

**NEW  
MEXICO  
REGISTER**

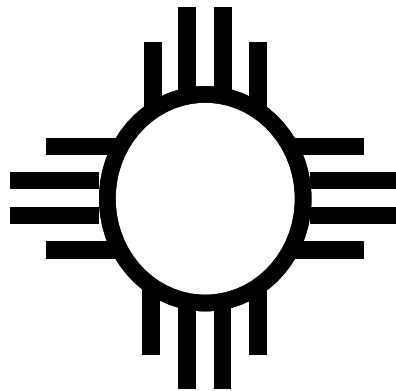


Volume XX  
Issue Number 1  
January 15, 2009



# **New Mexico Register**

**Volume XX, Issue Number 1  
January 15, 2009**



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

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# New Mexico Register

Volume XX, Number 1

January 15, 2009

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***A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered***

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ANIMAL SHELTERING SERVICES BOARD

Regulation and Licensing Department -  
Animal Sheltering Services Board

#### LEGAL NOTICE OF PUBLIC HEARING AND REGULAR BOARD MEETING

The Regulation and Licensing Department, Animal Sheltering Services Board ("Board"), hereby gives notice that the Board will convene a **Public Hearing** with respect to the adoption of regulations as follows:

Title 16, Chapter 24, Part 1 A n i m a l  
Sheltering Services, General Provisions

Title 16, Chapter 24, Part 2 A n i m a l  
Sheltering Services, Licensure and  
Certification

Title 16, Chapter 24, Part 3 A n i m a l  
Sheltering Services, Duties of Licensees  
and Certificate Holders

Title 16, Chapter 24, Part 4 A n i m a l  
Sheltering Services, Complaints,  
Enforcement and Disciplinary Action

Title 16, Chapter 24, Part 5 A n i m a l  
Sheltering Services, Fees

The Hearing will be held on February 18, 2009 at the Regulation and Licensing Department offices located at 5200 Oakland Avenue NE, Albuquerque, New Mexico, 87113, beginning at 9:00 a.m.

Copies of the proposed rules are available on the Animal Sheltering Board's website: [www.rld.state.nm.us/AnimalSheltering/index.html](http://www.rld.state.nm.us/AnimalSheltering/index.html) or by sending a request to the Board at P.O. Box 25101, Santa Fe, New Mexico 87504, or by calling (505) 476-4795 after December 31, 2008.

The public is invited to attend and comment on the proposed regulations. The Hearing Officer will receive oral and written recommendations and comments regarding the proposed regulations. Persons wishing to present their comments at the hearing will need (15) copies of any comments or proposed changes for distribution to the Board and staff.

Written recommendations and comments, including draft language, may be submitted to the Board in advance of the meeting at the address provided below. These recommendations/comments must be provided no later than February 4, 2009, 5:00 p.m., in order to be included in the materials for the public hearings. All other recommendations

and/or comments must be presented at the hearing.

Immediately following the Rule Hearing, the New Mexico Animal Sheltering Services Board will convene a **Regular Board Meeting** to adopt the rules and take care of regular business. The public is welcome to attend. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. A final agenda for the meeting will be available at least 24 hours prior to the meeting and may be obtained by making a written to the Board at P.O. Box 25101, Santa Fe, New Mexico 87504, by calling (505) 476-4795, or by checking the Board's website at: [www.rld.state.nm.us/AnimalSheltering/index.html](http://www.rld.state.nm.us/AnimalSheltering/index.html).

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 meeting, please contact the Board's office at (505) 476-4795, prior to the hearing but not later than February 4, 2009. Public documents can be provided in various accessible formats.

Helga Schimkat, Administrator  
Animal Sheltering Services Board  
P.O. Box 25101  
Santa Fe, New Mexico 87504

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 1:00 P.M., on January 15, 2009, in Hearing Room 2 of the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, New Mexico. The subject of the hearing will be Hospital Services.

The Human Services Department, Medical Assistance Division, is proposing to repeal MAD 721, Hospital Services and replace it with 8.311.2 NMAC, *Hospital Services*. The Department is proposing changes to implement two payment provisions due to the financial constraints of the Department and to assure payments to hospitals are reasonable. The anticipated reduction in expenditures to hospital providers because of these changes is estimated to be \$2,800,000.00 annually.

The remaining proposed changes are to bring the rule into the most current rule format for the New Mexico Human Services

Department, Medical Assistance Division and provide clarification on a number of sections.

Specifically, the following changes are proposed:

- \* Standardize rule language with currently existing provider rules and language reflecting the current accepted trends in the health care industry.
- \* Replacing Children's Mental Health Services Panel with "appropriate reviewing authority."
- \* Replacing accredited residential services specific classification levels with a reference to the distinct levels of care reimbursement available.
- \* Clarifying payment of claims for qualified medicare beneficiary crossover claims for an eligible recipient receiving services in an institution for mental diseases.
- \* Reimbursement for outpatient hospital services will be made using the Outpatient Prospective Payment System (OPPS) Rates.
- \* Reimbursement for radiology services will be paid according to the MAD fee schedule. The amounts may be viewed at [www.hsd.state.nm.us/mad/feeschedules](http://www.hsd.state.nm.us/mad/feeschedules). Other minor corrections for clarity including defining when awaiting placement days are covered.

Interested persons may submit written comments no later than 5:00 p.m., January 15, 2009, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
MANUFACTURED HOUSING  
DIVISION**

Regulation and Licensing Department -  
Manufactured Housing Division  
LEGAL NOTIFICATION OF PUBLIC  
HEARING

The Regulation and Licensing Department,  
Manufactured Housing Division,  
("Division") hereby gives notice that the  
Division will conduct a public hearing to  
consider adopting amendments to New  
Mexico Administrative Code, Part 14.12.2  
NMAC, Manufactured Housing.

The Hearing will be held at the Toney  
Anaya Building located at 2550 Cerrillos  
Road, Hearing Room 1, 2<sup>nd</sup> Floor, Santa  
Fe, New Mexico 87505 on Tuesday,  
February 17, 2009 and will begin at 9:00  
a.m.

Copies of the proposed rules are available  
on the Manufactured Housing Division  
W e b s i t e :  
[www.rld.state.nm.us/MHD/index.htm](http://www.rld.state.nm.us/MHD/index.htm) or by  
sending a request to the Manufactured  
Housing Division, P.O. Box 25101, Santa  
Fe, New Mexico 87504. Phone (505) 476-  
4770.

The public is invited to attend and comment  
on the proposed amendments. Members of  
the Manufactured Housing Committee will  
serve as the Hearing Officer and will  
receive oral and written recommendations  
and comments regarding the proposed  
amendments. Written recommendations and  
comments, including draft language, may  
be submitted to the Division in advance of  
the meeting at the address provided below.  
These recommendations/comments must be  
provided no later than February 6, 2009,  
5:00 p.m. in order to be included in the  
materials for the public hearing. All other  
recommendations/comments must be pre-  
sented at the February 17, 2009 hearing.

Following the Public Hearing, the State of  
New Mexico Manufactured Housing  
Committee will convene a Regular  
Committee Meeting on Tuesday, February  
17, 2009 at 12:30 p.m. The public is wel-  
come to attend. Persons desiring to present  
their views may appear in person or send  
their written comments to the Manufactured  
Housing Division office at P.O. Box 25101,  
Santa Fe, New Mexico 87504.

The Committee may go into closed session  
during the meeting to discuss issues pertain-

ing to issuance, suspension, renewal or rev-  
ocation of a license or limited personnel  
matters as permitted by the Open Meetings  
Act. A final agenda for the meeting will be  
available at least 24 hours prior to the meet-  
ing and may be obtained by making a writ-  
ten, verbal or faxed request to the  
Manufactured Housing Division, P.O. Box  
25101, Santa Fe, New Mexico 87504.  
Phone (505) 476-4770 or Fax: (505) 476-  
4702.

If you are an individual with a disability  
who is in need of a reader, amplifier, qual-  
ified sign language interpreter, or any other  
for of auxiliary aid or service to attend or  
participate in the meeting, please contact  
the Manufactured Housing Division office  
at (505) 476-4770, prior to the meeting but  
not later than February 13, 2009. Public  
documents, including the agenda and min-  
utes, can be provided in various accessible  
formats.

Benito J. Martinez Jr., Director  
Manufactured Housing Division  
P.O. Box 25101  
Santa Fe, New Mexico 87504

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO OFFICE OF THE STATE AUDITOR

**Explanatory paragraph. This is an emergency amendment to 2.2.2 NMAC, Sections 9, 10 and 13, effective December 22, 2008. The amendments allow the Office of the State Auditor to modify its audit report review process. Paragraph (2) of Subsection J of 2.2.2.10 is being changed to read “audit report” from “draft audit report and changing “review guide” from “preliminary review guide.”**

#### 2.2.2.9 REPORT DUE DATES:

A. The auditor shall deliver the organized and bound annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract or send it post marked by the due date.

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

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

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

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

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

(e) councils of governments, district courts, and district attorneys: **December 15**;

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

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

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

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

(3) If an audit report is not delivered on time to the state auditor, the auditor must include this instance of noncompliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. If appropriate, the finding should also be reported as an instance of significant deficiency in the operation of internal control in the agency's internal controls over financial reporting per the SAS 112 Appendix.

(4) An organized hard copy of the report should be submitted for review by the office with the following: a copy of the dated signed engagement letter if not previously submitted; a copy of the signed management representation letter; a list of the passed adjustments, clearly labeled “passed adjustments” (or memo stating there are none); and a copy of the completed state auditor [~~preliminary~~] review guide (available at [www.saonm.org](http://www.saonm.org)). The checklist should reference applicable page numbers in the audit report and be signed by the person completing the review guide. The audit manager should either complete the [~~preliminary~~] review guide or sign off as having reviewed it. A report will not be considered submitted to the office for the purpose of meeting the deadline until a copy of the signed engagement letter (if not previously submitted), a copy of the signed management representation letter, the passed adjustments, and the completed [~~preliminary~~] review guide are also submitted to the office. All separate reports prepared for component units should also be submitted to the office for review, along with a copy of the representation letter, a list of passed audit adjustments and a completed [~~preliminary~~] review guide for each separate report. A separate component unit report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed management representation letter, the passed adjustments, and the completed [~~preliminary~~] review guide are also submitted to the office. If a due date falls on a weekend or holiday, the audit report is due the following workday by 5:00 p.m. If the report is mailed to the state auditor, it should be postmarked no later than 5:00 p.m. on the due date to be considered filed timely. The state auditor will grant no extensions of time to deliver the audit reports.

(5) SAS No. 103 Paragraph 23 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the finan-

cial statements have been prepared and the management representation letter has been signed. SAS No. 113 Paragraph 14 requires the management representation letter to be dated the same date as the independent auditor's report.

(6) **As soon as the auditor becomes aware** that an agency's financial records are incomplete or require adjustment that will make the audit report late, the auditor shall notify the state auditor and oversight agency of the situation in writing. **There must be a separate notification for each late audit report. The notification must include an explanation regarding why the report will be late and must include a concurring signature by the agency.** A copy of the letter must be sent to the applicable oversight agency, public education department, department of finance and administration (DFA), DFA local government division, or higher education department. At the time the audit report is due, if the agency's financial records are still incomplete or require significant adjustment, the IPA or agency may consult the state auditor regarding the opinion to be rendered, but such a discussion should occur no later than the date the audit report is due. It is not the responsibility of the auditor to go beyond the scope of auditing standards generally accepted in the United States of America, or the audit report due date, to assure an unqualified opinion.

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

C. Delivery and release of the audit report:

(1) All audit reports (and all separate reports on component units) must be organized, bound and paginated. **The office is no longer accepting email versions of the audit reports for review.** The IPA shall deliver to the state auditor a hard copy of the **finalized** audit report for review by 5:00 p.m. on the day the report is due. Reports postmarked by the due date will also be considered submitted timely. Unfinished reports or excessively deficient reports will not satisfy this requirement. Such reports will be returned and [~~notice may be given to the New Mexico public accountancy board for possible licensure action~~] the office may take action in accordance with Subsection C of 2.2.2.13 NMAC.

(2) The IPA should review the report using the [~~preliminary~~] review guide available on the website prior to submitting the report to the office. All questions in the

guide must be answered, and the reviewer must sign and date the last page of the guide. The audit manager must either complete the [preliminary] review guide or sign off as having reviewed the completed questionnaire.

~~(2)~~ (3) The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once [all deficiency comments] the review of the report is completed pursuant to 2.2.2.13 NMAC and any significant deficiencies have been corrected by the IPA and the state auditor indicates it is ready to print the report, the required number of hardcopies specified in the audit contract, and an electronic version of the [completely corrected] final report, in PDF format, must be provided to the state auditor.

~~(3)~~ (4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a "release letter." Release of the audit report to the agency prior to it being officially released by the state auditor will result in an audit finding. Every member of the agency's governing authority shall receive a copy of the audit report.

