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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

Volume XXXI, Issue 11

June 9, 2020

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Notices of Rulemaking and Proposed Rules

ADMINISTRATIVE HEARING OFFICE

NOTICE OF PUBLIC HEARING FOR REPEALING AND REPLACING 22.600.3 NMAC, RULES OF PROCEDURE FOR TAX PROTESTS

The Administrative Hearings Office (“AHO”) will hold a public hearing beginning on **Monday, July 29, 2020 at 10:00 am** to consider repealing and replacing 22.600.3 NMAC governing the conduct and procedure of tax protests under Section 7-1B-8 NMSA 1978 of the Administrative Hearings Office Act. Proposed rules may be obtained at <http://www.aho.state.nm.us> or upon request submitted to tax.pleadings@state.nm.us or by telephone to (505) 827-0466. No technical scientific information was consulted in drafting any proposed rules.

Interested members of the public may attend the public hearing by videoconference or telephone. To access the hearing by telephone, call 346-248-7799 or 833-548-0276 (toll free). To access the hearing by videoconference, go to <https://zoom.us/j/92270281184?pwd=Y2xjWWZzVnRoUnpYVjF6b1BjBE43Zz09> and follow the onscreen instructions provided. If prompted to provide a Meeting ID (access code) or Password, please refer to the following: Meeting ID (access code): 922 7028 1184; Password (8675309).

The hearing will be conducted exclusively by videoconference and telephone for reasons stated in Executive Order 2020-004 of the Governor of the State of New Mexico (declaring a public health emergency) and the Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19, dated March 12, 2020.

The public hearing will be conducted in a fair and equitable manner by an AHO hearing officer and shall be recorded. Interested members

of the public attending in the manner described will be provided a reasonable opportunity to offer public comment, orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need auxiliary aid to attend or participate in the public hearing should contact John Griego at john.griego1@state.nm.us. AHO will endeavor to accommodate reasonable requests but cannot assure accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Written public comment, including presentation of data, views, or arguments about the contemplated repeal or proposed replacement rules, from any interested member of the public will also be accepted until 12:00 p.m. on July 29, 2020 by submitting them via email to tax.pleadings@state.nm.us with the subject line “AHO Rulemaking R20-01,” or via first class U.S. Mail to Administrative Hearings Office, ATTN Rulemaking R20-01, P.O. Box 6400, Santa Fe, NM, 87502. Written comments received after the deadline will not be considered.

Repeal and replacement of 22.600.3 NMAC (Hearings Under the Tax Administration Act) is proposed pursuant to Section 7-1B-5 NMSA 1978 for tax protest hearings conducted under Section 7-1-24 NMSA 1978. The replaced rule is intended to refine the procedures of the Administrative Hearings Office for the conduct of tax protests and to implement amendments to the Administrative Hearings Office Act enacted during the 2019 legislative session, including: amendments to definitions of terms; implementing a revised procedure for requesting hearings; addressing the preparation and filing of answers to protests; exercising peremptory excusals of hearing officers; updating the qualifications of authorized representatives; clarifying the effect of a protest withdrawal;

requiring parties to confer in good faith before seeking an order compelling discovery; providing a timeline for the presentation, consideration, and disposition of dispositive motions; implementing a process for considering whether the accrual of interest should stop due to the taxing authority’s failure to adhere to a statutory deadline; permitting the protesting party to make a rebuttal closing as a matter of right; permitting the request or requirement of submitting digital duplicates of previously tendered evidentiary exhibits to facilitate submission of digital record proper on appeal; establishing a process for consideration of requests for reasonable administrative costs, litigation costs and attorney fees; refining the process for requesting reconsideration. Other sections not substantively revised will nevertheless be repealed, re-organized and replaced among the new material summarized herein.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14 - 4 - 5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS as authorized by Section 9-2A-7 NMSA 1978:

8.15.2.10 NMAC – APPLICATION PROCESS

8.15.2.13 NMAC – CLIENT RESPONSIBILITIES

8.15.2.17 NMAC – PAYMENT FOR SERVICES

No technical scientific information was consulted in drafting these proposed rules.

Purpose of proposed rules: The purpose of the rulemaking is to promulgate amendments to 8.15.2 NMAC, which were initially published as emergency rules effective March 16, 2020. Due to the COVID-19 outbreak and the resulting executive orders and declarations, there was an emergency need for these amendments. The emergency amendments to 8.15.2 NMAC, as published, allow the department secretary the following authority during a public health emergency: to waive the requirements for employment, attending school or a training program; to waive co-payments for families receiving child care and pay the provider the clients approved rate; and to approve a differential rate be paid to licensed providers.

Copies of the proposed amended rules may be found at end of this notice and at CYFD's website at <https://www.newmexicokids.org/> 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on July 14, 2020, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need

any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at debra.gonzales@state.nm.us. CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written

public comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to CYFD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5160, Santa Fe, New Mexico 87502 – 5160. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on July 14, 2020 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on July 14, 2020.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-253-215-8782, access code 91353582922#. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/j/91353582922>, and follow the instructions indicated on the screen – Meeting ID (access code): 91353582922. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como es requerido bajo la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC, que propone adoptar enmiendas a las

siguientes reglas con respecto a LOS REQUISITOS DE ASISTENCIA DE LOS SERVICIOS SOCIALES PARA EL CUIDADO INFANTIL PARA PROGRAMAS DE ASISTENCIA DE CUIDADO INFANTIL Y PARA PROVEEDORES DE CUIDADO INFANTIL según autorizado por la sección 9-2A-7 NMSA 1978:

8.15.2.10 NMAC – PROCESO DE SOLICITUD

8.15.2.13 NMAC – RESPONSABILIDAD DEL CLIENTE

8.15.2.17 NMAC – PAGO POR SERVICIOS

No se consultó información científica o técnica cuando se redactaron estas propuestas de leyes administrativas.

Propósito de las propuestas de leyes

administrativas: El propósito de las leyes administrativas es enmendar los requisitos bajo 8.15.2 NMAC las cuales fueron inicialmente publicadas como reglas de emergencia con fecha efectiva marzo 16 del 2020. A causa de la erupción de COVID-19 y el resultado de la orden ejecutiva y declaraciones, que existía una necesidad emergente para estas enmiendas. Las enmiendas de emergencia para 8.15.2 NMAC, como fue publicada, le permite al secretario del departamento la siguiente autoridad durante una emergencia de salud pública: que elimine los requisitos de empleo, asistir a la escuela o programa de capacitación. Eliminar co-pagos para las familias que reciben cuidado infantil y pagar al proveedor la cantidad aprobada a los clientes; y a aprobar una cantidad diferencial de pago a los proveedores con licencia.

Copias de las propuestas de leyes administrativas pueden ser localizadas al final de este aviso y en el sitio de la red de CYFD en <https://www.newmexicokids.org/> 30 días antes de la audiencia pública.

Aviso de audiencia pública de

leyes administrativas: La audiencia pública de leyes administrativas será

el 14 de julio del 2020 a la 1:00 p.m. Se llevara acabo por internet, correo electrónico y medios telefónicos a causa de preocupaciones acerca del COVID-19 y de acuerdo con la Orden Ejecutiva 2020-004 de la Gobernadora Michelle Lujan Grisham; Declaración de Emergencia de Salud Pública de marzo 12 del 2020 y la Orden de Emergencia de Salud Pública que Limita Reuniones Masivas a causa de COVID-19. La audiencia pública será conducida de una manera justa y con igualdad por un representante u oficial de la agencia de CYFD y será grabado. Cualquier miembro del público interesado en asistir a la audiencia tendrá una oportunidad razonable para ofrecer comentarios, ya sea oralmente o por escrito, incluso una presentación de datos, puntos de vista o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales, a: debra.gonzales@state.nm.us. CYFD hará todos los esfuerzos posibles para acomodar todas las solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibidas por lo menos diez días de calendario antes de la fecha programada para la audiencia.

Aviso de aceptación de comentario público por escrito: Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas de leyes administrativas, pueden ser enviados a través de correo electrónico a: CYFD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: “8.15.2 NMAC Public Comment,” o por correo de primera clase a P.O. Drawer 5160, Santa Fe, New México 87502-5160. Comentarios por escrito pueden ser entregados en el edificio antiguo PERA ubicado en 1120 Paseo De Peralta el día 14 de Julio del 2020 de la 1:00 pm a las 3:00 pm. El

período de comentarios termina a la conclusión de la audiencia pública del 14 de julio del 2020.

Cualquier miembro del público interesado puede atender a la audiencia por medio de internet o telefono y ofrecer comentario público sobre la propuesta de leyes administrativas durante la audiencia. Para acceder la audiencia por medio de telefono: llame al 1-253-215-8782 con código de acceso 91353582922#. Usted tendrá la habilidad de escuchar toda la audiencia y sus comentarios serán grabados. Para acceder la audiencia por medio de internet: por favor dirijase a <https://zoom.us/j/91353582922>, y siga las instrucciones indicadas en la pantalla-Meeting ID- código de acceso: 91353582922. Esto será una forma de audiencia en vivo. Puede proveer sus comentarios por medio de la función de Chat durante la audiencia en vivo.

Proposed Rules/Reglas Propuestas

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation:

- (1) a completed signed application form;
- (2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support;

(3) school schedule or verification of educational activity, if applicable;

(4) verification of birth for all applicant's household children;

(5) proof of unearned income;

(6) proof of New Mexico home address; and

(7) CYFD approved provider.

