-2 NMSA 1978).

[H.] M. "Records" means information preserved by any technique in any medium now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

[I.] N. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.

[J.] O. "Records liaison officer" means a person in an agency responsible for authorizing the transfer, withdrawal or destruction of records and who acts on behalf of the records custodian.

[K.] P. "Retention" means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes. Retention requirements are established in records retention and disposition schedules that are approved by the state commission of public records.

[L.] Q. "Records retention and disposition schedules" means rules adopted by the state commission of public records pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

[1.13.10.7 NMAC - Rp, 1 NMAC 3.2.10.1.7, 6/30/2005; A, 6/29/2007]

1.13.10.13 STORAGE OF PAPER RECORDS WITH A FINITE RETENTION AT THE STATE RECORDS CENTER AND ARCHIVES:

A. The state records center and archives (state records center) provides storage to state agencies for inactive public records. Non-record materials shall not be submitted for storage in the records center.

B. Agency's records liaison officers shall complete a storage transmittal form and submit it electronically or manually (hardcopy) to the agency analysis bureau for approval before records can be stored. The form shall contain but is not limited to the following: agency code; agency name; division name; date prepared; page number; office location; name and signature of the records liaison officer; records liaison officer telephone number; records liaison officer fax number; schedule item number; record description; disposition trigger date; destroy date; shipment box number and media type.

C. Agencies that elect to have record liaison officers submit storage transmittal forms electronically, shall submit a written request to the state records center and archives (agency analysis) bureau chief requesting access to the electronic tracking system. The request shall contain but is not limited to the following: agency name, division name, bureau name, record liaison officer's name and contact information. If access is granted the agency analysis bureau shall notify the agency in writing of the password and ID assigned to the record liaison officer.

[C.] D. Agencies approved to store records shall be provided with barcode labels by the records center.

[D.] E. The barcode labels shall be affixed to the records storage boxes prior to delivery to the records center. The labels shall be placed two to three inches below the handle side of the storage box.

[E.] F. The records custodian and records liaison officer shall be notified by the records center when records in storage have met the legal retention period and are eligible for destruction.

[F.] G. If an agency does not respond to the records center's *notice of records eligible for destruction* by the established deadline, the state records center and archives shall charge the custodial agency a storage fee as established in 1.13.2 NMAC, Fees.

[1.13.10.13 NMAC - N, 6/30/2005, A, 6/01/2006; A, 6/29/2007]

1.13.10.15 STORAGE OF ELECTRONIC RECORDS:

A. An agency shall complete a storage transmittal form and submit it to the state records center and archives (agency analysis bureau) for approval. An agency records liaison officer may contact the state records center and archives (records management division) for information and assistance with storage.

(1) The storage transmittal form shall be signed by the agency's records custodian or records liaison officer.

(2) At a minimum, each individual unit (tape, disk, etc.) of electronic media shall be clearly identified with the agency name, record series and disposition date.

B. Agencies that elect to have record liaison officers submit storage transmittal forms electronically, shall submit a written request to the state records center and archives (agency analysis) bureau chief requesting access to the electronic tracking system. The request shall contain but is not limited to the following: agency name, division name, bureau name, record liaison officer's name and contact information. If access is granted the agency analysis bureau shall notify the agency in writing of the password and ID assigned to the record liaison officer.

[B.] C. Withdrawal and access to electronic retention files shall be through the standard records center procedure for access and withdrawal of records. For information on record withdrawal procedures see 1.13.10.11 NMAC.

[C.] D. Agencies are responsible for safeguarding against storage media deterioration and technology changes that can leave electronic records inaccessible over a period of time because of hardware or software obsolescence. To eliminate the possibility of creating a situation where information can no longer be retrieved, agencies shall provide for future record accessibility by:

(1) migrating all electronic records when there are major changes to the next generation of hardware or software; or

(2) migrating only current electronic records to new hardware or software, and converting records not migrated to "human readable form."

[D.] E. The records custodian and records liaison officer shall be notified by the records center when records in storage have met the legal retention period and are eligible to be transferred to archives or are eligible for destruction.

[1.13.10.15 NMAC - N, 6/30/2005; A, 6/29/2007]

1.13.10.18 DIRECT TRANSFER OF RECORDS TO THE ARCHIVES

DIVISION: An agency may transfer records with a permanent retention period to the archives division directly by submitting a request for disposition form to the agency analysis bureau for approval. The request for disposition form shall list only those records that are eligible for transfer to the archives division. The archives division will notify the agency when to deliver the records to the state records center and archives. Once the records are transferred to and accessioned by the archives division, legal title and custody of the records is also transferred from the creating agency to the state records center and archives.
[1.13.10.18 NMAC - N, 6/29/2007]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO DEPARTMENT OF AGRICULTURE

Public Meeting Notice

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the 2007 Acequia and Community Ditch Fund. The meeting will be held on Thursday, July 26, 2007, at 1:30 p.m. in Santa Fe, New Mexico, Room 315, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (505) 646-1091, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (505) 646-1091. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

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
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
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Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.