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

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

[2.2.2.9 NMAC - Rp, 2.2.2.9 NMAC, 4-15-08; A/E, 12-22-08]

#### **2.2.2.10 GENERAL CRITERIA:**

J. Exit conference and related confidentiality issues:

(2) The IPA shall deliver to the agency ~~[a draft audit report (stamped "Draft")]~~ an audit report, a list of the "passed audit adjustments," and a copy of all the adjusting entries at the exit conference. The ~~[draft]~~ audit report shall include the independent auditor's report, a complete set of financial statements, notes to the financial statements, audit findings that include responses from agency management, status of prior-year audit findings, and the reports on compliance and internal control required by government auditing standards and the Single Audit Act. The agency will have at least ten (10) workdays to review the ~~[draft]~~ audit report and respond to the IPA regarding any issues that need to be resolved prior to submitting the

report to the state auditor. The audit report (and any separate component unit audit reports) shall be delivered to the state auditor on or before 5:00 p.m. on the due date or send postmarked by the due date specified in Subsection A of 2.2.2.9 NMAC, with copies of the signed management representation letter, the list of "passed audit adjustments," and the completed and signed ~~[preliminary]~~ review guide with page numbers referenced. **A report will not be considered submitted to the office for the purpose of meeting the deadline, until a copy of the signed management representation letter, the passed adjustments, and the completed preliminary review guide are also submitted to the office.**

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 4-15-08; A/E, 12-22-08]

#### **2.2.2.13 REVIEW OF AUDIT REPORTS AND WORKING PAPERS:**

A. Section 12-6-14(B), NMSA requires that the state auditor or personnel of his office designated by him examine all audit reports of agencies made pursuant to contract. All audits under contracts approved by the state auditor are subject to review. The office will review all reports submitted by the IPA to determine if the reports are presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards. The office will review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date.

~~[(1) A preliminary review will be made of all audit reports received for proper reporting and presentation of financial statements, note disclosures and audit findings. The office will charge agencies for this audit report review services.~~

~~(2) The office will review the draft report submitted by the IPA to determine if it is presented in accordance with the requirements of this rule and applicable auditing, accounting and financial reporting standards.~~

~~(3) After the review is completed, the office of the state auditor will fax the review comments (list of deficiencies) to the IPA and the agency. The IPA is required to submit its responses to the review comments and the corrected pages within 20 calendar days of receipt of the list of deficiencies. If all of the corrections are not made, the office will fax another list of deficiencies to the IPA and the agency until all of the corrections have been made to the report. The IPA is required to respond to any subsequent faxes (list of deficiencies) within five calendar days. After all of the report deficiencies have been corrected, the office will fax the IPA and the agency a notice to print and submit the final corrected copies of the audit report to the office.~~

~~At that point, the IPA is required to submit the required number of bound copies required by the audit contract, and an electronic PDF version of the final corrected report to the office within ten calendar days after receipt of the notice to print. If the IPA does not respond to the list of deficiencies and does not submit the final copies of the audit report to the office within the time frames established by this rule, the state auditor will take that fact into consideration when reviewing the IPA's next contract or firm profile for approval.]~~

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

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

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

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

C. If during the course of ~~[such a quality control the state auditor determines that deficiencies noted are significant enough]~~ its review of an audit report, the office finds significant deficiencies that warrant a determination that the audit was not performed in accordance with auditing standards generally accepted in the United States of America or this rule, any or all of the following action(s) may be taken:

(1) as instructed by the office, the IPA may be required to correct the deficiencies and if necessary, the working papers and reissue the audit report to the agency, and any others receiving copies;

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

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

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

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

D. Results of review:

(1) A letter will be issued upon completion of each report or working paper review to advise the IPA of the results of the

review. The IPA is required to respond to all review comments as directed.

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

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

E. Revisions to the audit report: Revisions to the audit reports from reviews conducted by the federal inspector generals and the state auditor will be made by the IPA, to all copies of the audit report held by the agencies and the state auditor. [2.2.2.13 NMAC - Rp, 2.2.2.13 NMAC, 4-15-08; A/E, 12-22-08]

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION  
BOARD OF FINANCE**

This is an amendment to 2.61.4 NMAC, Section 8, effective January 15, 2009

**2.61.4.8 DISTRIBUTION OF  
PRIVATE ACTIVITY BOND ALLOCATIONS:**

A. Capitalized terms.

(1) Single family housing purpose bonds shall mean private activity bonds issued pursuant to Section 143 of the code or mortgage credit certificates issued pursuant to Section 25(c)(2) of the code.

(2) Multifamily housing purpose bonds shall mean private activity bonds issued pursuant to Section 142(a)(7) of the code.

(3) Housing purpose bonds shall mean single family housing purpose bonds and multifamily housing purpose bonds.

(4) Education purpose bonds shall mean private activity bonds issued pursuant to Section 144(b) of the code.

(5) Small issue economic development purpose bonds shall mean private activity bonds issued pursuant to Section 144(a) of the code.

(6) Exempt facility purpose bonds shall mean private activity bonds requiring an allocation of the state ceiling under the code other than education purpose bonds, housing purpose bonds and small issue economic development purpose bonds.

(7) Other purpose bonds shall mean small issue economic development purpose bonds and exempt facility purpose bonds.

(8) Single family housing purpose

allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for single family housing purpose bonds.

(9) Multifamily housing purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for multifamily housing purpose bonds.

(10) Education purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for education purpose bonds.

(11) Other purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for other purpose bonds.

(12) Single family housing purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the single family housing purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to single family housing purpose bonds.

(13) Multifamily housing purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the multifamily housing purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to multifamily housing purpose bonds.

(14) Education purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the education purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to education purpose bonds.

(15) Other purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the other purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation

that the board finds appropriate to allocate for carryforward purposes relating to other purpose bonds.

(16) Allocation percentage means single family housing purpose allocation percentage, multifamily housing purpose allocation percentage, education purpose allocation percentage and other purpose allocation percentage, respectively.

(17) Carryforward allocation percentage means single family housing purpose carryforward allocation percentage, multifamily housing purpose carryforward allocation percentage, housing purpose carryforward allocation percentage, education purpose carryforward allocation percentage and other purpose carryforward allocation percentage, respectively.

B. Issuing authorities requesting at any time during the year distributions of allocations or carryforward election allocations shall submit the following.

(1) For all requests:

(a) a letter from the issuing authority setting forth the amount of the state ceiling requested, the actual or expected date of adoption of the bond resolution or similar documentation by the issuing authority, the expected date of the sale of the bonds, the expected date of closing of the bonds, a statement of any significant conditions that need to be satisfied before the bonds can be issued, and a statement categorizing the private activity bonds as education purpose bonds, single family housing purpose bonds, multifamily housing purpose bonds, small issue economic development purpose bonds or exempt facility purpose bonds, in accordance with the definitions contained in this part, which categorization is subject to board review and recategorization, if appropriate;

(b) a letter from bond counsel for the issuing authority or the user, with supporting citations to state statutes, stating that the private activity bonds can validly be issued under state law by the issuing authority, which the board may refer to its bond counsel or to the state's attorney general for review and comment; if the board is advised by its bond counsel or the attorney general that the opinion of the issuing authority's bond counsel is incorrect, the board may refuse to issue the allocation requested;

(c) a letter from bond counsel for the issuing authority or the user, with supporting citations to the code and the regulations, stating that the bonds are private activity bonds requiring an allocation of the state ceiling; and

(d) a letter from the issuing authority or the user stating why the public purpose to be served by the issuance of the private activity bonds could not be as economically or effectively served by a means

not involving an allocation of the state ceiling;

(e) any fees required by Section 2.61.4.9 NMAC.

(2) For all requests not involving a project, i.e., for single family housing purpose bonds and education purpose bonds, a letter from the issuing authority setting forth the following:

(a) a general description of the location of the proposed borrowers;

(b) experience of the issuing authority in utilizing allocations of the state ceiling.

(3) For all requests involving a project, a letter from the issuing authority or the user including the following:

(a) a copy of the inducement resolution, certified by an official of the issuing authority;

(b) a description of the user, the project and the project's specific location;

(c) the estimated number and types of jobs, both construction and permanent, indicating which are expected to be filled by persons who are residents of the state at the time of submission of the request for allocation and which are expected to be filled by persons who are non-residents at the time of submission of the request for allocation; and a representation that the issuing authority, if it receives an allocation of the state ceiling for the project and issues the related bonds, will provide to the board annually, for four (4) years following the issuance of the bonds, on or before June 1, and after that period upon request of the board, employment reports on a form prescribed by the board setting forth in reasonable detail the numbers and types of workers, and their residency, employed at the project on a full-time equivalent basis during the preceding 12 month period;

(d) the present use or conditions of the project site and evidence that the proposed user of the project has obtained a legally enforceable right to acquire the project site; evidence of approved zoning of the proposed site must be submitted; this requires that project types for which the cap is being requested are not prohibited by the existing zoning of the proposed site;

(e) the maximum amount of the private activity bonds and other obligations to be issued;

(f) a proposed starting date and estimated completion date of the construction of the project, if applicable;

(g) information relating to the feasibility of the proposed project showing that the project or the user will generate revenues and cash flow sufficient to make payments to pay debt service on the bonds, if applicable;

(h) the amount and source of private capital which will be used for the project in addition to bond financing, as well as

a brief table showing estimated sources and uses of funds;

(i) conceptual site plans for the project and a map locating the project area;

(j) in the case of multifamily housing purpose bonds, an explanation of why the housing needs of individuals whose income will make them eligible under Section 142(d) of the code are not being met by existing multifamily housing; information as to the number and percentage of units set aside for households at various income levels or with special needs; the legal mechanisms to monitor and enforce compliance with the set-aside provisions and the experience of the monitoring entity with respect to similar projects; a representation that the issuing authority, if it receives an allocation of the state ceiling for the project and issues the related bonds, will provide to the board annually, for four (4) years following the issuance of the bonds, on or before June 1, and after that period upon request of the board, occupancy reports on a form prescribed by the board setting forth in reasonable detail information as to the occupancy of the rental units by category of household; and the duration of the set-aside provisions;

(k) information relating to the feasibility and proposed utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices;

(l) any other information regarding the economic benefits to the project's community and to the state or which the user believes will aid the board in considering the request for allocation; and

(m) a commitment letter or letter of intent, which may be subject to common contingencies or closing conditions, from the proposed underwriter, placement agent or bond purchaser to underwrite, place or purchase the bonds.

(4) For all requests for an allocation for single family housing purpose bonds where the issuing authority seeks an allocation to be used by the issuing authority for mortgage credit certificates or, in its discretion, for either qualified mortgage bonds or mortgage credit certificates, a letter from the issuing authority stating that a qualified mortgage credit certificate program has been adopted by the issuing authority and a description of how the issuing authority is proposing to use the mortgage credit certificates.

(5) For all requests for an allocation for multifamily housing purpose bonds, the board may condition any allocation on the agreement, on behalf of the issuer or the user of the project or projects, to set aside a specified minimum number of units for households at certain income levels or with special needs.

(6) The board or its staff may ask

for additional supplemental information from the issuing authority to aid the board in considering the request, including information as to the readiness of the issuer to issue the private activity bonds.

C. Within seven business days after an issuing authority issues any private activity bonds or makes a mortgage credit certificate election, the issuing authority or, in the case of a project, bond counsel for the issuing authority or the user or users, shall advise the board by letter of the date the bonds were issued and the total aggregate amount of the issue, or in the case of a mortgage credit certificate election, the date and the amount of the election, referencing in that letter how the applicable allocations and carryforward allocations issued by the board were used for that issue.

D. The authority of the board to issue, on behalf of the governor (as provided in Section 6-20-11 NMSA 1978), the certification required by the code or the regulations, is hereby delegated to the director of the board. The board interprets its authority to issue the certification, on behalf of the governor, as permissive, and not in substitution of the authority of the governor to issue the certification, on the governor's own behalf.

E. The board shall establish the bond issuance expiration date, pursuant to Section 6-20-2A(5) NMSA 1978, on or before the regularly scheduled meeting of the board in November of that year, except as otherwise provided in Paragraph (2) of Subsection K of 2.61.4.8 NMAC.

F. Issuing authorities shall comply with the following restrictions.

(1) Any issuing authority desiring to make a request to the board for an allocation or a carryforward election allocation must comply with established board rules for inclusion on the board's agenda. In order to be considered for inclusion on the agenda, all materials required to be submitted to the board must be submitted by the established time period prior to the meeting date. The board publishes to interested parties notice of the deadline for submission of complete materials prior to each meeting. It is an issuing authority's responsibility to ascertain that deadline and comply with it. All requests for allocations of the state ceiling appearing on the board's agenda for a particular meeting will be deemed to have been received simultaneously.

(2) An issuing authority or the user shall advise the board in writing of any unusable allocation of the state ceiling promptly after it becomes aware the allocation will not be used in full prior to the allocation expiration date. After being advised of a return of an allocation of the state ceiling, the board shall make an announcement of the amount of the return at its next board meeting. The board shall not consider any

requests for allocation of the state ceiling relating to the amount of any returned allocation until the meeting following the announcement of the return. The board may waive this waiting-period requirement for returns of allocations on or after November 1 of any calendar year.

(3) The board will not consider a request for a new allocation of the state ceiling for a project whose previous allocation has expired or was voluntarily returned until the issuing authority has resubmitted all of the information required by Subsection B of 2.61.4.8 NMAC. Such request for a new allocation will not be given a priority over other requests for allocations.

G. The board may require annually, to be presented at the board's regularly scheduled meeting in November, a report from state agencies issuing housing purpose bonds or education purpose bonds of the projected need of those state agencies for allocations of the state ceiling for the remainder of the calendar year and the next three calendar years.

H. At any time during a calendar year, the board may revise current year allocation percentages and carryforward allocation percentages.