B. Assistance is provided effective the first day of the month of application if all of the following apply:

(1) the client is utilizing child care services;

(2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and

(3) the eligible provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020]

8.15.2.13 CLIENT

RESPONSIBILITIES: Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, to include required co-payments, during the time of the public health emergency. Co-payments are determined by income and household

size. The co-payment schedule is published yearly at <https://cyfd.org/child-care-services>.

B. Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the co-payment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

(1) full time care will be based on one hundred percent of the base co-payment;

(2) part time 1 care will be based on seventy-five percent of the base co-payment;

(3) part time 2 care will be based on fifty percent of the base co-payment; and

(4) part time 3 care will be based on twenty-five percent of the base co-payment.

D. Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

F. In-home providers: Parents who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent.

G. Notification of changes: Clients must notify the department of changes that affect the need for care, which include but are not limited to any non-temporary change in activity, or household members moving in or out, within five business days of the change. Clients who do not comply with this requirement may be sanctioned.

H. Required application with New Mexico human services department's child support enforcement division (CSED):

(1) When one or both of the child's parents are absent from the home, the client shall apply for child support through CSED within 12 months of initial application with the child care assistance program.

(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at-risk child care; a parent is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists.

(3) Good cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:

(a) there is possible physical or emotional harm to the child, parent or guardian;

(b) the child was conceived as a result of incest or rape;

(c) legal proceedings for adoption of the child are pending before a court; or

(d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(4) The applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

(5) If the client is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020]

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

A. When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. Upon a change of provider the client and former provider have three days after the fifth day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in

providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.

C. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee

will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.

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

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

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

F. Hours of care shall be rounded to the nearest whole number.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes and in-home child care			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

H. The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

I. Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I. below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

J. The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

K. In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

L. Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31,

2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

M. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

N. If a significant change occurs in the client’s circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

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

P. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020]

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

**NOTICE OF PUBLIC MEETING
AND PUBLIC HEARING**

The New Mexico Oil Conservation Commission (Commission) hereby gives notice that the Commission will hold the following public meeting and public hearing commencing at 9:00 a.m. on July 30, 2020 online and via telephone. The hearing may be continued to the following day if not completed. Oral comments may be made either on-line or by telephone. The Commission shall make available to the public a preliminary agenda for the meeting no later than two weeks prior to the meeting, and a final agenda for the meeting no later than 72 hours before the meeting.

Case No. 21281: APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND THE COMMISSION’S RULES FOR PRODUCED WATER IN 19.15.2, 19.15.16, AND 19.15.34 NMAC; STATEWIDE.

The New Mexico Oil Conservation Division (OCD) proposes to (1) amend 19.15.2.7 NMAC to conform the definition of “produced water” with the definition found in the Oil and Gas Act, NMSA 1978, §70-2-33(K) (2019); (2) amend 19.15.16 NMAC to add a section requiring the filing of a water use report for a hydraulically fractured well that provides the portion of the water used in fracturing which is potable, nonpotable, or recycled produced water; and (3) amend 19.15.34 NMAC to conform the language in 19.15.34 NMAC to the legislative changes in Laws 2019, chapter 197 (HB 546) concerning produced water.

Purpose of Proposed Rule. The proposed rule implements the changes in produced water management and authority enacted by House Bill 546 (Laws 2019, chapter 197) in the 2019 Legislature.

Legal Authority. The proposed rule is authorized by the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, and specifically, Section 70-2-6 (authorizing the Commission to exercise jurisdiction, authority, and control of and over all

persons, matters, and things necessary or proper to enforce the statute), Section 70-2-11 (authorizing the Commission to make rules to prevent waste, protect correlative rights, and to do whatever may be reasonably necessary to implement the statute), and Section 70-2-12 (enumerating the powers of the Commission and OCD). The public hearing is governed by the Commission’s rule on rulemaking proceedings, 19.15.3 NMAC.

Availability of Proposed Rule. The full text of the proposed rule may be obtained from the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 476-3458, or can be viewed on the Rules page of the OCD’s website at <http://www.emnrd.state.nm.us/ocd>.

Public Hearing. The Commission will hold a public hearing on the proposed rule at the Commission meeting commencing at 9:00 a.m. on July 30, 2020 online and via telephone. The hearing may be continued to the following day(s) if not completed. The hearing will be held via Webex Meeting platform. The public meeting can be accessed by using the following link and/or meeting information:

July 30

OCC - (Day 1) Produced Water Rule Making Hearing
 Meeting number: 967 682 712
 Password: R4SpDXpeu49
<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m6572062a0f431b8f7a815b6edf74af0>

Join by phone

+1-408-418-9388 United States Toll

Access code: 967 682 712

July 31 (IF NECESSARY):

OCC - (Day 2) Produced Water Rule Making Hearing
 Meeting number: 963 288 479
 Password: ZjiqP9PET32
<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m2854bda11fb429c3fd553e90c6707a8f>

Join by phone

+1-408-418-9388 United States Toll

Access code: 963 288 479

For information on how to participate in the hearing please contact the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 476-3458 or visit the OCD's website at <http://www.emnrd.state.nm.us/ocd>. Pursuant to NMAC 19.15.3.8(C), the Commission will issue a Procedural Order specifying additional rules for the hearing as outlined below. The Procedural Order may be obtained from the Commission Clerk, Florene Davidson at florene.davidson@state.nm.us or (505) 476-3458, or can be viewed on the Rules page of the OCD's website at <http://www.emnrd.state.nm.us/ocd>.

Proposed Modifications, Technical Testimony, and Cross Examination.

Any person intending to propose a modification to the proposed rule, to present technical testimony at the hearing, or to cross-examine witnesses must file a Pre-Hearing Statement conforming to the requirements of Subsection B of 19.15.3.11 NMAC, no later than 5:00 p.m. on July 17, 2020. Additionally, all technical testimony shall be presented to the Commission in writing and shall be filed with the

Commission no later than 5:00 p.m. on July 17, 2020. Filing may be accomplished by first class mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or electronic mail to OCD.Hearings@state.nm.us. Any person who presents technical testimony in writing shall attend the hearing online or via telephone and will be subject to cross-examination by the members of the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

Oral Comments. Any person who has not submitted a Pre-Hearing Statement may present non-technical testimony or make an unsworn statement at the hearing, and may offer exhibits at the hearing so long as the exhibits are relevant to the proposed rule and do not unduly repeat the testimony. Any person that wishes to present oral non-technical testimony to the Commission shall notify the Commission Clerk, Florene Davidson by first class or electronic mail at 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or florene.davidson@state.nm.us no later than 5:00 p.m. on July 29, 2020. In order to ensure that all participants are able to participate in the hearing, notifications to the Commission Clerk shall include at least a name and telephone number of the person intending to present non-technical testimony. Any exhibits that will be offered in conjunction with non-technical testimony must be sent via electronic mail to the Commission Clerk, Florene Davidson, at the above email address no later than 5:00 p.m. on July 29, 2020. Any person who presents non-technical testimony will be subject to cross-examination by the Commission, the Commission's counsel, or another person who has filed a Pre-Hearing Statement on the subject matter of the person's direct testimony.

Written or Electronic Comments.

Any person may submit written or electronic comments on the proposed rule no later than 9:00 a.m. on July 30, 2020, unless extended by the Commission or the Chair of the Commission, by first class or electronic mail to the Commission Clerk, Florene Davidson, 3rd Floor, Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505, or florene.davidson@state.nm.us.

Persons with Disabilities. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, including a summary or other accessible form of document, please contact the Commission Clerk, Florene Davidson, florene.davidson@state.nm.us or (505) 476-3458, or through the New Mexico Relay Network at 1-800-659-1779, no later than July 17, 2020.

Technical Information. There is no technical information for the proposed rule.

LIVESTOCK BOARD**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the New Mexico Livestock Board (NMLB) will hold a video/telephonic rulemaking hearing on July 14, 2020 at 10:00 a.m. The hearing will be held via a virtual format. Instructions on how to join the virtual rulemaking hearing will be posted on the NMLB's website, www.nmlbonline.com.

The NMLB will consider a proposed amendment to 21.32.10 NMAC, Livestock Board Fees. The purpose of the proposed rule amendment to 21.32.10.14 DEPOSITS, is to provide NMLB inspectors the statutory maximum of ten (10) days to deposit fee monies collected, pursuant to NMSA 1978, Section 77-2-10. The proposed rule also allows for

the Executive Director to propose designated banks with confirmation from the Board and to direct the use of alternative financial institutions in emergency situations.

Copies of the full text of the proposed rule can be obtained from the agency's website at www.nmlbonline.com. To request a copy of the proposed rule by mail, contact the NMLB at (505)841-6161.

Interested persons may submit written comments on the proposed changes to 21.32.10 NMAC at www.nmlbonline.com or individuals may mail written comments to: NMLB/ Rule Comments, 300 San Mateo Blvd NE, Suite 1000, Albuquerque, NM 87108. Comments are due by 4:30 p.m. on Monday, July 13, 2020. The final proposed rule will be voted on by the board during the public hearing on July 14, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on July 14, 2020.