I. Whenever the board has on its agenda requests for allocations exceeding the remaining applicable amount of an allocation percentage or carryforward allocation percentage, the board will prioritize requests, as applicable:

(1) by giving preference to small issue economic development purpose bonds over exempt facility purpose bonds;

(2) with respect to small issue economic development purpose bonds, by considering factors such as employment, geographic location, nature and number of jobs created for residents and non-residents, nature of the industry, the utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices, and economic benefits to the community and the state;

(3) with respect to multifamily housing purpose bonds, by considering factors such as percentage of units devoted to persons of low income, services to special needs groups, percentage of financing provided by equity and other financing not requiring an allocation, geographic location, the experience of the agency charged with monitoring compliance with persons of low income requirements, and the utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices;

(4) with respect to single family housing purpose bonds, by considering factors such as targeting to persons of low income, geographic location, and experience of the issuing authority in utilizing

allocations of the state ceiling;

(5) with respect to exempt facility bonds, by considering factors such as employment, geographic location, nature of jobs created, nature of the industry, the utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices, and economic benefits to the community and the state; and

(6) with respect to education purpose bonds, by considering the geographic location of the prospective borrowers.

J. Pre-July 1 allocations:

(1) The act provides, in Section 6-20-3A and B NMSA 1978, that until July 1 in any calendar year, the state ceiling for the calendar year shall be allocated forty percent to state agencies as a group and sixty percent to issuing authorities, as a group, that are not state agencies; provided, however, that such allocation shall be made in accordance with directives, rules or regulations governing the distribution of allocations to be established by the board. This part is such a directive, rule or regulation of the board.

(2) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3A NMSA 1978 are directed to be utilized so that no single state agency may issue more than fifty percent of the allocation to state agencies as a group, except that the board may exceed that amount if the board determines it is not aware of any planned or pending requests for allocations by any state agency prior to July 1 of any year that could not be approved as a result of granting an allocation of more than fifty percent.

(3) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3B NMSA 1978 are directed to be utilized so that no single issuing authority that is not a state agency may issue more than twenty percent of the allocation to issuing authorities that are not state agencies as a group, except that the board may exceed that amount if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority, which is not a state agency, prior to July 1 of any year that could not be approved as a result of granting an allocation of more than twenty percent.

(4) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Sections 6-20-3A and B NMSA 1978 are directed to be utilized so that no more than the single family housing purpose allocation percentage of the state ceiling may be allocated to single family housing purpose bonds, no more than the multifamily housing purpose allocation percentage of the state ceiling may be

allocated to multifamily housing purpose bonds, no more than the education purpose allocation percentage of the state ceiling may be allocated to education purpose bonds and no more than the other purpose allocation percentage of the state ceiling may be allocated to other purpose bonds except that the board may exceed an allocation percentage if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority that could not be approved as a result of granting an allocation in excess of the applicable allocation percentage.

(5) The allocation expiration date for any allocation issued by the board prior to July 1 in any calendar year shall be July 1, subject to automatic and discretionary extension pursuant to Section 6-20-10 NMSA 1978, and the board may condition any discretionary extension or extensions on the completion of both a sale and issuance of the private activity bonds within the extension period.

K. Allocations on or after July 1 until November 1:

(1) On or after July 1 until November 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3D are directed to be utilized so that, after taking into account any allocations still outstanding for or previously used by any issuing authority in that calendar year, no more than the education purpose allocation percentage of the state ceiling may be allocated to education purpose bonds, no more than the single family housing purpose allocation percentage of the state ceiling may be allocated to single family housing purpose bonds, no more than the multifamily housing purpose allocation percentage of the state ceiling may be allocated to multifamily housing purpose bonds, and no more than the other purpose allocation percentage of the state ceiling may be allocated to other purpose bonds except that the board may exceed an allocation percentage if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority prior to November 1 of any year that could not be approved as a result of granting an allocation in excess of the applicable allocation percentage.

(2) The allocation expiration date for any allocation issued by the board on or after July 1 and prior to November 1 of any calendar year shall be the earlier of 120 days from the date of issuance by the board of the allocation or the date of the board's regularly scheduled meeting in December of that year, subject to automatic or discretionary extension pursuant to Section 6-20-10 NMSA 1978, ~~but any discretionary extension granted by the board will be for 30 days or less and the board may condition~~

~~the discretionary extension~~ and the board may condition any discretionary extension or extensions on the completion of both a sale and issuance of the private activity bonds within the extension period. For purposes of this part, the board hereby establishes the date of the board's regularly scheduled meeting in December, as that date may be set by the board annually, as the bond issuance expiration date for private activity bonds that receive an allocation on or after July 1 and prior to November 1.

L. Allocations on or after November 1:

(1) On or after November 1 of any calendar year, no allocations of the state ceiling will be made by the board, unless the board in its discretion deems it advisable. In determining whether it may be advisable, the board may consider, among other factors, the ability of the issuing authority seeking the allocation to issue the private activity bonds prior to the bond issuance expiration date and whether the allocation will further the board's policy to share the state ceiling among single family housing purpose bonds, multifamily housing purpose bonds, education purpose bonds and other purpose bonds in accordance with their respective allocation percentages.

(2) The allocation expiration date for any allocation issued by the board on or after November 1 of any calendar year shall be the bond issuance expiration date established by the board annually pursuant to Subsection E of 2.61.4.8 NMAC.

M. Carryforward election allocations:

(1) Requests for carryforward election allocations may be made by any issuing authority for any carryforward purpose to the board at its regularly scheduled meeting in December of the calendar year, and shall be accompanied by any fees that may be required pursuant to Section 2.61.4.9 NMAC.

(2) If and to the extent requested by issuing authorities, carryforward election allocations of the state ceiling made pursuant to Section 6-20-7 NMSA 1978 are directed to be utilized so that of the balance of any state ceiling remaining unused after the bond issuance expiration date no more than the single family housing purpose carryforward allocation percentage will be allocated to single family housing purpose bonds, no more than the multifamily housing purpose carryforward allocation percentage will be allocated to multifamily housing purpose bonds, no more than the education purpose carryforward allocation percentage will be allocated to education purpose bonds and no more than the other purpose carryforward allocation percentage will be allocated to exempt facility purpose bonds. In determining the carryforward

election allocation among housing purpose bonds, the board may give first preference to qualified mortgage bonds, next preference to issuances of mortgage credit certificates and final preference to multifamily housing purpose bonds. The board may also take into account, if in its discretion it so determines, allocations used in that calendar year for housing purpose bonds, education purpose bonds and exempt facility bonds. If the board does not receive sufficient carryforward election allocation requests for any category of carryforward purpose such that issuing authorities have not requested at least the applicable carryforward allocation percentage of the balance of the state ceiling, the board may in its discretion determine, to the extent requested by issuing authorities, to exceed the applicable carryforward allocation percentage for any category of carryforward purpose.

[2/29/96; 11/30/96; 11/29/97; 2.61.4.8 NMAC - Rn & A, 2.61.4.8 NMAC, 01/01/06; A, 10/15/08; A, 01/15/09]

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION  
BOARD OF FINANCE**

This is an amendment to 2.61.6 NMAC, Sections 2 and 7 through 11, effective January 15, 2009.

**TITLE 2 PUBLIC FINANCE  
CHAPTER 61 STATE INDEBTED-  
NESS AND SECURITIES  
PART 6 BOND PROJECT  
DISBURSEMENTS**

**2.61.6.1 ISSUING AGENCY:** State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM 87501. [2.61.6.1 NMAC - N, 02-28-02]

**2.61.6.2 SCOPE:** [~~State agencies and higher education institutions~~] All agencies with respect to draw down of bond proceeds from severance tax bonds, supplemental severance tax bonds, or general obligation bonds. [2.61.6.2 NMAC - N, 02-28-02; A, 01-15-09]

**2.61.6.3 STATUTORY AUTHORITY:** Section 6-1-1 (E) NMSA 1978 provides for the state board of finance to have general supervision of the fiscal affairs of the state and securities belonging to or in custody of the state, and that the board may make rules and regulations for carrying out these provisions. [2.61.6.3 NMAC - N, 02-28-02]

**2.61.6.4 DURATION:** Permanent. [2.61.6.4 NMAC - N, 02-28-02]

**2.61.6.5 EFFECTIVE DATE:** February 28, 2002, unless a later date is cited at the end of a section. [2.61.6.5 NMAC - N, 02-28-02]

**2.61.6.6 OBJECTIVE:** This rule provides general guidance regarding the financial and legal requirements for draw down of bond proceeds. [2.61.6.6 NMAC - N, 02-28-02]

**2.61.6.7 DEFINITIONS:**  
A. "Agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of the state. It also includes the purchasing division of the general services department and the state purchasing agent, but does not include local public bodies.

B. "Board" means state board of finance.

C. "Capital expenditure" means cost of a type that is properly chargeable to a capital account under general federal income tax principles.

[~~C~~] D. "Draw requests" means agency request for bond proceeds on a form approved from time to time by board staff. [2.61.6.7 NMAC - N, 02-28-02; A, 01-15-09]

**2.61.6.8 INTERPRETION OF AUTHORIZING LANGUAGE:**

A. In accordance with New Mexico law, bond proceed expenditures shall not be made for purposes other than those specified in an appropriation and any other relevant law, and must meet the definition of capital expenditure unless otherwise authorized by law. It is crucial to determine whether the purpose for a draw request falls within an appropriation's permitted use. The following provides general direction and clarification in the interpretation of authorizing language. Agencies may also refer to the Uniform Statute and Rule Construction Act, 12-2A NMSA 1978 for guidance.

(1) Straight-forward language-some appropriation language is relatively unambiguous, either because it is quite specific or quite general, and it should not be difficult to determine whether the draw request falls within the appropriation language. The following examples use both specific and general language.

(a) "To purchase a van" - the specificity would not permit the purchase of a bus or truck or multiple vans. Using the appropriation to prepay rent on a leased

vehicle would not be permitted.

(b) "For [a] (a jail, an engineering study, specific type of equipment, etc.)" - "for [a]" permits the broadest interpretation of the items that could be covered. The words act as a substitute for a particular verb or verbs that might raise interpretive questions or otherwise limit the use of funds. For example, "for a jail" could include purchasing an existing building, purchasing real estate, demolition, the planning and designing, constructing, equipping, furnishing and all other things of capital nature incident to completing the jail.

(2) Standard appropriation language - appropriation language uses certain verbs routinely to anticipate how appropriations will be applied. In order for agencies to be able to make draw requests with certainty based on frequently used verbs or combinations thereof, the following are the board's interpretations of frequently used verbs in authorizing language.

(a) Acquire - obtain something already in existence; does not mean to construct, build or otherwise create the thing to be acquired.

(b) Build - construct a structure or space including fixtures and other built-ins, but not including furnishings or moveable equipment; may include demolition and the design and planning process but does not include acquisition of underlying land; may include the use of modular and prefabricated buildings; may include the cost of commissioning a building for energy efficient green building standards (i.e. LEED certification), as required by law; used interchangeably with "construct".

(c) Construct or construct improvements - see "build".

(d) Design - planning process including location and feasibility studies, architectural drawings and plans, engineering, archaeological and environmental surveys or clearances, zoning, design activities necessary if seeking LEED certification, and all other steps incident to creating a plan for a final product.

(e) Develop - establish the process for future implementation of a project; similar to "design" however less tangible and more conceptual.

(f) Equip or equip improvements - supply tools, furnishing and other implements that are of a permanent or non-depletable nature and are reasonably necessary in the use of the building or other asset for its intended purpose; used interchangeably with "furnish" (however the nouns "equipment" and "furniture" have different meanings, the former referring to mechanical, technological or recreational items, while the latter is generally limited to objects necessary to make a room comfortable); for example: wood chips and shade

structures for playgrounds.

(g) Expand - increase size or capacity.

(h) Feasibility study - a preliminary study undertaken to determine and document a project's viability, the results of which are used to make a decision whether or not to proceed with the project.

~~[(h)]~~ (i) Furnish - ~~[see "equip"]~~ is generally interpreted to mean provide furniture for a building; however, may be used interchangeably with "equip" to mean the provision of items essential for the use of a building or asset for its intended purpose.

(j) Furniture - see "equip".

(k) Governmental entity - a public body such as state agencies, cities, counties, school districts (including charter schools), governmental instrumentalities created by statute.

~~[(k)]~~ (l) Improve - enhance the quality or function of something; used interchangeably with "construct", "remodel", "renovate" and "upgrade"; may include items such as the purchase of books and desks for a library.

~~[(l)]~~ (m) Information technology - includes hardware, software when the software is needed for the intended use of the facility and is a one-time expense, wiring, cooling (where necessary) and related costs, but does not include remodeling, space dividers or other furniture; does not include consumables such as toner, batteries, CD-ROMs, etc. unless included as part of the package or otherwise allowed.

~~[(m)]~~ (n) Install - bring into service, including necessary labor and parts directly related to the installation, but does not include the cost of the item actually being installed.

(o) Plan - see "develop".

(p) Prepare - make ready for a future purpose, use or activity.

~~[(p)]~~ (q) Purchase - see "acquire".

~~[(q)]~~ (r) Remodel - see "improve".

~~[(r)]~~ (s) Renovate - see "improve".

~~[(s)]~~ (t) Repair - return to usefulness.

~~[(t)]~~ (u) Replace - substitute with identical or similar item.

~~[(u)]~~ (v) Upgrade - see "improve".

B. Special meanings in road/street context - Unless specifically limited by the legislature, "to improve a road" includes anything that will make the existing road better and is deemed appropriate in the discretion of the agency responsible for the project, and could include acquisition of rights-of-way. However, the [State Highway and Transportation Department] department of transportation has taken the position that "to construct a road" does not

include planning, designing, right-of-way activities and acquisition, environmental documentation, environmental clearances, and other pre-construction project development tasks. Preliminary activities such as those would only be included if the legislature specified for "planning and designing."

C. Training of government employees - if training is purchased from the vendor or other third party in connection with the acquisition of any permitted property, which training is necessary to the initial use of the property, the appropriation may be used for such training costs. However, no part of the appropriation shall be used to pay for the salaries or wages of government employees during training, or travel costs for government employees to attend training.

D. Litany - when multiple verbs are listed in the appropriation, assume that they are used deliberately and to the exclusion of those not listed. When "and" is used in a list, the appropriation must be applied to all the purposes listed, unless the appropriation act provides that when the amount appropriated is not enough to pay for all the purposes listed [~~and joined by "and"~~], the funds may be expended on fewer than all of them. When "or" is used, the appropriation may be applied to any or all of the purposes listed.

E. Unusual or special appropriation language - if the appropriation language is not clear, the following interpretation guidelines may be helpful.

~~[(E)]~~ Technical term - determine whether a technical term or term of art has an established meaning within a particular field, industry or context, such as the following examples:

~~[(E)]~~ (1) "software" - ~~[look to computer dictionary, etc.]~~ software that is a one time expenditure if necessary for intended use of hardware;

~~[(E)]~~ (2) accounting term - if the term is commonly thought of as an accounting term, apply generally accepted accounting principles (GAAP) and government accounting standards board (GASB) interpretations;

~~[(E)]~~ (3) tax term - if the term is commonly thought of as a tax term, consult the Internal Revenue Code for meaning.

~~[(2)]~~ ~~Legislative intent - occasionally an Agency will submit a written request to the legislature or a known group will have lobbied for a particular appropriation. If so, consideration may be given to such information, but only where it is clear what the legislature is responding to in granting the appropriation.~~

~~[(3)]~~ ~~Uniform Statute and Rule Construction Act - this Act provides general guidelines for interpretation including among others:~~



~~(a) principles governing the computation of time, as well as miscellaneous specific definitions (though generally not applicable to public finance);~~

~~(b) give effect to known objective and purpose; give effect to entire text;~~

~~(c) general words following particulars are presumed to be restricted to the meaning of the particulars;~~

~~(d) legislature had in mind nothing other than that enumerated so do not expand the meaning of an unambiguous term or phrase;~~

~~(e) ordinary words are given ordinary meaning where no evidence of legislative intent exists to do otherwise.]~~

F. Errors in appropriation language - if the entity, location or object erroneously referenced in the appropriation actually exists, then the funds cannot be applied otherwise, regardless of a suspected different legislative intent. If the entity, location or object erroneously referenced in the appropriation is non-existent, then the funds can be applied to the appropriate cause, if there is sufficient evidence that was the intended use.

G. Other considerations - the interpretations must make sense and not violate applicable law.

(1) Avoid unconstitutional results:

(a) Anti-donation - the appropriation cannot be given to a non-governmental entity; the item to be purchased or constructed must be owned by a governmental entity.

(b) Control of state - no appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state.

~~[(c) Balanced budget requirement — precludes appropriations for operating expenses (i.e. salaries) that should instead be incorporated into the state budget.]~~

(2) Consider the appropriation in terms of the current context/situation of a project.

(3) Favor an interpretation that would make full use of the appropriation and avoid unachievable results.

(4) Assess the sufficiency of funds to support the interpretation (however, if an appropriation for a project is not sufficient to complete all the purposes specified, the appropriation may be expended for any portion of the purposes specified in the appropriation, if the appropriation act so states).

(5) Avoid interpretations that may jeopardize any tax-exempt bonds issued to finance the appropriation:

(a) Capital expenditure - appropriations should be used for ~~[the acquisition, construction, or improvement of land or property of a character subject to the~~

~~allowance for depreciation as permitted by the IRS] a capital expenditure.~~

(b) Private use - if the item acquired or created will be used principally by one or a few private sector entities (including a non-profit organization) this should be brought to the attention of the board, unless previously discussed.

(c) Reimbursement and refinancing - if the funds are to be used to reimburse an expense paid prior to the issuance of the bonds, or to pay off a loan used to pay for such expense, this should be brought to the attention of the board, unless previously discussed. Generally the look back period for reimbursement is 60 days prior to the date a bill is approved by the governor (severance tax bonds) or approved by the voters (general obligation bonds).

~~(6) Operating expenses - unless expressly provided for by statute, bond proceeds may not be used to pay for operating expenses (e.g. salaries and in-house labor).~~

~~(7) Indirect expenses - generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.~~

H. Interpretive memoranda - in order to develop consistency in interpretations, the board will document specific interpretive decisions that arise. The interpretive memoranda will be provided to agencies making draw requests based on interpreting language, and may be relied on for future interpretations of the same or similar terms.

[2.61.6.8 NMAC - N, 02-28-02; A, 01-15-09]

**2.61.6.9 PAYMENT OF CAPITAL PROJECT EXPENSES, DRAW REQUEST PROCEDURES:**

A. The recipient of bond proceeds is the governmental entity that will carry-out the completion of the project. In many cases, the agency named to receive the appropriation will also be the entity responsible for the project. In other cases, the named agency will be an intermediate agency that is expected to make a grant to a local government entity to carry out the completion of the project. Either an intermediate agency may make a draw request to the board on behalf of a local government entity as recipient, or an agency itself as recipient may make the request directly to the board, unless otherwise approved by the board director.

(1) Documentation to support draw requests from agency:

(a) one draw request form for each project (1 original and 2 copies) ~~[per~~

~~draw period, unless specified on the form that a draw has previously been made on the project during the same draw period];~~

(b) proof of payment - notarized certification from an authorized signatory that expenditures are valid or actual receipts;

~~(c) [authorization agreement for wire transfer (if first time payee by wire transfer)] ACH transfer information;~~

~~(d) [wire transfer information] evidence that conditions have been satisfied if applicable;~~

~~(e) certification that the statements made in the original certification and questionnaire remain true, including use of facility.~~

(2) Intermediate agencies typically submitting draw requests to the board on behalf of local entity recipients: ~~[Department of Environment, State Highway and Transportation Department, Office of Indian Affairs, Local Government, Education Department and State Agency on Aging] environment department, department of transportation, Indian affairs department, local government division, public education department and aging and long term services department:~~

~~(a) one draw request form for each project (1 original and 2 copies);~~

~~[(a)] (b) proof of payment - a notarized certification from an authorized signatory that expenditures are valid or actual receipts;~~

~~[(b) authorization agreement for wire transfer (if first time payee by wire transfer)];~~

~~(c) [wire] ACH transfer information;~~

~~(d) evidence that conditions have been satisfied if applicable;~~

~~(e) certification that the statements made in the original certification and questionnaire remain true, including use of facility.~~

B. Frequency - draw requests ~~[will be processed] are due in the board of finance office by 3:00 p.m. on the 1st, 10th, and 20th day of each month or by 9:00 a.m. the next business day if the 1st, 10th [and/or] or 20th falls on a weekend or holiday (the "draw request deadline").~~ Draw requests submitted on or before the draw request deadline will result in funds available six business days after the draw request deadline.

C. The minimum draw request amount per project shall be \$1,500 unless it is the final draw request or otherwise recommended by the intermediate agency.

[2.61.6.9 NMAC - N, 02-28-02; A, 01-15-09]

**2.61.6.10 ART IN PUBLIC PLACES (AIPP) ACT:**



A. A portion of appropriations for ~~[capital expenditures]~~ construction and major renovations shall be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings.

(1) "Appropriations for ~~[capital expenditures]~~ construction and major renovations" include appropriations for that purpose to any public entity from severance tax bonds, general obligation bonds, or supplemental severance tax bonds, both taxable and tax-exempt.

(2) ~~[Application of the AIPP Act is automatic and need not be directed in the individual appropriation acts, though the legislature may specifically declare that the AIPP Act shall not apply.] Under the AIPP Act, all agencies shall set aside the lesser of \$200,000 or one percent of the amount appropriated for new construction or major renovation (exceeding \$100,000) to use for art in, upon or around the building being constructed or renovated. In addition, an amount of money equal to the lesser of \$200,000 or one percent of the amount appropriated for new construction or major renovations of auxiliary buildings, as defined in the AIPP Act, shall be accounted for separately and expended for acquisition and installation of art for existing public buildings, as defined.~~

~~[(3) "Public buildings" include buildings under the control and management of the Property Control Division of the General Services Department; Department of Game and Fish; the Energy, Minerals and Natural Resources Department; state Highway and Transportation Department; State Fair Commission; Supreme Court; Commissioner of Public Lands; Office of Cultural Affairs; governing boards of the state educational institutions and statutorily created post secondary education institutions; Education Department; and the legislature.~~

~~(4) "Public buildings" also includes all other buildings constructed or renovated with funds appropriated by the legislature, such as local government projects and those owned by Indian Nations, tribes or pueblos funded by state bond proceeds.~~

~~(5) "Public buildings" does NOT include auxiliary buildings such as maintenance plants, correctional facilities, warehouses or temporary structures. If the amount set aside relates to construction or renovation to an excluded building (such as a maintenance plant, correctional facility, warehouse or temporary structure), the amount is accounted for separately and is to be used by the Office of Cultural Affairs to acquire art for existing public buildings.~~

~~(6) Under the AIPP Act, all Agencies shall set aside the lesser of~~

~~\$200,000 or 1 percent of the amount appropriated for new construction or major renovation (exceeding \$100,000) to use for art in, upon or around the building being constructed or renovated.]~~

B. The board's role in administering the AIPP Act is as follows.

(1) After each bond issue, the board submits a list of approved projects to the arts division of the ~~[Office]~~ department of cultural affairs, which administers the AIPP fund. The arts division determines which projects the AIPP Act applies to and advises the board accordingly. Based on that determination, the board sets aside the requisite amount from each applicable project in a separate AIPP pooled fund for each bond issue.

(2) When the arts division of ~~[Office]~~ the department of cultural affairs is ready to purchase or commission art, the office submits a draw request to the board which then makes the disbursement out of the AIPP ~~[fund]~~ project.

C. Frequency - Draw requests ~~[will be processed]~~ are due in the board of finance office by 3:00 p.m. on the 1st, 10th and 20th day of each month or by 9:00 a.m. the next business day if the 1st, 10th ~~[and/or]~~ or 20th falls on a weekend or holiday (the "draw request deadline"). Draw requests submitted on or before the draw request deadline will result in funds available six business days after the draw request deadline.

[2.61.6.10 NMAC - N, 02-28-02; A, 01-15-09]

**2.61.6.11 EXCEPTIONS TO THE RULE:** In the absence of specific legislative authority or board-issued guidance to the contrary, this rule governs the disbursement of all bond proceeds to agencies. Further, the executive director of the board, in consultation with bond and board counsel, may approve exceptions to the provisions herein when circumstances warrant.

[2.61.6.11 NMAC - N, 01-15-09]

**HISTORY OF 2.61.6 NMAC:**  
[RESERVED]

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

This is an emergency repeal and replace of 8 NMAC 4.MAD.721, Hospital Services, filed 1-18-1995. It is replaced by 8.311.2 NMAC, Hospital Services, effective 1-1-2009.

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

**TITLE 8 SOCIAL SERVICES  
CHAPTER 311 HOSPITAL SERVICES  
PART 2 HOSPITAL SERVICES  
VICES**

**8.311.2.1 ISSUING AGENCY:**  
Human Services Department (HSD).  
[8.311.2.1 NMAC - Rp/E, 8 NMAC 4.MAD.000.1, 1/1/09]

**8.311.2.2 SCOPE:** This rule applies to the general public.  
[8.311.2 2 NMAC - Rp/E, 8 NMAC 4.MAD.000.2, 1/1/09]

**8.311.2.3 STATUTORY AUTHORITY:** The New Mexico medical program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See NMSA 1978 Section 27-2-12 et seq.  
[8.311.2.3 NMAC - Rp/E, 8 NMAC 4.MAD.000.3, 1/1/09]

**8.311.2.4 DURATION:**  
Permanent  
[8.311.2.4 NMAC - Rp/E, 8 NMAC 4.MAD.000.4, 1/1/09]

**8.311.2.5 EFFECTIVE DATE:**  
January 1, 2009, unless a later date is cited at the end of a section.  
[8.311.2.5 NMAC - Rp/E, 8 NMAC 4.MAD.000.5, 1/1/09]

**8.311.2.6 OBJECTIVE:** The objective of these rules is to provide instructions for the service portion of the New Mexico medical assistance programs.  
[8.311.2.6 NMAC - Rp/E, 8 NMAC 4.MAD.000.6, 1/1/09]

**8.311.2.7 DEFINITIONS:**  
[RESERVED]

**8.311.2.8 MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.  
[8.311.2.8 NMAC - Rp/E, 8 NMAC 4.MAD.002, 1/1/09]

**8.311.2.9 HOSPITAL SERVICES:** MAD pays for medically neces-

sary health services furnished to eligible recipients. To help New Mexico MAD eligible recipients receive necessary services, MAD pays for inpatient, outpatient, and emergency services furnished in general hospital settings.

[8.311.2.9 NMAC - Rp/E, 8 NMAC 4.MAD 721, 1/1/09]

#### **8.311.2.10 ELIGIBLE PROVIDERS:**

Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners of facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD processing contractor. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions and other pertinent material, and to obtain answers to questions found in the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. Eligible providers include:

A. a general acute care hospital, rehabilitation, extended care or other specialty hospital:

(1) licensed by the New Mexico department of health (DOH), and

(2) participating in the Title XVIII (medicare) program or accredited by the joint commission (previously known as JCAHO accreditation);

B. a rehabilitation inpatient unit or a psychiatric unit in an inpatient hospital (referred to as a prospective payment system exempt unit (PPS-exempt));

C. a free-standing psychiatric hospital may be reimbursed for providing inpatient and outpatient services to an eligible recipient under 21 years of age; see *MAD-742.1, Inpatient Psychiatric Services in Free-Standing Hospital*;

D. a border area and out-of-state hospital is eligible to be reimbursed by MAD if its licensure and certification to

participate in its state medicaid or medicare program is accepted in lieu of licensing and certification by MAD; and

E. a hospital certified only for emergency services is reimbursed for furnishing inpatient and outpatient emergency services for the period during which the emergency exists.