Legal authority for this rulemaking can be found in the Livestock Code 77-2-7, et seq. NMSA 1978; Livestock Board's power to establish rules and regulations 77-2-7, et seq. NMSA 1978.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the agency at (505) 841-6161 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the NMLB at (505) 841-6161 if a summary or other type of accessible format is needed.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Friday, July 10, 2020 from 10 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. Due to recent public health orders issued by Governor Michelle Lujan Grisham, the location of the hearing may be subject to change. The purpose of the public hearing is to receive public input on the proposed new rule of 6.12.12 NMAC, Armed Public School Security Personnel and proposed amendment of 6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text

The purpose of the proposed new rule **6.12.12 NMAC, Armed Public School Security Personnel**, is to provide parameters for a local school board or governing body of a charter school to authorize formerly certified and commissioned law enforcement officers employed by a school district or charter school as school security personnel to carry a firearm on school premises or other school property to mitigate loss of life during an emergency and until local law enforcement arrives.

The purpose of the proposed amendment of **6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students**, is to provide a comprehensive framework within which school

districts, local school boards, locally chartered charter schools, state-chartered charter schools, and governing bodies of charter schools [can] may carry out their educational mission and exercise their authority and responsibility to provide a safe environment for student learning and [further to] provide students and parents with an understanding of the basic rights and requirements necessary to effectively function in the educational community.

Statutory Authorization(s):

Sections 9-24-8, 22-2-1, 22-2-2, 22-5-4.12, 22-5-18, 22-10A-5, 22-10A-40, 22-10A-41, and 28-2-4 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 121, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Friday, July 10, 2020. The PED encourages the early submission of written comments. The public comment period is from June 9, 2020 to July 10, 2020 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an

alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

RACING COMMISSION

POSTPONEMENT OF NOTICE OF PUBLIC RULE HEARING Due to Executive Order 2020-004 Issued by Governor Michelle Lujan Grisham

The New Mexico Racing Commission is postponing the public rule hearing that is set for May 28, 2020 in the New Mexico Gaming Commission's Boardroom ("Boardroom") at 4900 Alameda Blvd. NE, Albuquerque, NM. The Commission will hold a Public Meeting and Rule Hearing on June 25, 2020 during the Commission's regular business meeting with the public session beginning at 9:00 a.m. The Commission will re-convene a regular meeting to adopt the rules and conduct regular business. The Rule Hearing and Commission meeting will be held in the Boardroom located at the New Mexico Racing Commission, 4900 Alameda Blvd., NE, Albuquerque, NM.

The New Mexico Racing Commission ("Commission") hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules governing Horse Racing in New Mexico. The proposed amendments are to clarify rules regarding summary suspension and update the most current version of the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule, modify multiple-medication violation penalties, correct typographical errors, modify penalties of Category C violations, remove Naproxen as a permissible medication

and update the rule regarding non-steroidal anti-inflammatory drugs (NSAIDs).

Statutory Authority: Legal authority for this rulemaking can be found in the New Mexico Horse Racing Act, Sections 60-1A-1 through 60-1A-30 NMSA 1978 (2007, as amended through 2017), which, among other provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

15.2.1 NMAC - General Provisions
15.2.6 NMAC – Medications and Prohibited Substances

No technical information served as the basis for the proposed rule.

Purpose of proposed rules:

Subsection B of 15.2.1.9 NMAC:

The purpose of the proposed amendment is to clarify the time limit for summary suspension for a Category A medication violation.

15.2.6.9 To include Association of Racing Commissioners International's Uniform Classification Guidelines and Recommended Penalties January, 2020 version 14.1 and the Association of Racing Commissioners International's Controlled Therapeutic Medication Schedule for Horses, December, 2019, version 4.2.

Subsection B of 15.2.6.9 NMAC:

The purpose of the proposed amendment is to clarify and make the penalties for "Major" medication violations consistent with the Association of Racing Commissioners International's Model Rules guidelines.

Subsection O of 15.2.6.9 NMAC:

The purpose of the proposed amendment is to make point assigned for medication violations of Class A controlled therapeutic substances consistent with points assigned to non-controlled substances mandated by the Multiple Medication Violation

Rule. Fixing a typographical error in subparagraph 8.

A copy of the proposed rule may be found on the Commission's website @ <http://nmrc.state.nm.us/rules-regulations.aspx>. You may also contact Denise Chavez at 505.222.0714 to request to receive a copy of the proposed rules by regular mail.

Notice of Acceptance of written public comment:

Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and make a brief verbal presentation of their view. All written comments must be received by the Commission by 5:00 PM on June 18, 2020. Please submit comments to:

Denise Chavez, Paralegal
New Mexico Racing Commission
4900 Alameda Blvd. NE
Albuquerque, NM 87113
Telephone: 505.222.0714
Fax: 505.222.0713
Email: DeniseM.Chavez@state.nm.us

The **final** agenda for the Commission meeting will be available one hundred twenty (120) hours prior to the meeting. A copy of the **final** agenda may be obtained from Denise Chavez or from the Commission's website.

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

WORKFORCE SOLUTIONS DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing in the conference

room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on July 14, 2020 from 10:00 am to 12:00 pm. The public comment hearing will also be conducted virtually. Instructions regarding how to join the virtual meeting will be posted on the NMDWS website at <https://www.dws.state.nm.us/>. The purpose of the public hearing will be to obtain input and public comment on an amendment to 11.2.4 NMAC adding a section governing Planning Regions.

Purpose of the amendment is to add a section to define Planning Regions under WIOA and to establish a policy to regulate these regions

Summary: amending WIOA regulations to add a section to define Planning Regions under WIOA and establishing a policy to regulate these regions.

Under Title I of the Workforce Innovation and Opportunity Act, 29 U.S.C. Chapter 32, Subchapter I, WIOA USDOL Final Rule 20 C.F.R. 683, et al, and NMSA 1978 §§50-14-1 et seq, NMDWS is the agency responsible for the Workforce Innovation and Opportunity Act and the Department has legal authority for rule making.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on July 13, 2020. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made

available at least thirty days prior to the hearing.

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

PUBLIC RECORDS, COMMISSION OF

NOTICE OF CANCELATION OF REGULAR MEETING AND OF RULEMAKING

The New Mexico Commission of Public Records (CPR) regular meeting and rule hearing previously scheduled for Tuesday, May 26, 2020, at 10:00 A.M. at the New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, NM, has been canceled due to the COVID-19 pandemic. The meeting and rule hearing will be rescheduled to a future date as appropriate.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT YOUTH CONSERVATION COMMISSION

NOTICE OF TERMINATION OF PROPOSED RULEMAKING

At its 5/13/2020 public web-based meeting the Youth Conservation Corps Commission voted to terminate its proposed rule change, The Youth Conservation Corps (YCC) and Outdoor Equity Grant (OEG) Programs, 11.2.171.13 NMAC, published in the NM Register, Volume XXXI, Issue 1, 1/14/2020, pursuant to Subsection C of Section 14-4-5 NMSA 1978.

HIGHER EDUCATION DEPARTMENT

NOTICE OF TERMINATION OF PROPOSED RULEMAKING

The New Mexico Higher Education Department gives notice of the termination of its proposed rule change, and cancellation of the proposed rule hearing for the **LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM**, 5.7.20 NMAC, published in the NM Register, Volume XXXI, Issue 10, 5/19/2020, pursuant to Subsection C of Section 14-4-5 NMSA 1978.

PUBLIC REGULATION COMMISSION

NOTICE OF TERMINATION OF RULEMAKING

The New Mexico Public Regulation Commission is providing notice of cancelation of the rulemaking public hearing scheduled on Friday, May 15, 2020, at 9:30 a.m., at the offices of the commission located in the fourth floor hearing room of the old PERA building, at 1120 Paseo de Peralta, Santa Fe, New Mexico 87501 in accordance with subsection C of section 14-4-5 NMSA 1978.

The proposed new rule assigned part number 17.9.2 NMAC entitled **PROCUREMENT REQUIREMENTS FOR INVESTOR OWNED ELECTRIC UTILITIES** and the rulemaking proceeding under case no. 18-00030-UT has been terminated by the New Mexico public regulation commission.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

Effective Date and Validity of Rule Filings

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

HEALTH, DEPARTMENT OF

The New Mexico Department of Health approved the repeal of its rule 7.9.2 NMAC - Requirements for Long Term Care Facilities (filed 8/31/2000) and replaced it with 7.9.2 NMAC - Requirements for Long Term Care Facilities adopted on 5/22/2020, and effective 6/9/2020.

HEALTH, DEPARTMENT OF

**TITLE 7 HEALTH
CHAPTER 9 NURSING
HOMES AND INTERMEDIATE
CARE FACILITIES
PART 2 REQUIREMENTS
FOR LONG TERM CARE
FACILITIES**

7.9.2.1 ISSUING AGENCY: New Mexico department of health, division of health improvement.
[7.9.2.1 NMAC - Rp, 7.9.2.1 NMAC, 6/9/2020]

7.9.2.2 SCOPE:
A. Services for residents shall be provided on a continuing 24 hour basis and shall maintain or improve physical, mental and psychosocial well-being under plan of care developed by a physician or other licensed health professional and shall be reviewed and revised based on assessment.