[8.311.2.10 NMAC - Rp/E, 8 NMAC 4.MAD 721.1, 1/1/09]

#### **8.311.2.11 PROVIDER RESPONSIBILITIES:**

A. A provider who furnishes services to a MAD eligible recipient must comply with all federal and state laws, regulations and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, as well as current program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient. See 8.302.1 NMAC, *General Provider Policies*.

C. A provider agrees to be paid by the MAD managed care organizations (MCOs) at any amount mutually-agreed between the provider and MCOs when the provider enters into contracts with MCOs contracting with HSD for the provision of managed care services to the MAD population.

(1) If the provider and the MCOs are unable to agree to terms or fail to execute an agreement for any reason, the MCOs shall be obligated to pay the provider one-hundred percent (100%) of the "applicable reimbursement rate" based on the provider type.

(2) The "applicable reimbursement rate" is defined as the rate paid by HSD to the provider participating in medicaid or other medical assistance programs administered by HSD and excludes disproportionate share hospital and medical edu-

cation payments.

[8.311.2.11 NMAC - Rp/E, 8 NMAC 4.MAD.721.2, 1/1/09]

#### **8.311.2.12 COVERED SERVICES:**

MAD covers inpatient and outpatient hospital, and emergency services which are medically necessary for the diagnosis, the treatment of an illness or injury or as required by the condition of the eligible recipient. MAD covers items or services ordinarily furnished by a hospital for the care and treatment of an eligible recipient. These items or services must be furnished under the direction of a MAD physician, podiatrist, or dentist with staff privileges in a hospital which is an enrolled MAD provider. Services must be furnished within the scope and practice of the profession as defined by state laws and in accordance with applicable federal and state and local laws and regulations.

[8.311.2.12 NMAC - Rp/E, 8 NMAC 4.MAD 721.3, 1/1/09]

#### **8.311.2.13 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:**

All MAD services are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for authorization of services.

A. Prior authorization: Certain procedures or services may require prior authorization from MAD or its designee. A procedure that requires prior authorization is primarily one for which the medical necessity may be uncertain, which may be for cosmetic purposes, or which may be of questionable effectiveness or long-term benefit.

(1) All transfers from one acute care DRG reimbursed hospital to another DRG reimbursed hospital.

(2) All inpatient stays for a PPS-exempt psychiatric unit of a general acute care hospital requires admission and continued stay reviews.

(3) All inpatient stays in a rehabilitation hospital, a PPS-exempt rehabilitation unit in a general acute care hospital, and an extended care or other specialty hospital requires admission and continued stay reviews.

(4) Outpatient physical, occupational, and speech therapies services require prior authorization.

(5) Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** Prior authorization of services does not guarantee that an individual is eligible for MAD services. A provider must verify that an individual is eligible for the MAD services at the time services are furnished and determine if an eligible recipient has other health insurance.

C. **Consideration:** A provider who disagrees with a prior authorization request denial or another review decision may request a re-review and a reconsideration. See *MAD-953, Reconsideration of Utilization Review Decisions*.

[8.311.2.13 NMAC - Rp/E, 8 NMAC 4.MAD 721.4, 1/1/09]

**8.311.2.14 INPATIENT SERVICES:** MAD coverage of some inpatient services may be conditional or limited.

A. **Medically warranted days:** A general hospital is not reimbursed for days of acute level inpatient services furnished to an eligible recipient as a result of difficulty in securing alternative placement. A lack of nursing facility placement is not sufficient grounds for continued acute-level hospital care.

B. **Awaiting placement days:**

(1) When the MAD utilization review (UR) contractor determines that an eligible recipient no longer meets the care criteria in a rehabilitation, extended care or other specialty hospital or PPS exempt rehabilitation hospital but requires a nursing facility level of care which may not be immediately located, those days during which the eligible recipient is awaiting placement in a lower level of care facility are termed "awaiting placement days". Payment to the hospital for awaiting placement days is made at the weighted average rate paid by MAD for the level of nursing facility services required by the eligible recipient (high NF or low NF).

(2) When the MAD UR contractor determines that a recipient under 21 years of age no longer meets acute care criteria and it is verified that an appropriate reviewing authority has made a determination that the eligible recipient requires a residential level of care which may not be immediately located, those days during which the eligible recipient is awaiting placement to the lower level of care are termed "awaiting placement days". MAD does not cover residential care for individu-

als over 21 years of age.

(3) Payment to the hospital for awaiting placement days is made at the weighted average rate paid by MAD for residential services that may have different levels of classification based on the medical necessity for the placement of the eligible recipient. See 8.302.5 NMAC, MAD Billing Instructions. A separate claim form must be submitted for awaiting placement days.

(4) MAD does not pay for any ancillary services for "awaiting placement days". The rate paid is considered all inclusive. Medically necessary physician visits, or, in the case of the eligible recipient under twenty-one (21) years of age requiring residential services, licensed Ph.D. psychologist visits, are not included in this limitation.

C. **Private rooms:** A hospital is not reimbursed for the additional cost of a private room unless the private room is medically necessary to protect the health of the eligible recipient or others.

D. **Services performed in an outpatient setting:** MAD covers certain procedures performed in an office, clinic, or as an outpatient institutional service which are alternatives to hospitalization. Generally, these procedures are those for which an overnight stay in a hospital is seldom necessary.

(1) An eligible recipient may be hospitalized if there is an existing medical condition which predisposes the eligible recipient to complications even with minor procedures.

(2) All claims for one- or two-day stays for hospitalization are subject to prepayment or post-payment review.

E. **Observation stay:** If a physician orders an eligible recipient to remain in the hospital for less than twenty-four (24) hours, the stay is not covered as inpatient admission, but is classified as an observation stay. An observation stay is considered an outpatient service.

(1) The following are exemptions to the general observation stay definition:

(a) the eligible recipient dies;

(b) documentation in medical records indicates that the eligible recipient left against medical advice or was removed from the facility by his legal guardian against medical advice;

(c) an eligible recipient is transferred to another facility to obtain necessary medical care unavailable at the transferring facility; or

(d) an inpatient admission results in delivery of a child.

(2) MAD or its designee determines whether an eligible recipient's admission falls into one of the exempt categories or considers it to be a one- or two- day stay.

(a) If an admission is considered an observation stay, the admitting hospital is notified that the services are not covered as an inpatient admission.

(b) A hospital must bill these services as outpatient observation services. However, outpatient observation services must be medically necessary and must not involve premature discharge of an eligible recipient in an unstable medical condition.

(3) The hospital or attending physician can request a re-review and reconsideration of the observation stay decision. See MAD 953, *Reconsideration of Utilization Review Decisions*.

(4) The observation stay review does not replace the review of one- and two-day stays for medical necessity.

(5) MAD does not cover medically unnecessary admissions, regardless of length of stay.

F. **Review of hospital admissions:** All cases requiring a medical peer review decision on appropriate use of hospital resources, quality of care or appropriateness of admission, transfer into a different hospital, and readmission are reviewed by MAD or its designee. MAD or its designee performs a medical review to verify the following:

(1) admission to acute care hospital is medically necessary;

(2) all hospital services and surgical procedures furnished are appropriate to the eligible recipient's condition and are reasonable and necessary to the care of the eligible recipient;

(3) patterns of inappropriate admissions and transfers from one hospital to another are identified and are corrected; hospitals are not reimbursed for inappropriate admissions or transfers; and

(4) the method of payment and its application by a hospital does not jeopardize the quality of medical care.

G. **Non-covered services:** MAD does not cover the following specific inpatient benefits:

(1) a hospital service which is not considered medically necessary by MAD or its designee for the condition of the eligible recipient;

(2) a hospital service that requires prior authorization for which the approval was not requested except in cases with extenuating circumstances as granted by MAD or its designee;

(3) a hospital service which is furnished to an individual who was not eligible for MAD services on the date of service;

(4) an experimental or investigational procedure, technology or therapy and the service related to it, including hospitalization, anesthesiology, laboratory tests, and imaging services; see MAD-765, *Experimental or Investigational Procedures*

or Therapies;

(5) a drug classified as "ineffective" by the federal food and drug administration;

(6) private duty or incremental nursing services;

(7) laboratory specimen handling or mailing charges; and

(8) formal educational or vocational training services which relate to traditional academic subjects or training for employment.

**H. Covered services in hospitals certified for emergency services-only:** Certain inpatient and outpatient services may be furnished by a hospital certified to participate in the Title XVIII (medicare) program as an emergency hospital. MAD reimburses a provider only for treatment of conditions considered to be medical or surgical emergencies. "Emergency" is defined as a condition which develops unexpectedly and needs immediate medical attention to prevent the death or serious health impairment of the eligible recipient which necessitates the use of the most accessible hospital equipped to furnish emergency services.

(1) MAD covers the full range of inpatient and outpatient services furnished to an eligible recipient in an emergency situation in a hospital which is certified for emergency services-only.

(2) MAD reimbursement for emergency services furnished in a hospital certified for an emergency services-only is made for the period during which the emergency exists.

(a) Documentation of the eligible recipient's condition, the physician's statement that emergency services were necessary, and the date when, in the physician's judgment, the emergency ceased, must be attached to the claim form.

(b) An emergency no longer exists when it becomes safe from a medical standpoint to move the eligible recipient to a certified inpatient hospital or to discharge the eligible recipient.

(c) Reimbursement for services in an emergency hospital is made at a percentage of reasonable charges as determined by HSD. No retroactive adjustments are made.

**I. Patient self determination act:** An adult eligible recipient must be informed of his right to make health decisions, including the right to accept or refuse medical treatment, as specified in the Patient Self-Determination Act. See 8.302.1 NMAC, *General Provider Policies*.

**J. Psychiatric services furnished to an eligible recipient under 21 years of age in PPS-exempt units of acute care hospitals:** Services furnished to a MAD eligible recipient must be under the direction of a physician. In the case of psychiatric services furnished to an eligible

recipient under 21 years of age, these services must be furnished under the direction of board eligible/board certified psychiatrist, or a licensed psychologist working in collaboration with a similarly qualified psychiatrist. The psychiatrist must conduct an evaluation of the eligible recipient, in person, within 24 hours of admission. In the case of an eligible recipient under 12 years of age, the psychiatrist must be board eligible/board certified in child or adolescent psychiatry. The requirement for the specified psychiatrist for an eligible recipient under age 12 and under 21 years of age may be waived when all of the following conditions are met:

(1) the need for admission is urgent or emergent, and transfer or referral to another provider poses an unacceptable risk for adverse patient outcomes; and

(2) at the time of admission, a board eligible/board certified psychiatrist, or in the case of an eligible recipient under 12 years of age, a child psychiatrist is not accessible in the community in which the facility is located; and

(3) another facility which is able to furnish a board eligible/board certified psychiatrist, or in the case of an eligible recipient under 12 years of age, a child psychiatrist, is not available or accessible in the community; and

(4) the admission is for stabilization only and transfer arrangements to the care of a board eligible/ board certified psychiatrist, or in the case of an eligible recipient under 12 years of age, a child psychiatrist is made as soon as possible with the understanding that if the eligible recipient needs to transfer to another facility, the actual transfer will occur as soon as the eligible recipient is stable for transfer, in accordance with professional standards.

**K. Reimbursement for inpatient services:** MAD reimburses for inpatient hospital services using different methodologies. See 8.311.3 NMAC, *Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services*.

(1) All services or supplies furnished during the hospital stay are reimbursed by the hospital payment amount and no other provider may bill for services or supplies; an exception to this general rule applies to durable medical equipment delivered for discharge and ambulance transportation.

(2) A physician's services are not reimbursed to a hospital under Hospital Services regulations, but may be payable as a professional component of a service. See 8.310.2 NMAC, *Medical Services Providers*, for information on the professional component of services.

(3) Transportation services are billed as part of a hospital claim if the hos-

pital is DRG reimbursed and transportation is necessary during the inpatient stay.

(a) Transportation is included in a DRG payment when an eligible recipient is transported to a different facility for procedure(s) not available at the hospital where the eligible recipient is a patient.

(b) Exceptions are considered for air ambulance services operated by a facility when air transportation constitutes an integral part of the medical services furnished by the facility. See 8.324.7 NMAC, *Transportation Services*.

**L. Reimbursement limitations for capital costs:** Reimbursement for capital costs follows the guidelines set forth in HIM-15. See P.L. 97-248 (TEFRA). In addition, MAD applies the following restrictions for new construction:

(1) The total basis of depreciable assets does not exceed the median cost of constructing a hospital as listed in an index acceptable to MAD, adjusted for New Mexico costs and for inflation in the construction industry from the date of publication to the date the provider is expected to become a MAD provider.

(2) The cost of construction is expected to include only the cost of buildings and fixed equipment.

(3) A reasonable value of land and major movable equipment is added to obtain the value of the entire facility.

[8.311.2.14 NMAC - Rp/E, 8 NMAC 4.MAD 721.5, 1/1/09]

**8.311.2.15 OUTPATIENT SERVICES:** MAD covers outpatient services which are medically necessary for prevention, diagnosis or rehabilitation as indicated by the condition of an eligible recipient. Services must be furnished within the scope and practice of a professional provider as defined by state laws and regulations.

**A. Outpatient covered services:** Covered hospital outpatient care includes the use of minor surgery or cast rooms, intravenous infusions, catheter changes, first aid care of injuries, laboratory and radiology services, and diagnostic and therapeutic radiation, including radioactive isotopes. A partial hospitalization program in a general hospital psychiatric unit is considered under outpatient services. See 8.321.5 NMAC, *Outpatient Psychiatric Services and Partial Hospitalization*.

**B. Outpatient noncovered services** MAD does not cover the following specific outpatient benefits:

(1) outpatient hospital services not considered medically necessary for the condition of the eligible recipient;

(2) outpatient hospital services that require prior approval for which the approval was not requested except in cases with extenuating circumstances as granted

by MAD or its designee;

(3) outpatient hospital services furnished to an individual who was not eligible for MAD services on the date of service;

(4) experimental or investigational procedures, technologies or therapies and the services related to them, including hospitalization, anesthesiology, laboratory tests, and imaging services; see 8.325.6 NMAC, *Experimental or Investigational Procedures or Therapies*;

(5) drugs classified as "ineffective" by the federal food and drug administration;

(6) laboratory specimen handling or mailing charges; and

(7) formal educational or vocational services which relate to traditional academic subjects or training for employment;

**C. Prior authorization:** Certain procedures or services performed in outpatient settings can require prior approval from MAD or its designee. Outpatient physical, occupational, and speech therapies services require prior authorization.

**D. Reimbursement for outpatient services:** Effective January 1, 2009, outpatient hospital services are reimbursed using outpatient prospective payment system (OPPS) rates.

(1) Reimbursement for laboratory and radiology services will not exceed maximum levels established by MAD.

(2) Reimbursement for oral medications dispensed in a hospital outpatient setting is limited to usual charges up to a maximum of two dollars per visit per eligible recipient.

(3) Services or supplies furnished by a provider under contract or through referral must meet the contract services requirements and be reimbursed based on approved methods. See 8.302.2 NMAC, *Billing For Medicaid Service*.

(4) For MAD fee-for-service (FFS) contracted providers only, when applicable due to federal requirements, the OPPS rates will be implemented following approval of the New Mexico state plan by the centers for medicare and medicaid services (CMS). Until implemented, reimbursement for a MAD fee-for-service provider will be made using the medicare allowable cost method, reducing medicare allowable costs by three percent (3%). The interim rate of payment is established by MAD. [8.311.2.15 NMAC - Rp/E, 8 NMAC 4.MAD 721.6, 1/1/09]

**8.311.2.16 EMERGENCY ROOM SERVICES:** MAD covers emergency room services which are medically necessary for the treatment of medical or

surgical emergencies to an eligible recipient and which are within the scope of the MAD program.

**A. Covered emergency services:** A medical or surgical emergency is defined as a condition which develops unexpectedly and requires immediate medical attention to prevent death or serious impairment to the health of an eligible recipient.

**B. Retrospective review:** An emergency room service may be subject to prepayment or post-payment review verifying whether or not the circumstances warranted emergency room service. If it is determined that an emergency service was furnished in a non-emergency situation, the emergency room charge may be denied.

(1) The eligible recipient or their personal representative is responsible for payment of a denied emergency room charge and may be billed directly by the provider.

(2) The use of an ancillary service is reviewed and paid if medically appropriate for the condition treated, even though the condition was not an emergency. An ancillary service which is denied as not medically appropriate may not be billed to the eligible recipient or their personal representative.

**C. Prior authorization:** Some services or procedures performed in an emergency room setting need prior approval from MAD or its designee. Procedures that require prior approval in non-emergency settings also require prior approval in emergency settings.

**D. Noncovered emergency services:** MAD does not cover the following specific emergency services:

(1) emergency services which are not considered medically necessary as emergency services;

(2) emergency services furnished to individuals who were not eligible for MAD services on the date of service;

(3) experimental or investigational procedures, technologies or therapies and the services related to them, including hospitalization, anesthesiology, laboratory tests and imaging services; see 8.325.6 NMAC, *Experimental or Investigational Procedures or Therapies*;

(4) drugs classified as "ineffective" by the federal food and drug administration; and

(5) laboratory specimen handling or mailing charges.

**E. Reimbursement for emergency room service:** An emergency service furnished by an eligible provider is reimbursed at the outpatient rate. See Section D of 8.311.2 NMAC, *Reimbursement for Outpatient Services*.

(1) An emergency room service

furnished in a DRG- reimbursed hospital in conjunction with an inpatient admission is included with the charges for inpatient care. In this case, a payment for an emergency room service is included in the DRG rate.

(2) A physician's service furnished in an emergency room is not reimbursed to a hospital but may be paid as a professional component of a service. See 8.310.2 NMAC, *Medical Services Providers*.

(3) A service furnished in an urgent care center of a hospital which does not meet the definition of an emergency, may not be submitted as an emergency room service.

[8.311.2.16 NMAC - Rp/E, 8 NMAC 4.MAD 721.7, 1/1/09]

## NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

### TRAINING AND RECRUITING DIVISION

Law Enforcement Academy

This is an amendment to 10.29.1 NMAC, Sections 10 and 13, effective 1/15/09.

#### 10.29.1.10 QUALIFICATIONS FOR ADMISSION TO THE ACADEMY

**A. Qualifications for police officer admission -** In accordance with those qualifications enumerated under NMSA 1978, Section 29-7-6 (Repl. Pamph. 1994), the director shall reject applicants for admission to the academy if, after investigation, it is determined that the applicant does not meet the following criteria:

(1) citizenship and age requirements as set forth in NMSA 1978, Section 29-7-6 (Repl. Pamph. 1994);

(2) holds a United States high school diploma or its equivalent;

(3) holds a valid drivers license;

(4) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge, or within the three year period immediately preceding his/her application, to any violation of any federal law or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;

(5) is found, after examination by a licensed physician, to be free from any physical condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act;

(6) is found, after examination by a certified psychologist, to be free of any emotional or mental condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act;

(7) is found to be of good moral character and has not committed any acts constituting dishonesty or fraud; and

(8) is found not to have committed any other acts which would be grounds for denial, revocation, or suspension of certification under the provision of 10.29.1.11 NMAC.

**B. Qualifications for telecommunicator admission** - In accordance with those qualifications enumerated under NMSA 1978, Section 29-7C-3, the director shall reject applicants for admission to the academy if, after investigation, it is determined that the applicant does not meet the following criteria:

(1) United States citizenship or legal resident and age requirements as set forth in NMSA 1978, Section 29-7C-3;

(2) holds a United States high school diploma or its equivalent from an accredited institution;

(3) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge, or within the three year period immediately preceding his/her application, to any violation of any federal law or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;

(4) is found to be of good moral character and has not committed any acts constituting dishonesty or fraud; and

(5) is found not to have committed any other acts which would be grounds for denial, revocation, or suspension of certification under the provision of 10.29.1.11 NMAC; and

(6) has been examined by a certified technician and have no uncorrected hearing loss in either ear of greater than 25db at 500, 1000, 2000 Hz, and no more than a 20db loss in the better ear by audiometry, using ANSI (1969) standards.

**C. Status** - Applicants shall be appraised by the director of the status of their application and any deficiencies therein, in writing, as soon as possible. If an applicant is denied admission, the written notification shall include an explanation of the specific facts and circumstances upon which the decision is based. Decisions of the director may be appealed to the board. The appeals procedures provided for in 10.29.1.13 NMAC through 10.29.1.15

NMAC shall be utilized in the event an appeal is filed under this section.

[4-15-93, 10-1-97, 1-1-99; 10.29.1.10 NMAC - Rn, 10 NMAC 29.1.10, 7/1/01; A, 01/01/04; A, 1/15/09]

**10.29.1.13 PROCEEDINGS FOR DENIAL, REVOCATION, OR SUSPENSION BEFORE THE LAW ENFORCEMENT ACADEMY BOARD; PROCEDURE**

**A.** All actions contemplated by the director to deny, suspend or revoke a police officer's or telecommunicator's certification shall be brought before the law enforcement academy. The officer or telecommunicator may secure a hearing before the board if the board receives within thirty (30) calendar days from the receipt of the director's notice of final decision, a request for hearing. Such request shall be made in writing and shall be addressed to the board. The request may be either personally served upon the director on behalf of the board or sent by registered letter to the New Mexico law enforcement academy. If the police officer or telecommunicator does not mail a request for hearing within the time and in the manner required by this rule, the board may take the action contemplated by the director and such action shall be considered final.

**B.** The board may appoint a hearing officer to receive testimony and make recommendations therein to the board.

**C.** Neither an appointed hearing officer nor any member of the board shall participate in any adjudicatory proceeding if, for any reason, the hearing officer or board member cannot afford a fair and impartial hearing to the parties.

**D.** Either of the parties may seek to disqualify the designated hearing officer or particular board members from hearing the appeal if within ten (10) calendar days of receipt of the scheduling order required by ~~Paragraph 10 of Subsection A~~ Subsection J of 10.29.1.13 NMAC below, an affidavit of disqualification is filed with the board, which states with particularity the specific reasons for refusal.

**E.** The board or designated hearing officer shall rule on motions of disqualification and no interlocutory appeal of the decision shall be permitted.

**F.** Parties are not to discuss the merits of any pending adjudicatory proceeding with members of the board or a designated hearing officer unless both parties or their respective representatives are present.

**G.** The police officer or telecommunicator, within ten (10) calendar days after filing the request for hearing, shall file with the board a concise statement

of the issues upon which he or she wishes to be heard and a concise statement setting forth the factual ground and authorities upon which the officer relies.

**H.** Within ten (10) calendar days after the filing of the police officer's or telecommunicator's statement and brief the director shall file an answer with the board, stating the justification for his decision and any authorities in support therein.

**I.** Pre-hearing motions shall not be accepted by the board or designated hearing officer. The parties may engage in discovery limited to interrogatories, requests for production, and requests for admission.

**J.** Within twenty (20) calendar days of receipt of the statements and briefs, the board or designated hearing officer shall issue to the parties a scheduling order establishing deadlines for completion of discovery and a hearing date. Hearings shall be conducted within ninety (90) calendar days of the date of filing of the request for hearing.

**K.** The parties shall file a list of witnesses and a brief description of their testimony and all exhibits to be introduced at the hearing with the board or the designated hearing officer at least ten (10) calendar days in advance of the designated hearing date.

**L.** Extensions of time shall be granted in the discretion of the hearing officer or the board.

[4-11-93, 7-29-93, 10-1-97, 1-1-99; 10.29.1.13 NMAC - Rn, 10 NMAC 29.1.13, 7/1/01; A, 01/01/04; A, 1/15/09]

**NEW MEXICO RESPIRATORY CARE ADVISORY BOARD**

This is an amendment to 16.23.1 NMAC, Section 7, effective January 16, 2009.

**16.23.1.7 DEFINITIONS:**

**A. "16 NMAC 23"** means the Respiratory Care Advisory Board's Rules and Regulations as published in Title 16 of the New Mexico Administrative Code.

**B. "Applicant"** means a person who has applied to the Department for a temporary permit or a respiratory care practitioner's license.

**C. "Approval"** means the review and acceptance of a specific activity.

**D. "Approval Body"** means the agency, institution, or organization with the authorization to award continuing education credit.

**E. "Approved Training and Education Program"** means a pro-

gram supported by the Committee on Accreditation for Respiratory Care (CoARC), or its predecessor the Joint Review Committee for Respiratory Therapy Education (JRCRTE), or accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or its successor approval body.

**F. "Audit"** means an examination and verification of continuing education documents by the Department.

**G. "Board"** means the Respiratory Care Advisory Board.

**H. "CRTT"** means a certified respiratory therapy technician. This is the entry level of respiratory care.

**I. "Clock Hour"** means a unit of measurement to describe a continuing education offering which equals a 60-minute clock hour.

**J. "Continuing Education" or "CE"** means a learning experience intended to enhance professional development.

**K. "Department"** means the New Mexico Regulation and Licensing Department.

**L. "Expired License"** means a license that has not been renewed on or before the end of the license renewal period.

**M. "CRT"** means certified respiratory therapist. This is the entry level of respiratory care.

**N. "Initial Licensure"** means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other licensing requirements.

**O. "Inspection of Public Records Act"** refers to Section 14-2-1 through Section 14-2-10, NMSA 1978 (1993 Repl. Pam.).

**P. "Medical Board"** as it applies to respiratory care, means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.

**Q. "Lapsed License"** means an expired license which has not been reactivated within the time limitations set forth in Section 11 of Part 11 in 16 NMAC 23.

**R. "License"** means a document identifying the legal privilege and authorization to practice within a professional category.

**S. "License Reactivation"** means the process of making current a license that has expired as a result of failure to comply with the necessary renewal requirements.

**T. "Must"** means required.

**U. "NBRC"** means the

National Board for Respiratory Care, Inc.

**V. "National Licensing Exam"** means the national examination for respiratory care practitioners administered by the National Board for Respiratory Care resulting in obtaining CRTT, CRT, or RRT credentials.

**W. "New Mexico Administrative Code" or "NMAC"** means the organizing structure for rules filed by New Mexico State agencies. The NMAC is also the body of filed rules and the published versions thereof. The NMAC is structured by Title, Chapter, and Part.

**X. "Medical Direction"**, as it applies to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.

**Y. "Open Meetings Act"** refers to Section 10-15-1 through Section 10-15-4, NMSA 1978 (1993 Repl. Pam.).

**Z. "Parental Responsibility Act" or "PRA"** refers to Section 40-5A-1 through Section 40-5A-13, NMSA 1978 (1995 Supp.) herein referred to as the Parental Responsibility Act or PRA.