B. All facilities licensed as nursing homes pursuant to Subsection A of Section 24-1-5 NMSA 1978, are subject to all provisions of these regulations.
[7.9.2.2 NMAC - Rp, 7.9.2.2 NMAC, 6/9/2020]

7.9.2.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6 NMSA 1978 of the Department of Health Act, as amended; and the authority granted under Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and 24-1-5 NMSA 1978 of the Public Health Act, as amended.
[7.9.2.3 NMAC - Rp, 7.9.2.3 NMAC, 6/9/2020]

7.9.2.4 DURATION: Permanent.
[7.9.2.4 NMAC - Rp, 7.9.2.4 NMAC, 6/9/2020]

7.9.2.5 EFFECTIVE DATE: June 9, 2020, unless a different date is cited at the end of a section or paragraph.
[7.9.2.5 NMAC - Rp, 7.9.2.5 NMAC, 6/9/2020]

7.9.2.6 OBJECTIVE:
A. Establish minimum standards for long term care facilities in the state of New Mexico.

B. Monitor long term care facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the residents or staff.

C. Encourage the maintenance of long term care facilities that will provide quality services which maintain or improve the health and quality of life to the residents.
[7.9.2.6 NMAC - Rp, 7.9.2.6 NMAC, 6/9/2020]

7.9.2.7 DEFINITIONS: For purposes of these regulations the following shall apply:

- A. Definitions beginning with "A":**
- (1) "Abuse"**
means any act or failure to act performed intentionally, knowingly, or recklessly that causes or is likely to cause harm to a resident, including but not limited to:
 - (a)** Physical contact that harms or is likely to harm a resident of a care facility.
 - (b)** Inappropriate use of physical restraint, isolation, or medication that harms or is likely to harm a resident.
 - (c)** Inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order.
 - (d)** Medically inappropriate conduct that causes or is likely to cause physical harm to a resident.
 - (e)** Medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident.
 - (f)** An unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.
- (2) "Ambulatory"** means able to walk without assistance.
- (3) "Applicant"** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.
- B. Definitions beginning with "B":** [RESERVED]
- C. Definitions**

beginning with "C": [RESERVED]

D. Definitions

beginning with "D":

(1)

"Department" means the New Mexico department of health.

(2)

"Developmental disability" means mental retardation or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

(a)

manifested before the individual reaches age 22;

(b)

likely to continue indefinitely; and

(c)

results in substantial functional limitations in three or more of the following areas of major life activity:

(i)

self-care;

(ii)

understanding and use of language;

(iii)

learning;

(iv)

mobility;

(v)

self-direction;

(vi)

capacity for independent living; and

(vii)

economic self-sufficiency.

(3)

"Dietitian" means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982.

(4) "Direct

supervision" means supervision of an assistant by a supervisor who is present in the same building as the assistant while the assistant is performing the supervised function.

E. Definitions

beginning with "E": "Exploitation" of a patient/client/resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a patient/client's property, including any form of property, for another persons profit, advantage or benefit.

(1)

"Exploitation" includes but is not limited to:

(a)

manipulating the patient/client resident by whatever mechanism to give money or property to any facility staff or management member;

(b)

misappropriation or misuse of monies belonging to a resident or the unauthorized sale, or transfer or use of a patient/client/residents property;

(c)

loans of any kind from a patient/client/resident to family, operator or families of staff or operator;

(d)

accepting monetary or other gifts from a patient /client/resident or their family with a value in excess of \$25 and not to exceed a total value of \$300 in one year.

(e)

All gifts received by facility operators, their families or staff of the facility must be documented and acknowledged by person giving the gift and the recipient.

(2) **Exception:**

Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

F. Definitions

beginning with "F":

(1) "Facility"

means a nursing home subject to the requirements of these regulations.

(2) "Full-

time" means at least an average of 37.5 hours each week devoted to facility business.

G. Definitions

beginning with "G": [RESERVED]

H. Definitions

beginning with "H": [RESERVED]

I. Definitions

beginning with "I":

(1)

"Intermediate care facility" means a nursing home, which is licensed by the department as an intermediate care facility to provide intermediate nursing care.

(2)

"Intermediate nursing care" means a basic care consisting of physical, emotional, social and other

rehabilitative services under periodic medical supervision. This nursing care requires the skill of a licensed nurse for observation and recording of reactions and symptoms, and for supervision of nursing care. Most of the residents have long-term illnesses or disabilities which may have reached a relatively stable plateau. Other residents whose conditions are stabilized may need medical and nursing services to maintain stability. Essential supportive consultant services are provided in accordance with these regulations.

J. Definitions

beginning with "J": [RESERVED]

K. Definitions

beginning with "K": [RESERVED]

L. Definitions

beginning with "L":

(1) "Licensed

practical nurse" means a person licensed as a licensed practical nurse under Section 61-3-1 through Section 61-3-30 NMSA 1978, Nursing Practice Act.

(2)

"Licensee" means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the long term care facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.

M. Definitions

beginning with "M": "Mobile non-ambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair or a wheeled platform.

N. Definitions

beginning with "N":

(1) "Non-

ambulatory" means unable to walk without assistance.

(2) "Non-

mobile" means unable to move from place to place.

(3) "Nurse"

means registered nurse or licensed practical nurse.

(4) "Nurse

practitioner (certified)" means a registered professional nurse who meets the requirements for licensure as established under Sections 61-

3-1 through 61-3-30 NMSA 1978, Nursing Practice Act.

O. Definitions beginning with “O”:

P. Definitions beginning with “P”:

(1) **“Personal care”** means personal assistance, supervision and a suitable activities program. In addition:

(a) the services provided are chiefly characterized by the fact that they can be provided by personnel other than those trained in medical or allied fields. The services are directed toward personal assistance, supervision, and protection;

(b) the medical service emphasizes a preventive approach of periodic medical supervision by the resident’s physician as part of a formal medical program that will provide required consultation services and also cover emergencies; and

(c) the dietary needs of residents are met by the provision of adequate general diet or by therapeutic, medically prescribed diets.

(2) **“Pharmacist”** means a person registered as a pharmacist under Section 61-11-1 NMSA 1978, the Pharmacy Act.

(3) **“Physical therapist”** means a person licensed to practice physical therapy under Sections 61-12D-1 to Section 61-12D-19 NMSA 1978, the Physical Therapy Act.

(4) **“Physician”** means a person licensed to practice medicine or osteopathy as defined by Section 61-6-1 NMSA 1978, the Medical Practice Act, and Sections 61-10-1 through 61-10-21 NMSA 1978, the Osteopathic Medicine Act.

(5) **“Physician’s extender”** means a person who is a physician’s assistant or a nurse practitioner acting under the general supervision and direction of a physician.

(6) **“Physician’s assistant”** means a

person licensed under Section 61-6-7 through 61-6-10 NMSA 1978, the Physician Assistant Act, to perform as a physician’s assistant.

(7) **“Practitioner”** means a physician, dentist or podiatrist or other person permitted by New Mexico law to distribute, dispense and administer a controlled substance in the course of professional practice.

Q. Definitions beginning with “Q”: [RESERVED]

R. Definitions beginning with “R”:

(1) **“Registered nurse”** means a person who holds a certificate of registration as a registered nurse under Section 61-3-1 to 61-3-30 NMSA 1978, the Nursing Practice Act.

(2) **“Resident”** means a person cared for or treated in any facility on a 24-hour basis irrespective of how the person has been admitted to the facility.

S. Definitions beginning with “S”:

(1) **“Skilled nursing facility”** means a nursing home which is licensed by the department to provide skilled nursing services.

(2) **“Skilled nursing care”** means those services furnished pursuant to a physician’s orders which:

(a) require the skills of professional personnel such as registered or licensed practical nurses; and

(b) are provided either directly by or under the supervision of these personnel;

(c) in determining whether a service is skilled nursing care, the following criteria shall be used:

(i) the service would constitute a skilled service where the inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of professional personnel;

(ii) the restoration potential of a resident is not the deciding factor in determining whether a service is to be considered skilled or unskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities; and

(iii) a service that is generally unskilled would be considered skilled where, because of special medical complications, its performance or supervision or the observation of the resident necessitates the use of skilled nursing personnel.

(3) **“Specialized consultation”** means the provision of professional or technical advice, such as systems analysis, crisis resolution or in-service training, to assist the facility in maximizing service outcomes.

(4) **“Supervision”** means at least intermittent face-to-face contact between supervisor and assistant, with the supervisor instructing and overseeing the assistant, but does not require the continuous presence of the supervisor in the same building as the assistant.

T. Definitions beginning with “T”: **“Tour of duty”** means a portion of the day during which a shift of resident care personnel are on duty.

U. Definitions beginning with “U”: **“Unit dose drug delivery system”** means a system for the distribution of medications in which single doses of medications are individually packaged and sealed for distribution to residents.

V. Definitions beginning with “V”: **“Variance”** means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of

residents or staff of a long term care facility, and is at the sole discretion of the licensing authority.

W. Definitions

beginning with “W”: “Waive/waivers” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of residents and staff are not in danger. Waivers are issued at the sole discretion of the licensing. [7.9.2.7 NMAC - Rp, 7.9.2.7 NMAC, 6/9/2020]

7.9.2.8 LICENSURE:

A. Application/ requirements for licensure:

(1) All initial applications shall be made on forms provided by the licensing authority.

(a) all information requested on the application must be provided;

(b) The application must be dated and signed by the person who shall be the licensee;

(c) the application must be notarized.

(2) In every application, the applicant shall provide the following information:

(a) the identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;

(b) the identities of all persons or business entities having five percent ownership interest whatsoever in the facility, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building, and

(c) the identities of all creditors holding a security interest in the premises, whether land or building; and

(d) in the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, and between

any owner or operator of the new licensee, whether direct or indirect.