**AA. "Public Records Act"** refers to Section 14-3-1 through Section 14-3-25, NMSA 1978 (1995 Repl. Pam.).

**BB. "Facility"** means the employer of a licensed respiratory care practitioner or temporary permit holder.

**CC. "RRT"** means a registered respiratory therapist. This is the advanced level of respiratory care.

**DD. "Reinstatement"** means the process whereby a license that has been subject to revocation or suspension is returned to former status.

**EE. "Respiratory Care Act"** refers to Section 61-12B-1 through Section 61-12B-16, NMSA 1978 (1996 Repl. Pam.).

**FF. "Respiratory Care Practitioner" or "RCP"** means a person who is licensed to practice respiratory care in New Mexico.

**GG. "Respiratory Therapy Training Program"** means a program approved by the Commission on Accreditation of Allied Health Education Programs (CAHEP), or its successor approval body.

**HH. [RESERVED]**

**II. "Shall"** means a mandatory requirement.

**JJ. "State Rules Act"** refers to Section 14-4-1 through Section 14-4-9, NMSA 1978 (1995 Repl. Pam.).

**KK. "Superintendent"** means the Superintendent of the Regulation and Licensing Department.

**LL. "Uniform Licensing Act" or "ULA"** refers to Section 61-1-1

through Section 61-1-33, NMSA 1978 (1993 Repl. Pam.).

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 7-30-99; 16.23.1.7 NMAC - Rn, 16 NMAC 23.1.7, 7-10-2000; A, 7-10-2000; A, 07-10-03; A, 1-16-09]

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

This is an amendment to 16.23.2 NMAC, Sections 8, 9, 11, 12, 14, 15, 16, 17, 18 and 19, and insertion of new material in Section 13, effective January 16, 2009.

**16.23.2.8 INITIAL PRACTITIONER LICENSE FEES:** [~~\$125.00~~] \$150.00 fee.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.2.8 NMAC - Rn, 16 NMAC 23.2.8, 01-30-2003; A, 07-10-03; A, 1-16-09]

**16.23.2.9 PRACTITIONER LICENSE RENEWAL FEE:** [~~\$135.00~~] \$150.00 fee.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.2.9 NMAC - Rn, 16 NMAC 23.2.9, 01-30-2003; A, 07-10-03; A, 1-16-09]

**16.23.2.11 TEMPORARY STUDENT EXTERN OR GRADUATE PERMITS.**

[**A.** ~~\$25.00~~ initial issuance of a one-year renewable temporary permit.

**B.** ~~\$25.00~~ one-year temporary permit - first renewal.

**C.** ~~\$105.00~~ one-year temporary permit - second and third renewals.]

A. Temporary Student Extern.

(1) \$50.00 initial issuance of a one-year renewable temporary permit.

(2) \$50.00 one year temporary permit - first renewal.

B. Graduate Permits.

(1) \$100.00 initial issuance of a one year non-renewable temporary permit.

(2) \$50.00 credential upgrade from graduate permit to CRT.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.2.11 NMAC - Rn, 16 NMAC 23.2.11, 01-30-2003; A, 01-16-09]

**16.23.2.12 WRITTEN VERIFICATION OF LICENSURE:** **\$10.00** [~~administrative processing~~] fee. [~~A check or money order~~] Payment must be submitted with the request for a written verification of licensure.

[4-21-95; 11-29-97; 16.23.2.12 NMAC - Rn, 16 NMAC 23.2.12, 01-30-2003; A, 1-16-09]



**16.23.2.13** ~~[RESERVED]~~ **CRE-DENTIAL UPGRADE from CRT to RRT:** \$25.00 fee. Payment must accompany the required forms for upgrade of credentials as set forth in 16.23.3 NMAC, Section 11.

[4-21-95; 11-29-97; 16.23.2.13 NMAC - Rn, 16 NMAC 23.2.13, 01-30-2003; Repealed, 06-24-2004; 16.23.2.13 NMAC - N, 1-16-09]

**16.23.2.14** **DUPLICATE WALL LICENSE:** ~~[\$20.00: A check or money order]~~ \$25.00 fee. Payment must accompany the ~~[written]~~ request for a duplicate wall license as set forth in 16.23.4.13 NMAC.

[11-29-97; 16.23.2.14 NMAC - Rn, 16 NMAC 23.2.14, 01-30-2003; A, 1-16-09]

**16.23.2.15** **WALL LICENSE FOR NAME CHANGE:** ~~[\$20.00: A check or money order]~~ \$20.00 fee. Payment must accompany the documents required for a name change as set forth in 16.23.4.14 NMAC.

[11-29-97; 16.23.2.15 NMAC - Rn, 16 NMAC 23.2.15, 01-30-2003; A, 1-16-09]

**16.23.2.16** **D U P L I C A T E RENEWAL LICENSE:** ~~[\$10.00: A check or money order]~~ \$15.00 fee. Payment must accompany the ~~[written]~~ request for a duplicate renewal license as set forth in 16.23.4.13 NMAC.

[11-29-97; 16.23.2.16 NMAC - Rn, 16 NMAC 23.2.16, 01-30-2003; A, 1-16-09]

**16.23.2.17** **DUPLICATE PERMIT:** ~~[\$10.00: A check or money order]~~ \$15.00 fee. Payment must accompany the ~~[written]~~ request for a duplicate permit as set forth in 16.23.6.17 NMAC.

[11-29-97; 16.23.2.17 NMAC - Rn, 16 NMAC 23.2.17, 01-30-2003; A, 1-16-09]

**16.23.2.18** **INACTIVE STATUS FOR PRACTITIONER'S LICENSE:** ~~[\$25.00 administrative processing fee]~~ \$30.00 fee. Payment must accompany a completed renewal application filed in accordance with 16.23.9.9 NMAC.

[11-29-97; 16.23.2.18 NMAC - Rn, 16 NMAC 23.2.18, 01-30-2003; A, 1-16-09]

**16.23.2.19** **REACTIVATION FROM INACTIVE STATUS FEE:** ~~[\$115.00 fee]~~ \$150.00 fee. Payment must accompany the request for reactivation from inactive status as set forth in 16.23.9.16 NMAC.

[11-29-97; 16.23.2.19 NMAC - Rn, 16 NMAC 23.2.19, 01-30-2003; A, 07-10-03; A, 1-16-09]

### NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

This is an amendment to 16.23.3, Section 10 and the addition of a new section, Section 11, effective January 16, 2009.

#### 16.23.3.10 REQUIREMENTS FOR PERSONS RETURNING TO THE FIELD:

Respiratory therapists applying for licensure who cannot provide proof of having been working in the field of respiratory care within the immediate preceding five years prior to licensure application in New Mexico must provide proof of having successfully passed the exam for certified respiratory therapists (CRRT or CRT) or registered respiratory therapists (RRT) administered by the NBRC and taken within the year of licensure application in New Mexico. In lieu of experience or successfully passing the NBRC within the year of licensure application the licensee may submit 20 hours of required continuing education taken within the year of licensure application.

[16.16.23.10 NMAC - N, 06-24-2004; A, 1-16-09]

#### 16.23.3.11 REQUIREMENTS FOR UPGRADING LICENSE TYPE:

Respiratory therapists wanting to upgrade their license type from CRRT or CRT to RRT must complete an affidavit and submit the required fee as set forth in 16.23.2 NMAC, Section 13.

[16.23.3.11 NMAC - N, 1-16-09]

### NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

This is an amendment to 16.23.4 NMAC, Sections 8, 10, 13, and 15, effective January 16, 2009.

#### 16.23.4.8 DOCUMENTATION REQUIREMENTS FOR PRACTITIONERS:

Applicants for licensure must provide the following items of documentation to the department. ~~[A notary public must certify all document copies as a true and correct copy of the original.]~~

A. A practitioners application form approved by the department, completed by the applicant, and signed by the applicant ~~[in the presence of a notary public.]~~

B. A passport-type photograph of the applicant taken within the last year, ~~[and which the applicant has signed the back of, in the presence of a notary public.]~~

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

~~D. At least one letter of character reference written within the preceding three years from someone unrelated to the applicant.~~

~~(1) The letter must include a return address and phone number; and~~

~~(2) The letter may be sent directly to the department by the reference; or,~~

~~(3) If the reference letter is included with the application, the reference's signature on the letter must have been witnessed by a notary public.]~~

~~[E.]~~ C. A copy of the official transcript for the completed respiratory care program; or a copy of the respiratory care program completion certificate or diploma; or an official copy of the transcripts sent directly from the program; or a letter sent directly from the program director prior to matriculation.

~~[F.]~~ D. A copy of the national board for respiratory care, ~~[inc-s]~~ (NBRC) CRTT, CRT, or RRT certificate; or a copy of the applicant's NBRC CRTT, CRT, or RRT identification card; or a copy of the exam results showing successful passing of the NBRC CRTT, CRT, or RRT examination if the applicant has not yet received the NBRC certificate.

~~[G.]~~ E. ~~[A check or money order made payable]~~ Payment to the board in the amount of the applicable fee as provided in 16.23.2.8 NMAC.

~~[H.]~~ F. If applicable, a statement of other professional licenses held by the applicant either in New Mexico or in other licensing jurisdictions, and copies thereof; and verification of licensure status sent directly to the department by all state licensing boards where the applicant is or has ever been licensed.

~~[I.]~~ G. A resume' with employment information encompassing at least five years prior to the application for licensure in New Mexico.

~~[J.]~~ H. Applicants for licensure who have not been actively engaged or employed in the practice of respiratory therapy within the last five years prior to application for licensure in New Mexico must provide proof of having successfully passed either the NBRC certified respiratory therapist (CRT) or registered respiratory therapist (RRT) standards exam taken within a year of licensure application in New Mexico.

[2-21-85; 6-10-87; 1-9-88; 1-19-91; 9-19-91; 11-29-97; 7-30-99; 16.23.4.8 NMAC - Rn, 16 NMAC 23.4.8, 01-30-2003; A, 07-10-03; A, 06-24-2004; A, 1-16-09]

**16.23.4.10 LICENSES ISSUED AFTER [AUGUST 1] JUNE 1 OF THE ODD-NUMBERED YEAR:** Respiratory care practitioner licenses initially issued



after ~~[August 1]~~ June 1 of the odd-numbered (renewal) year will not expire until September 30 of the NEXT renewal period ~~[following the year of the initial licensure]~~ (see 16.23.8.12 NMAC).

[11-29-97; 16.23.4.10 NMAC - Rn, 16 NMAC 23.4.10, 01-30-2003; A, 1-16-09]

**16.23.4.13 D U P L I C A T E LICENSE:** In the event a license is lost or destroyed, the department will issue a duplicate license upon receipt of the following.

**A.** ~~[A written]~~ Notice to the department of the loss, ~~[signed, and witnessed by a notary public]~~ by the licensee.

**B.** A ~~[statement requesting]~~ request for a duplicate wall license ~~[and/or]~~ or a duplicate renewal license.

**C.** Administrative fee(s) in an amount as provided in 16.23.2.14 NMAC and 16.23.2.16 NMAC.

[11-29-97; 16.23.4.13 NMAC - Rn, 16 NMAC 23.4.13, 01-30-2003; A, 1-16-09]

**16.23.4.15 I N C O M P L E T E APPLICATIONS PURGED:** Incomplete applications for licensure will be purged from board files ~~[one year]~~ two years from the date the first item of documentation was received ~~[and board staff created a hard copy file].~~

[16.23.4.15 NMAC - N, 07-10-03; A, 1-16-09]

## NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

This is an amendment to 16.23.6 NMAC, Sections 7, 9, 10, 13, 15, 19 and 21, effective January 16, 2009.

### 16.23.6.7 DEFINITIONS:

**A. "Direct supervision"** means direction and control by a training supervisor over a student extern temporary permittee or a graduate temporary permittee while the permittee is providing respiratory care procedures under the authority of the training supervisor's license.

**B. "Supervisory facility"** means the employer of a temporary permit holder.

**C. "Graduate"** means a non-licensed person who has completed an approved respiratory care training program and is employed by a supervisory facility to provide respiratory care **for remuneration** and in accordance with the provisions for a temporary permit issued under these regulations.

**D. "Licensing period for temporary permits"** means a one year period from the date of issuance to the last day of the same month, one year later.

**E. "Non-traditional training program"** refers to a respiratory care training program in which a person receives on-the-job training in respiratory care from a supervising medical director, a supervising physician, or a licensed respiratory care practitioner, and in which the trainee may receive compensation while in such a training program.

**F. "Traditional training program"** refers to a respiratory care training program that provides classroom instruction and clinical experience only to students or student externs under direct supervision of a licensed and responsible professional.

**G. "Permittee"** means a person who has been granted a temporary permit by the department, in consultation with the board.

**H. "Student"** means a person enrolled in an approved respiratory care training and education program and who receives **no remuneration** for respiratory care services performed in a supervisory facility as part of an approved respiratory care training program.

**I. "Student extern"** means a person who is engaged by a supervisory facility to provide respiratory care **for remuneration** while enrolled in an approved respiratory care training and education program, and in accordance with the provisions for a temporary permit issued under these regulations.