(3) The applicant shall provide to the department, information including, but not limited to, information regarding felony convictions, civil actions involving fraud, embezzlement or misappropriation of property, any state or federal adverse action resulting in suspension or revocation of license or permit.

(4) The new licensee shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of six months.

(5) No license may be issued unless and until the applicant has supplied all information requested by the department.

(6) Fees: All applications for initial licensure must be accompanied by the required fee.

(a) Current fee schedules may be requested from the licensing authority.

(b) Fees must be in the form of a certified check, money order, personal or business check made payable to the state of New Mexico.

(c) Fees are non-refundable.

B. Action by the department:

(1) After receiving complete application, the department shall investigate the applicant to determine the applicant’s ability to comply with these regulations.

(2) Within 60 days after receiving a complete application for a license, the department shall either approve the application and issue a license or deny the application. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial.

(3) The licensing authority shall not issue a new license if the applicant has had a health facility license revoked or denied renewal, or has surrendered a license under threat of revocation or denial of renewal, or has lost

certification as a Medicaid provider as a result of violations of applicable medicaid requirements. The licensing authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be Class A or Class B deficiencies as defined in *Health Facility Sanctions and Civil Monetary Penalties*, 7NMAC 1.8, or has been noncompliant with plans of correction.

[7.9.2.8 NMAC - Rp, 7.9.2.8 NMAC, 6/9/2020]

7.9.2.9 TYPES OF LICENSE:

A. Annual license:
An annual license is issued for a one year period to a long term care facility which has met all requirements of these regulations.

B. Temporary license:
The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A license must apply to the licensing authority for an amended license when there is a change of administrator/director, when there is a change of name for the facility, when a change in capacity is sought, a change in bed classification is sought, or an addition or deletion of any special or operation unit(s) as listed in these regulations is sought.

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for amended license.

(3) Application must be submitted within

10 working days of the change.
[7.9.2.9 NMAC - Rp, 7.9.2.9 NMAC, 6/9/2020]

7.9.2.10 SCOPE OF LICENSE:

A. The license is issued only for the premises and the persons named in the license application and may not be transferred or assigned by the licensee.

B. The license shall state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the department considers appropriate and necessary taking all facts and circumstances into account.

C. A licensee shall fully comply with all requirements and restrictions of the license.
[7.9.2.10 NMAC - Rp, 7.9.2.10 NMAC, 6/9/2020]

7.9.2.11 SEPARATE LICENSES: Separate licenses shall be required for facilities which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same ground or adjacent ground.
[7.9.2.11 NMAC - Rp, 7.9.2.11 NMAC, 6/9/2020]

7.9.2.12 LICENSE RENEWAL:

A. Licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application and required fee prior to expiration of current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these regulations.

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the long term care facility

shall cease operation until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[7.9.2.12 NMAC - Rp, 7.9.2.12 NMAC, 6/9/2020]

7.9.2.13 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location or accessible to public view within the facility.

[7.9.2.13 NMAC - Rp, 7.9.2.13 NMAC, 6/9/2020]

7.9.2.14 REPORT OF CHANGES:

A. The licensee shall notify the department in writing of any changes in the information provided, within 10 days of such changes. This notification shall include information and documentation regarding such changes.

B. When a change of administrator occurs, the department shall be notified within 10 days in writing by the licensee. Such writing shall include the name and license number of the new administrator.

C. Each licensee shall notify the department within 10 days in writing of any change of the mailing address of the licensee. Such writing shall include the new mailing address of the licensee.

D. When a change in the principal officer of a corporate license (chairman, president, general manager) occurs the department shall be notified within 30 days in writing by the licensee. Such writing shall include the name and business address of such officer.

E. Any decrease or increase in licensed bed capacity of the facility shall require notification by letter to the department and shall result in the issuance of a corrected license.

[7.9.2.14 NMAC - Rp, 7.9.2.14 NMAC, 6/9/2020]

7.9.2.15 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. Ownership of the facility changes.

B. The facility changes location.

C. Licensee of the facility changes.

D. The facility discontinues operation.

E. A facility wishing to continue operation as a licensed long term care facility under circumstances listed in 7.9.2.15 NMAC must submit an application for initial licensure in accordance with 7.9.2.8 NMAC of these regulations, at least 30 days prior to the anticipated change.
[7.9.2.15 NMAC - Rp, 7.9.2.15 NMAC, 6/9/2020]

7.9.2.16 AUTOMATIC EXPIRATION OF LICENSE: a license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked, or:

A. On the day a facility discontinues operation.

B. On the day a facility is sold, leased, or otherwise changes ownership or licensee.

C. On the day a facility changes location.

[7.9.2.16 NMAC - Rp, 7.9.2.16 NMAC, 6/9/2020]

7.9.2.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING:

In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[7.9.2.17 NMAC - Rp, 7.9.2.17 NMAC, 6/9/2020]

**7.9.2.18 GROUND
FOR REVOCATION OR
SUSPENSION OF LICENSE,
DENIAL OF INITIAL OR
RENEWAL APPLICATION FOR
LICENSE, OR IMPOSITION OF
INTERMEDIATE SANCTIONS
OR CIVIL MONETARY**

PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A.** Failure to comply with any provision of these regulations.
- B.** Failure to allow survey by authorized representatives of the licensing authority.
- C.** Any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony.
- D.** Misrepresentation of falsification of any information or application forms or other documents provided to the licensing authority.
- E.** Discovery of repeat violations of these regulations during surveys.
- F.** Failure to provide the required care and services as outlined by these regulations for the patients receiving care at the long term care facility.
- G.** Abuse, neglect or exploitation of any patient/client/resident by facility operator, staff, or relatives or operator/staff.
[7.9.2.18 NMAC - Rp, 7.9.2.18 NMAC, 6/9/2020]

**7.9.2.19 HEARING
PROCEDURES:**

A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the long term care facility as outlined in 7.9.2.17 NMAC and 7.9.2.18 NMAC will be held in accordance with adjudicatory hearings, New Mexico department of health, 7 NMAC 1.2 (2-1-96).

B. A copy of the adjudicatory hearing procedures will be furnished to the long term care facility or agency at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.
[7.9.2.19 NMAC - Rp, 7.9.2.19 NMAC, 6/9/2020]

**7.9.2.20 PROGRAM
FLEXIBILITY:**

A. All facilities shall maintain compliance with the licensee requirements. If the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects conflicts with requirements, then prior written approval from the department shall be obtained in order to ensure provisions for safe and adequate care. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the department.

B. Any approval of the department granted under this section, or a certified copy thereof shall be posted immediately adjacent to the facility's license.
[7.9.2.20 NMAC - Rp, 7.9.2.20 NMAC, 6/9/2020]

**7.9.2.21 WAIVERS AND
VARIANCES:**

A. Definitions: As used in this section:

- (1) waiver:** means the grant of an exemption from a requirement of these regulations;
- (2) variance:** means the granting of an alternate requirement in place of a requirement of these regulations.

B. Requirements for waivers and variances: A waiver or variance may be granted if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that:

(1) strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident;

(2) an alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interest of better care or management.

C. Applications:

(1) All applications for waiver or variance from the requirements of these regulations shall be made in writing to the department, specifying the following:

- (a)** the rule from which the waiver or variance is requested;
- (b)** the time period for which the waiver or variance is requested;
- (c)** if the request is for a variance, the specific alternative action which the facility proposes;
- (d)** the reasons for the request; and
- (e)** justification that the goal or purpose of the rule or regulations would be satisfied.

(2) Requests for a waiver or variance may be made at any time.

(3) The department may require additional information from the facility prior to acting on the request.

D. Grants and denials:

(1) The department at its discretion shall grant or deny each request for waiver or variance in writing. A notice of denials shall contain the reasons for denial.

(2) The terms of a requested variance may be modified upon agreement between the department and a facility.

(3) The department may impose such conditions on the granting of a waiver or variance which it deems necessary.

(4) The department may limit the duration of any waiver or variance.

(5) The department's action on a request for a waiver is not subject to administrative appeal.

E. Revocation: The department may revoke a waiver or variance if:

(1) it is determined that the waiver or variance is adversely affecting the health, safety or welfare of the resident's; or

(2) the facility has failed to comply with the variance as granted; or

(3) the licensee notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied;

(4) required by a change in law.

[7.9.2.21 NMAC - Rp, 7.9.2.21 NMAC, 6/9/2020]

7.9.2.22 RIGHTS OF

RESIDENTS: Every resident shall have the right to:

A. Communications: Have private and unrestricted communications with the resident's family, physician, attorney and any other person, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

(1) Receive, send, and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held, or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed, or held.

(2) Use a telephone for private communications during reasonable hours.

(3) Have private visiting pursuant to a reasonable written visitation policy.

B. Access: Immediate access by representatives of human services department, health and environment department, ombudsman, personal physician and, subject to resident's consent, immediate family or other relatives or visitors following notification of staff person in charge and presentation of valid identification. Reasonable access by providers of health, social, legal or other services must be assured.

C. Grievances: Present grievances on one's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and join with other residents or individuals within or outside of the facility to work for improvements in resident care.

D. Finances: Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

(1) A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorize this action in writing. The facility shall obtain separate authorization for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed the designated spending limit require a separate authorization for each individual occurrence.