**J. "Training supervisor"** means a New Mexico licensed respiratory care practitioner licensed as a CRT, CRRT, RRT or a New Mexico licensed physician who agrees to be responsible for the respiratory care administered by student externs and graduates while these individuals are employed by a supervisory facility and are being trained there.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 7-30-99; 16.23.6.7 NMAC - Rn, 16 NMAC 23.6.7, 7-10-2000; A, 7-10-2000; A, 1-16-09]

### 16.23.6.9 APPLICATION REQUIREMENTS FOR STUDENT EXTERNS:

The department, in consultation with the board, will issue temporary permits to respiratory care student externs enrolled in a traditional or non-traditional respiratory care training program approved as set forth in Subsections E and GG of 16.23.1 NMAC, and who provide satisfactory evidence of the following:

**A.** Verification of current respiratory care program enrollment sent directly by the educational institution to the department;

~~[B. A copy of the applicant's birth certificate certified by a notary public to be a true and correct copy of the~~

~~original;]~~

~~[C.]~~ **B.** A passport-type photograph taken within the past year;

~~[D.]~~ **C.** A notarized statement or letter sent by the applicant's direct supervisor confirming the location and status of the applicant's employment;

~~[E.]~~ **D.** A notarized agreement signed by the proposed training supervisor which certifies that the supervisor will provide training and direct supervision which meets the requirements of these regulations;

~~[F.]~~ **E.** A temporary permit application form approved by the department, completed by the applicant, and signed by the applicant in the presence of a notary public; and

~~[G.]~~ **E.** ~~[A check or money order made payable]~~ Payment to the board in the amount ~~[stipulated in Section 11 of Part 2 of 16 NMAC 23]~~ set forth in Subsection A of 16.23.2.11 NMAC.

[2-21-85; 6-10-87; 1-9-88; 1-9-988; 8-20-91; 9-19-91; 9-3-92; 11-6-92; 11-29-97; 7-30-99; 16.23.6.9 NMAC - Rn, 16 NMAC 23.6.9, 7-10-2000; A, 7-10-2000; A, 1-16-09]

### 16.23.6.10 APPLICATION REQUIREMENTS FOR GRADUATES:

The department, in consultation with the board, will issue non-renewable temporary permits to non-licensed graduates from an approved respiratory care training and education program (see Subsections E and GG of 16.23.6.1 NMAC), and who provide the following:

**A.** the required items listed in Subsections B through G of 16.23.6 NMAC (this rule);

**B.** a copy of the applicant's graduation certificate or diploma from an approved respiratory care training and educational program, ~~[either of which must be certified by a notary public to be a true and correct copy of the original;]~~ or

**C.** the applicant's graduate transcript sent directly to the department by the educational institution; or an official copy of the transcripts sent directly from the program; or a letter sent directly from the program director prior to matriculation; and

**D.** proof of good faith attempts and reasonable progress in pursuing NBRC credentialing as an RRT, CRT, or CRTT by providing:

(1) test results of any unsuccessful attempts to pass the NBRC credentialing examination; or

(2) a copy of the letter scheduling the applicant for the NBRC CRTT, CRT, or RRT credentialing exam if the applicant has not taken the credentialing exam before, but is scheduled to sit for it.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 11-6-92; 4-21-95; 11-29-97; 7-30-99; 16.23.6.10

NMAC - Rn, 16 NMAC 23.6.10, 7-10-2000, A, 7-10-2000; A, 1-16-09]

**16.23.6.13 LIMITATIONS ON STUDENT EXTERN TEMPORARY PERMITS:**

Student externs and graduates with temporary permits will be limited in the performance of respiratory care to those competence levels that have written verification and in accordance with the safe practice and patient care safety regulations of the facility.

**A.** Temporary permits are only valid for the performance of respiratory care under the direct supervision of the training supervisor who signed the supervisor's agreement portion of the applicant's application for the temporary permit.

**B.** Any change in supervision or in employment by either the permittee or the training supervisor invalidates the permit and must be reported to the department. Since the training supervisor is responsible for the respiratory care administered by the permittee, it is advisable for the training supervisor in this circumstance to document to the department that he or she is no longer professionally responsible for the permittee.

**C.** A temporary permit issued to a respiratory care student extern is immediately invalid upon the student extern's withdrawal from the respiratory care training and education program.

**D.** A temporary permit may not be renewed more than ~~three (3)~~ two (2) times.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 9-3-92; 11-6-92; 11-29-97; 16.23.6.13 NMAC - Rn, 16 NMAC 23.6.13, 7-10-2000; A, 7-10-2000; A, 07-10-03; A, 1-16-09]

**16.23.6.15 RE-ENROLLMENT IN NEW PROGRAM:**

If an applicant has failed or withdrawn from a program and at a later date enrolls in a **new** approved respiratory care program, he or she may apply for a **new** permit under the new program.

**A.** With the application, the applicant must provide a letter to the department explaining the circumstances of withdrawal from the previous program and of enrollment in the new program.

**B.** The applicant must meet all the application requirements set forth in 16.23.6.9 NMAC.

**C.** The previous temporary permit number will ~~not~~ be reissued ~~to the new temporary permit~~.

**D.** All applicable provisions in Part 6 and Part 7 will apply to the new temporary permit.

[11-29-97; 16.23.6.15 NMAC - Rn, 16 NMAC 23.6.15, 7-10-2000; A, 7-10-2000; A, 1-16-09]

**16.23.6.19 DIRECT SUPERVI-**

**SION IN PRACTICE:** The training supervisor may be a CRRT, CRT, or RRT and shall train the temporary permittee in the performance of respiratory care functions until the training supervisor determines that the permittee is competent to perform those functions independently. The degree of independence extended to the permittee is contingent upon the supervised training received by the permittee from the training supervisor who is ultimately medically and legally liable for the actions of the permittee.

**A.** The training supervisor is the agent of the facility and trains the trainee permittee in accordance with the safe practice and patient care safety standards of the facility.

**B.** Before the permittee is allowed to perform respiratory care functions independently, the provisions of 16.23.6.13 NMAC require that the training supervisor file with the facility a written verification that the permittee is competent to perform respiratory care functions.

**C.** When the facility allows the permittee to perform the approved respiratory care functions on patients, the facility assumes responsibility as well.

[16.23.6.19 NMAC - N, 7-10-2000; A, 1-16-09]

**16.23.6.21 INCOMPLETE APPLICATIONS PURGED:**

Incomplete applications for licensure will be purged from board files ~~[one year]~~ two years from the date the first item of documentation was received ~~[and board staff created a hard copy file]~~.

[16.23.6.21 NMAC - N, 07-10-03; A, 1-16-09]

**NEW MEXICO RESPIRATORY CARE ADVISORY BOARD**

This is an amendment to 16.23.7, Sections 8, 9, 10 and 13, effective January 16, 2009.

**16.23.7.8 TEMPORARY STUDENT PERMIT EXPIRATION:**

**A.** Temporary permits are issued for a period of one year, and will expire on the last day of the month in which the initial permit was issued.

**B.** Renewed temporary permits will also expire on the last day of the same month in which the permit was initially issued.

**C.** The number of permits possible will ~~[still]~~ be a total of ~~[four]~~ three maximum regardless of the period of unemployment while the permittee is enrolled in the respiratory care training program.

[6-10-87; 1-9-88; 9-19-91; 9-3-92; 11-6-92;

11-29-97; 16.23.7.8 NMAC - Rn, 16 NMAC 23.7.8, 01-30-2003; A, 1-16-09]

**16.23.7.9 RENEWAL PROCESS FOR STUDENT TEMPORARY PERMITS:**

**A.** At least forty-five days before the temporary permit expiration date, the department will mail the permittee a temporary permit renewal notice and an application form to apply for permit renewal.

**B.** Renewal application notices will be mailed to the last residential address on file with the department. It is the permittee's responsibility to request a renewal form if one has not been received thirty days prior to the permit expiration date.

**C.** The department will send the permittee's training supervisor a copy of the renewal notice, which was sent to the permittee.

[11-29-97; 16.23.7.9 NMAC - Rn, 16 NMAC 23.7.9, 01-30-2003; A, 1-16-09]

**16.23.7.10 REQUIREMENTS FOR STUDENT TEMPORARY PERMIT RENEWAL:**

All applicants for temporary permit renewal must meet the following requirements:

**A.** Complete and sign a renewal application form approved by the department;

**B.** Provide the documentation required by this rule for student externs or graduates, whichever is applicable to the permittee (See 16.23.6.9 NMAC or 16.23.6.10 NMAC); and a copy of the applicant's birth certificate and a photograph are not required for temporary permit renewals.

**C.** Submit a check or money order payable to the board for the required fee as provided in ~~[Subsections B or Subsection C of]~~ 16.23.2.11 NMAC, whichever is applicable.

[11-29-97; 16.23.7.10 NMAC - Rn, 16 NMAC 23.7.10, 01-30-2003; A, 1-16-09]

**16.23.7.13 FINAL PERMIT - NO RENEWAL:**

Forty-five days prior to the expiration date of the ~~[fourth]~~ third and final permit (initial permit plus ~~[three]~~ two renewals), the permittee and the permittee's training supervisor will be notified that the permittee's permit lapse is imminent, and that the privileges allowed by the permit will no longer be authorized.

**A.** In order to continue practicing in the profession, the permittee must complete the process for practitioner license application as set forth in 16.23.3 NMAC.

**B.** Any licensed practitioner who aids and abets the continued practice of a person whose permit privileges

have lapsed shall be subject to disciplinary action by the department for violation of the Respiratory Care Act and Subsection H of 16.23.17.8 NMAC.

[11-29-97; 16.23.7.13 NMAC - Rn, 16 NMAC 23.7.13, 01-30-2003, A, 1-16-09]

**NEW MEXICO  
RESPIRATORY CARE  
ADVISORY BOARD**

This an amendment to 16.23.8 NMAC, Sections 9, 10, 11, and 12, effective January 16, 2009.

**16.23.8.9 NOTIFICATION:** No less than forty-five days prior to the license expiration date, notices and renewal applications will be mailed to the licensee at the last ~~residential~~ official address on file with the department.

**A.** Failure to receive the renewal application notice will not relieve the licensee of the responsibility of renewing the license by the expiration date.

**B.** It is the licensee's responsibility to request a renewal application if one has not been received at least thirty days prior to the license expiration date.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.8.9 NMAC - Rn, 16 NMAC 23.8.9, 01-30-2003; A, 1-16-09]

**16.23.8.10 APPLICATION REQUIRED:** Practitioner licenses shall be renewed by the department, in consultation with the board, only upon receipt of the following:

**A.** A completed ~~[signed, and notarized]~~ renewal application

**B.** ~~[Documentation verifying]~~ Certification that the continuing education requirements were met as set forth in ~~[PART 12 of 16.23 NMAC;]~~ 16.23.12 NMAC; and

**C.** Payment in the amount of the required fee as provided in 16.23.2.9 NMAC.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.8.10 NMAC - Rn, 16 NMAC 23.8.10, 01-30-2003; A, 1-16-09]

**16.23.8.11 RENEWAL DEADLINE:** The deadline for renewal of current respiratory care practitioner licenses is September 30th of the odd-numbered year, except as provided in 16.23.8.12 NMAC (this rule).

**A. September 30 Postmark Requirement.** Completed renewal applications must be postmarked or completed on-line on or before September 30 of the renewal year.

**B. Application Rejected.**

~~[Unsigned, incorrect, or otherwise]~~ Incomplete renewal applications will be rejected ~~[and returned to the licensee for correction or completion.]~~ by the board.

**C. Late Renewal.** Any renewal application, corrected or otherwise returned to the Department postmarked **after** September 30, of the odd-numbered year, is expired and must be accompanied by the penalty fee required for reactivation. (See 16.23.2.10 NMAC.)

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.8.11 NMAC - Rn, 16 NMAC 23.8.11, 01-30-2003, A, 1-16-09]

**16.23.8.12 RENEWAL DEADLINE FOR PRACTITIONER LICENSES ISSUED AFTER ~~AUGUST 1~~ JUNE 1 OF THE RENEWAL YEAR:**

Practitioners' licenses issued after ~~[August 1]~~ June 1 of the renewal (odd-numbered) year will not expire until September 30 of the renewal cycle **following** the **current** renewal cycle.

[11-29-97; 16.23.8.12 NMAC - Rn, 16 NMAC 23.8.12, 01-30-2003; A, 1-16-09]

**NEW MEXICO WATER  
QUALITY CONTROL  
COMMISSION**

This is an amendment to 20.7.4 NMAC by the addition of a new section, Section 15, effective 2/2/09.

**20.7.4.15 MINIMUM NUMBER OF CERTIFIED OPERATORS:**

**A.** A public wastewater facility or public water supply system shall provide the minimum number of certified operators needed to operate the system or facility to protect human health, public welfare or the environment.

**B.** If the department determines a public wastewater facility or public water supply system is in violation of Subsection A of this section, the department may determine the minimum number of certified operators needed for the public wastewater facility or public water supply system. The determination shall be made in writing and delivered by certified mail. Violation of the department determination shall be considered a violation of the rule.

**C.** In determining the minimum number of certified operators needed to operate a public wastewater facility or public water supply system in compliance with Subsection A of this section, the department shall consider the following criteria:

- (1) current compliance with applicable state and federal regulations;
- (2) historical compliance with applicable state and federal regulations;
- (3) actual discharge/production

- compared to design capacity:
- (4) availability of redundant facilities;
- (5) geographic area served by the public wastewater facility or public water supply system;
- (6) level of automation;
- (7) staffing plan;
- (8) capacity assessment findings;
- (9) sanitary survey deficiencies;
- (10) mechanical reliability; and
- (11) currency of federally

required vulnerability assessments and risk management plans.

[20.7.4.15 NMAC - N, 2/2/09]

~~[20.7.4.15]~~ 20.7.4.16 - 20.7.4.19

[RESERVED]

**End of Adopted Rules Section**

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**Other Material Related to Administrative Law**

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**NEW MEXICO BOARD OF  
EXAMINERS FOR  
ARCHITECTS****New Mexico Board of Examiners for  
Architects**

PO Box 509  
Santa Fe, NM  
505-982-2869

**Regular Meeting**

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 6, 2009. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES 2009

<b>Volume XX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	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.