(2) Any resident funds held or controlled by the facility, and any earnings from them, shall be credited to the resident and may not be comingled with other funds or property except that of other residents.

(3) The facility shall furnish a resident, the resident's guardian, or a representative designated by the resident with at least a quarterly statement of all funds held by the facility for the resident and all expenditures made from the

resident's account, and a similar statement at the time of the resident's permanent discharge.

(4) The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident.

E. Admission information: Be fully informed in writing prior to or at the time of admission, of all services and the charges for these services, and be informed in writing, during the resident's stay, of any changes in services available or in charges for services, as follows:

(1) No person may be admitted to a facility without that person or that person's guardian or designated representative signing an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to be admitted for short-term care, the information required under these regulations.

(a) an accurate description of the basic services provided by the facility, the rate charged for those services, and the method of payment for them;

(b) information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x-ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;

(c) the method for notifying residents of a change in rates or fees;

(d) terms for refunding advance payments in case of transfer, death or voluntary or involuntary discharge.

(e) terms of holding and charging for a bed during a resident's temporary absence.

(f) conditions for involuntary discharge or transfer, including transfers within the facility;

(g) information about the availability of storage space for personal effects; and

(h) a summary of residents' rights recognized and protected by this section and all facility policies and regulations governing resident conduct and responsibilities.

(2) No statement of admission information may be in conflict with any part of these regulations.

F. Treatment: Be treated with courtesy, respect, and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified, and registered providers under contract with the facility.

G. Privacy: Have physical and emotional privacy in treatment, living arrangements, and in caring for personal needs, including, but not limited to:

(1) Privacy for visits by spouse. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

(2) Privacy concerning health care. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to authorize their presence.

(3) Confidentiality of health and personnel records, and the right to approve or refuse their release to any individual outside the facility, except in the case of the resident's transfer to another facility or as required by law or third-party payment contracts.

H. Work: Not be required to perform work for the facility, but may work for the facility if:

(1) the work is included by the physician for therapeutic purposes in the resident's plan of care; and

(2) the work is ordered by the resident's physician and does not threaten the health, safety, or welfare of the resident or others.

(3) the resident volunteers for work and such activities is not contra-indicated by physician.

I. Outside activities: Meet with and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

J. Personal possessions: Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably, secure manner.

K. Transfer, discharge and bedhold: Involuntary transfer shall be conducted only for resident's welfare, health and safety of others, or failure to pay. Reasons other than failure to pay must be documented by a physician in resident's record. Prior to transfer the facility must notify resident and next of kin or responsible party of right to appeal and name and address of ombudsman.

L. Abuse and restraints: Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record.

Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraint" includes, but is not limited to, any article, device, or garment which

interferes with the free movement of the resident and which the resident is unable to remove easily.

M. Care: Receive adequate and appropriate care within the capacity of the facility.

N. Choice of provider: Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice. The pharmacist of choice must be able to supply drugs and biologicals in such a manner as is consistent with the facility's medication delivery system.

O. Care planning: Be fully informed of one's treatment and care and participate in the planning of that treatment and care, unless contra-indicated by physician order.

P. Religious activity: Participate in religious activities and services, of resident's choice and meet privately with clergy.

Q. Non-discriminatory treatment: Be free from discrimination based on the source from which the facility's charges for the resident's care are paid, as follows:

(1) No facility may assign a resident to a particular wing or other distinct area of the facility, whether for sleeping, dining or any other purpose, on the basis of the source or amount of payment. A facility only part of which is certified for medicare or medicaid reimbursement under Title XVIII/ XIX of the Social Security Act is not prohibited from assigning a resident to the certified part of the facility because of the source of payment for the resident's care is medicare or medicaid.

(2) Facilities shall offer and provide an identical package of basic services meeting the requirements of these regulations to all individuals regardless of the sources of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, provided that these enhanced services are made available at an identical cost to all residents regardless of the source of a resident's payment. A facility which elects to offer

enhancements to basic services to its residents must provide all residents with a detailed explanation of enhanced services and the additional charges for these services.

(3) If a facility offers at extra charge additional services which are not covered by the facility's provider agreement under which it provides medicaid and medicare services, it shall provide them to any resident willing and able to pay for them, regardless of the source from which the resident pays the facility's charges.

(4) No facility may require, offer or provide an identification tag for a resident that publicly identifies the source from which the facility's charges for that resident's care are paid.

R. Incompetence: If a resident is found incompetent by a court under New Mexico's Probate Code, (Sections 45-5-101 through 45-5-432 NMSA 1978), and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon the resident's guardian or conservator.

S. Corrections clients: Rights established under this section do not, except as determined by the department, apply to residents in a facility who are in the legal custody of the department for correctional purposes.

T. Notification:
 (1) Serving notice: Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each prospective resident and his or her guardian, if any, and to each member of the facility's staff. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.

(2) Amendments: All amendments to

the rights provided under this section and all amendments to the facility regulations and policies governing resident conduct and responsibilities require notification of each resident and guardian, if any, at the time the amendment is put into effect. The facility shall provide the resident, guardian, if any, and each member of the facility's staff with a copy of all amendments.

(3) Posting: Copies of the resident's rights provided under these regulations and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility.

U. Encouragement and assistance: Each facility shall encourage and assist residents to exercise their rights as residents and citizens and shall provide appropriate training for staff awareness so that staff are encouraged to respect the rights of residents established under this section.

[7.9.2.22 NMAC - Rp, 7.9.2.22 NMAC, 6/9/2020]

7.9.2.23 COMPLAINTS:

A. Filing complaints: Any person may file a complaint with a licensee or the department regarding the operation of a facility. Complaints may be made orally or in writing.

B. Reviewing complaints: Each facility shall establish a system of reviewing complaints and allegations of violations of resident's rights established under this section. The facility shall designate a specific individual who, for the purpose of effectuating this section, shall report to the administrator.

C. Reporting complaints: Allegations that residents' rights have been violated by persons licensed, certified or registered by any professional licensing board or designated authority shall be promptly reported by the facility to the appropriate licensing or examining board or authority and to the person against whom the allegation has been made. Any employee of the facility

and any person licensed, certified, or registered by any professional licensing board or authority, may also report such allegations to the board. [7.9.2.23 NMAC - Rp, 7.9.2.23 NMAC, 6/9/2020]

7.9.2.24 COMMUNITY ORGANIZATION ACCESS:

A. In this section, "access" means the right to:
 (1) enter any facility;
 (2) seek a resident's agreement to communicate privately and without restriction with the resident;
 (3) communicate privately and without restriction with any resident who does not object to communication.

B. Any employee, agent, or designated representative of a community legal services program or community service organization shall be permitted access to any facility whenever visitors are permitted by the written visitation policy referred to in these regulations, but not before 8:00 am., nor after 5:00 p.m. The facility visitation policy shall include provisions for scheduling visits after 5:00 p.m.

C. Conditions:
 (1) The employee, agent, or designated representative shall, upon request of the facility's administrator or administrator's designee, present valid and current identification signed by the principal officer of the agency, program or organization represented.

(2) Access shall be granted for visits which are consistent with an express purpose of an organization the purpose of which is to:

(a) Visit, talk with, or offer personal, social, and legal services to any resident, or obtain information from the resident about the facility and its operations.

(b) Inform residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational

materials and discussions in groups or with individual residents.

(c)

Assist any residents in asserting legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which a resident may be aggrieved.

(d)

Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.

[7.9.2.24 NMAC - Rp, 7.9.2.24 NMAC, 6/9/2020]

7.9.2.25 HOUSING RESIDENTS IN LOCKED UNITS:

Definitions as used in this section:

A. Locked unit:

means a ward, wing or room which is designated as a protected environment and is secured in a manner that prevents a resident from leaving the unit at will. A physical restraint applied to the body is not a locked unit. A facility locked for purposes of security is not a locked unit, provided that residents may exit at will. An alarmed unit does not constitute a locked unit.

B. Consent: means a written, signed request given without duress by a resident capable of understanding the nature of the locked unit, the circumstances of one's condition, and the meaning of the consent to be given.

(1) A resident or responsible party may give consent to reside in a locked unit.

(2) The consent shall be effective only for 90 days from the date of the consent, unless revoked. Consent may be renewed for 90 day periods pursuant to this subsection.

(3) The consent may be revoked by the resident if competent or by legal guardian at any time. The resident shall be transferred to an unlocked unit promptly following revocation.

C. Emergencies: In an emergency, a resident may be confined in a locked unit if necessary to protect the resident or others

from injury or to protect property, providing the facility immediately attempts to notify the physician for instructions. A physician's orders for the confinement must be obtained within 12 hours. No resident may be confined for more than an additional hours under order of the physician.

[7.9.2.25 NMAC - Rp, 7.9.2.25 NMAC, 6/9/2020]

7.9.2.26 ADMINISTRATOR/STATUTORY REFERENCE:

A nursing home shall be supervised by an administrator licensed under the Nursing Home Administrators Act, Sections 61-13-16 through 61-13-16 NMSA 1978. Supervision shall include, but not be limited to, taking all reasonable steps to provide qualified personnel to assure the health, safety, and rights of the residents.

A. Full-time

administrator: Every nursing home shall be supervised full-time by an administrator licensed under the Nursing Home Administrators Act, except multiple facilities. If more than one nursing home or other licensed health care facility is located on the same or contiguous property, one full-time administrator may serve all the facilities.

B. Absence of

administrator: A person present in and competent to supervise the facility shall be designated to be in charge whenever there is not an administrator in the facility, and shall be identified to all staff.

C. Change of

administrator:

(1)

Replacement of administrator: If it is necessary immediately to terminate an administrator, or if the licensee loses an administrator for other reasons, a replacement shall be employed or designated as soon as possible within days of vacancy.

(2) Temporary

replacement: During any vacancy in the position of administrator, the licensee shall employ or designate a person competent to fulfill the functions of an administrator immediately.

(3) Notice of

change of administrator: When the licensee loses an administrator, the licensee shall notify the department within two department working days of such loss and provide written notification to the department of the name and qualifications of the person in charge of the facility during the vacancy; and the name and qualifications of the replacement administrator, when known.

[7.9.2.26 NMAC - Rp, 7.9.2.26 NMAC, 6/9/2020]

7.9.2.27 EMPLOYEES:

In this section, "employee" means anyone directly employed by the facility on other than a consulting or contractual basis.

A. Qualifications

and restrictions: No person under 16 years of age shall be employed to provide direct care to residents.

B. Physical health

certifications: Every new employee shall be certified in writing by a physician as having been screened for tuberculosis infection and provide a statement of medical evidence that they are currently free from communicable disease prior to beginning work.

C. Disease

surveillance and control: Facilities shall develop and implement written policies for control of communicable diseases which ensure that employees and volunteers with systems or signs of communicable disease or infected skin lesions are not permitted to work unless authorized to do so by a physician or physician extender.

D. Volunteers:

Facilities may use volunteers provided that the volunteers receive the orientation, training, and supervision necessary to assure resident health, safety and welfare.

E. Abuse of residents:

(1) Orientation

for all employees: Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire

prevention, accident prevention, and emergency procedures. All employees shall be oriented to resident's rights and to their position and duties by the time they have worked 30 days.

(2) Training: Except for nurses, all employees who provide direct care to residents shall be trained through a program approved by the department.

(3) Assignments: Employees shall be assigned only to resident care duties consistent with their training.

(4) Reporting: All employees will be instructed in the reporting requirements of Section 27-7-14 NMSA 1978, the Adult Protective Services Act, of abuse, neglect or exploitation of any resident.

F. Continuing education:

(1) Nursing in-service: The facility shall require employees who provide direct care to residents to attend educational programs desired to develop and improve the skill and knowledge of the employees with respect to the needs of the facility's residents, including rehabilitative therapy, oral health care, wheelchair safety and transportation and special programming for developmentally disabled residents if the facility admits developmentally disabled person. These programs shall be conducted quarterly to enable staff to acquire the skills and techniques necessary to implement the individual program plans for each resident under their care.

(2) Dietary in-service: Educational programs shall be held quarterly for dietary staff, and shall include instruction in the proper handling of food, personal hygiene and grooming, and nutrition and modified diet patterns served by the facility.

(3) All other staff in-service: The facility shall provide in-service designed to improve the skills and knowledge of all other employees.
[7.9.2.27 NMAC - Rp, 7.9.2.27 NMAC, 6/9/2020]

7.9.2.28 RECORDS - GENERAL: The administrator or administrator's designee shall provide the department with any information required to document compliance with these regulations and shall provide reasonable means for examining records and gathering the information.
[7.9.2.28 NMAC - Rp, 7.9.2.28 NMAC, 6/9/2020]

7.9.2.29 PERSONNEL RECORDS: A separate record of each employee shall be maintained, be kept current, and contain sufficient information to support assignment to the employee's current position and duties.
[7.9.2.29 NMAC - Rp, 7.9.2.29 NMAC, 6/9/2020]

7.9.2.30 MEDICAL RECORDS - STAFF:

A. Timeliness: Duties relating to medical records shall be completed in a timely manner.

B. Each facility shall designate an employee of the facility as the person responsible for the medical record service, who:

(1) is a graduate of a school of medical record science that is accredited jointly by the council on medical education of the American medical association; or

(2) receives regular consultation but not less than four hours quarterly as appropriate from a person who meets the requirements of Paragraph (1) of Subsection B of 7.9.2.30 NMAC. Such consultation shall not be substituted for the routine duties of staff maintaining records. The records consultant shall evaluate the records and records service, identify problem areas, and submit written recommendations for change to the administrator.

(3) Sufficient time will be allocated to the person who is designated responsible for medical record service to insure that accurate records are maintained.
[7.9.2.30 NMAC - Rp, 7.9.2.30 NMAC, 6/9/2020]

7.9.2.31 MEDICAL RECORDS - GENERAL:

A. Availability of records: Medical records of current residents shall be stored in the facility and shall be easily accessible, at all times, to persons authorized by the resident to obtain the release of the medical records.

B. Organization: The facility shall maintain a systematically organized records system appropriate to the nature and size of the facility for the collection and release of resident information.

C. Unit record: A unit record shall be maintained for each resident and day care client.

D. Indexes: A master resident index shall be maintained.

E. Maintenance: The facility shall safeguard medical records against loss, destruction, or unauthorized use, and shall provide adequate space and equipment to efficiently review, index, file and promptly retrieve the medical records.

F. Retention and destruction:

(1) The medical record shall be completed and stored within 60 days following a resident's discharge or death.

(2) An original medical record and legible copy or copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of this resident shall be retained for a period of at least 10 years following a resident's discharge or death. All other records required by these regulations shall be retained for the period for which the facility is under review.

(3) Medical records no longer required to be retained under this section may be destroyed, provided:

(a) the confidentiality of the information is maintained; and

(b) the facility permanently retains at least identification of the resident, final diagnosis, physician, and dates of admission and discharge.

(4) A facility shall arrange for the storage and safekeeping of records for the periods and under the conditions required by this paragraph in the event the facility closes.

(5) If the ownership of a facility changes, the medical records and indexes shall remain with the facility.

G. Records documentation:

(1) All entries in medical records shall be legible, permanently recorded, dated, and authenticated with the name and title of the person making the entry.

(2) Symbols and abbreviations may be used in medical records if approved by a written facility policy which defines the symbols and abbreviations and which controls their use.

[7.9.2.31 NMAC - Rp, 7.9.2.31 NMAC, 6/9/2020]

7.9.2.32 MEDICAL RECORDS - CONTENT: Except for persons admitted for short-term care, each resident's medical record shall contain:

A. Identification and summary sheet:

B. Physician's documentation:

- (1) An admission medical evaluation by a physician, including:
 - (a) a summary of prior treatment;
 - (b) current medical findings;
 - (c) diagnosis at the time of admission to the facility;
 - (d) the resident's rehabilitation potential;
 - (e) the results of the required physical examination;
 - (f) level of care.

(2) All physician's orders including:

- (a) admission to the facility;
- (b) medications and treatments;

- (c) diets;
- (d) rehabilitative services;
- (e) limitations on activities;
- (f) restraint orders;
- (g) discharge or transfer orders.

(3) Physician progress notes following each visit.

(4) Annual physical examination.

(5) Alternate visit schedule, and justification for such alternate visits, not to exceed 90 days.

C. Nursing service documentation:

(1) An assessment of the resident's nursing needs.

(2) Initial nursing care plan and any revisions.

(3) Nursing notes are required as follows:

(a) for residents requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least weekly; and

(b) for residents not requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least monthly.

(4) In addition to the nursing care plan, nursing documentation describing:

(a) the general physical and mental condition of the resident, including any unusual symptoms or actions;

(b) all incidents or accidents including time, place, injuries or potential complications from injury or accident, details of incident or accident, action taken, and follow-up care;

(c) the administration of all medications, the need for PRN medications and the resident's response, refusal to take medication, omission of medications, errors in the administration of medications, and drug reactions;

(d) food intake, when the monitoring of intake is necessary;

(e) fluid Intake when monitoring of intake is necessary;

(f) any unusual occurrences of appetite or refusal or reluctance to accept diets;

(g) summary of restorative nursing measures which are provided;

(h) summary of the use of physical and chemical restraints;

(i) other non-routine nursing care given;

(j) the condition of a resident upon discharge; and

(k) the time of death, the physician called, and the person to whom the body was released.

D. Social services records:

(1) a social history of the resident; and

(2) notes regarding pertinent social data and action taken.

E. Activities records:

Documentation of activities programming, a history and assessment, a summary of attendance, and quarterly progress notes.

F. Rehabilitative services:

(1) An evaluation of the rehabilitative needs of the resident.

(2) Plan of treatment.

(3) Progress notes detailing treatment given, evaluation, and progress.

G. Dietary assessment:

Record of the dietary assessment.

H. Dental services:

Summary of all dental services resident has received.

I. Diagnostic services:

Records of all diagnostic tests performed during the resident's stay in the facility.

J. Plan of care: Plan of care which includes integrated

program activities, therapies and treatments designed to help each resident achieve specific goals as developed by an interdisciplinary team.

K. Authorization or consent: A photocopy of any court order, power of attorney or living will authorizing another person to speak or act on behalf of the resident and any resident consent forms.

L. Discharge or transfer information: Documents, prepared upon a resident's discharge or transfer from the facility, summarizing, when appropriate:

- (1) current medical finding and condition;
- (2) final diagnosis;
- (3) rehabilitation potential;
- (4) a summary of the course of treatment;
- (5) nursing and dietary information;
- (6) ambulation status;
- (7) administrative and social information; and
- (8) needed continued care and instructions.

[7.9.2.32 NMAC - Rp, 7.9.2.32 NMAC, 6/9/2020]

7.9.2.33 OTHER RECORDS: The facility shall retain:

- A. Dietary records:** All menus and therapeutic diets for one year.
- B. Staffing records:** Records of staff work schedules and time worked for one year.
- C. Safety tests:** Records of tests of fire detection, alarm, and extinguishment equipment.
- D. Resident census:** At least a daily census of all residents, indicating number of residents requiring each level of care.
- E. Professional consultations:** Documentation of professional consultations by:
 - (1) A dietician.
 - (2) A registered nurse.
 - (3) Others, as may be used by the facility.

F. In-service and orientation programs: Subject matter, instructors and attendance records of all in-service and orientation programs.

G. Transfer agreements: Transfer agreements.

H. Funds and property statement: The statement prepared upon a resident's discharge or transfer from the facility that accounts for all funds and receipted property held by the facility for the resident.

I. Court orders and consent forms: Copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of the resident.

[7.9.2.33 NMAC - Rp, 7.9.2.33 NMAC, 6/9/2020]

7.9.2.34 LICENSE LIMITATIONS:

A. Bed capacity: No facility may house more residents than the maximum bed capacity for which it is licensed. Persons participating in a day care program are not residents for purposes of these regulations.

B. Care levels: No person who requires care greater than that which the facility is licensed to provide may be admitted to or retained in the facility, unless under waiver according to state guidelines.

C. Other conditions: The facility shall comply with all other conditions of the license.

[7.9.2.34 NMAC - Rp, 7.9.2.34 NMAC, 6/9/2020]

7.9.2.35 OTHER LIMITATIONS ON ADMISSION:

A. Persons requiring unavailable services: Persons who require services which the facility does not provide or make available shall not be admitted or retained.

B. Communicable diseases:

- (1) Restriction: No person suspected of having a disease in a communicable state shall be admitted or retained unless the facility has the means to manage the condition.

(2) Isolation techniques: Persons suspected of having a disease in a communicable state shall be managed according to isolation techniques for use in hospitals, published by the U.S. department of health and human services, public health services, center for disease control, or with comparable methods as developed by facility policies.

(3) Reportable diseases: Suspected diseases reportable by law shall be reported to the local public health agency and the division of health, bureau of community health and prevention within time frames specified by these agencies.

C. Destructive residents: Residents who are known to be destructive of property, self-destructive, disturbing or abusive to other residents, or suicide, shall not be admitted or retained, unless the facility has and uses sufficient resources to appropriately manage and care for them.

D. Developmental disabilities: No person who has a primary diagnosis of developmental disability may be admitted to a facility unless the facility is certified as in intermediate care facility for the mentally retarded, except that a person who has a developmental disability and who requires skilled nursing care services may be admitted to a skilled nursing facility if approved for such level of care by the state developmental disability authority.

E. Mental illness: No person with a primary diagnosis of mental illness may be admitted to long term care facilities except that a person who has a diagnosis of mental illness and who requires skilled nursing care services may be admitted to a long term care facility if approved for such level of care by-the state mental illness authority.

F. Admission seven days a week: With prior approval, facilities shall take reasonable steps to admit residents seven days a week.

[7.9.2.35 NMAC - Rp, 7.9.2.35 NMAC, 6/9/2020]

7.9.2.36 PROGRAM STATEMENT FOR DEVELOPMENTALLY DISABLED RESIDENTS:

A. Approval: Each facility serving residents who have a developmental disability and require active treatment shall submit a written program statement to the department for approval.

B. Contents: The program statement shall detail the following:

- (1) services to be provided;
- (2) admission policies for developmentally disabled persons;
- (3) program goals for developmentally disabled residents;
- (4) description of program elements, including relationships, contracted services and arrangements with other health and social services agencies and programs.
- (5) a designation of staff assigned to the care of developmentally disabled residents. Staff scheduling shall demonstrate consistency of staff involvement. Staff members shall have demonstrated skill in the management of these residents; and
- (6) a description of care evaluation procedures for developmentally disabled residents. These procedures shall require that case evaluation results be incorporated into the individual resident's care plan and that individual plans of care be reviewed and revised as indicated by resident need.

[7.9.2.36 NMAC - Rp, 7.9.2.36 NMAC, 6/9/2020]

7.9.2.37 PROCEDURES FOR ADMISSION OF RESIDENTS:

A. "Applicability": The procedures in this section apply to all persons admitted to facilities except persons admitted for short-term care.

B. "Physicians orders": No person may be admitted as a resident except upon:

(1) order of a physician;

(2) receipt of information from a physician, before or on the day of admission, about the person's current medical condition and diagnosis, and receipt of a physician's initial plan of care and orders from a physician for immediate care of the resident; and

(3) receipt of certification in writing from a physician that the person is free of active tuberculosis and clinically apparent communicable disease the person may be found to have.

C. "Medical examination and evaluation":

(1) Examination: Each resident shall have a physical examination by a physician or physician extender within 48 hours following admission unless an examination was performed within 15 days before admission.

(2) Evaluation: Within 48 hours after admission the physician or physician extender shall complete the resident's medical history and physical examination record. If copies of previous evaluations are used, the physician must authenticate such findings within 48 hours of admission.

D. "Resident assessment": A comprehensive accurate assessment of each resident's functional capacity and impairment, as basis for care delivery, shall be conducted by designated qualified staff. A preliminary assessment shall be completed within 48 hours of admission, a comprehensive assessment within 30 days of admission, after significant change and repeated at least annually.

[7.9.2.37 NMAC - Rp, 7.9.2.37 NMAC, 6/9/2020]

7.9.2.38 REMOVALS FROM THE FACILITY:

The provisions of this section shall apply to all resident removals.

A. Conditions: No resident may be temporarily or permanently removed from this facility except:

(1) Voluntary removal: Upon the request or with

the informed consent of the resident or guardian.

- (2) Involuntary removal:
 - (a) for nonpayment of charges, following seven days notice and opportunity to pay any deficiency;
 - (b) if the resident requires care other than that which the facility is licensed to provide;
 - (c) for medical reasons as ordered by a physician;
 - (d) in case of a medical emergency or disaster;
 - (e) for the resident's welfare or the welfare of other residents;
 - (f) if the resident does not need nursing home care, and alternate placement is identified and arrangements for transfer have been completed;
 - (g) if the short-term care period for which the resident was admitted has expired; and
 - (h) as otherwise permitted by law.

(3) Alternate placement: Except for removal under the preceding section, no resident may be involuntarily removed unless an alternate placement is arranged for the resident.

B. Permanent removals:

(1) Notice: The facility shall provide a resident, the resident's physician and guardian, relative, or other responsible person, at least 30 days notice of removal under Subsection A of 7.9.2.38 NMAC, except Subparagraph (a) of Paragraph (2) of Subsection A of 7.9.2.38 NMAC, unless the continued presence of the resident endangers the health, safety, or welfare of the resident or other residents.

(2) Removal procedures:

(a) The resident, shall be given a notice containing the time and place of a planning conference; a statement

informing the resident that any persons of the resident's choice may attend the conference; and the -procedure for submitting a complaint to the department.

(b)

Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to involuntary removal under Subsection A of 7.9.2.38 NMAC a planning conference shall be held at least three days before removal with the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements, and develop a relocation plan which includes at least those activities listed below.

(c)

Removal activities shall include: counseling regarding the impending removal; arrangements for the resident to visit the potential alternative placement or meeting with that facility's admissions staff, unless medically contra-indicated or waived by the resident; assistance to the resident in planning the moving of belongings and funds to the new facility or quarters; and provisions for needed medications and treatments during relocation.

(d)

Discharge records: Upon removal of a resident, all relevant documents shall be prepared and provided to the facility admitting the resident. [7.9.2.38 NMAC - Rp, 7.9.2.38 NMAC, 6/9/2020]

7.9.2.39 TRANSFER AGREEMENTS:

A. Requirement:

Each facility shall have in effect a transfer agreement with one or more hospitals under which in-patient hospital care or other hospital services are available promptly to the facility's resident's when needed. Facilities under same management having identified distinct parts are exempt from transfer agreements.

B. Transfer of

residents: A hospital and a facility shall be considered to have a transfer agreement in effect if there is a written agreement between them or, when the two Institutions are under common control, if there is a written statement by the person or body which controls them, which gives reasonable assurance that:

(1)

transfer of residents will take place between the hospital and the facility ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician; and

(2)

there shall be interchange of medical and other information necessary for the care and treatment of individuals transferred between the institutions or for determining, whether such individuals can be adequately cared for somewhere other than in either of the institutions.

C. Exemption:

A facility which does not have a resident transfer agreement in effect, but which is found by the Department to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between the two facilities and the information referred to in Subsection B of 7.9.2.39 NMAC above, shall be considered to have such an agreement in effect if and for so long as the department finds that to do so is in the public interest and essential to ensuring nursing facility services in the community.

[7.9.2.39 NMAC - Rp, 7.9.2.39 NMAC, 6/9/2020]

7.9.2.40 BEDHOLD:

A. Bedhold:

A resident who is on leave or temporarily discharged has expressed an intention to return to the facility under the terms of the admission policy for bedhold, shall not be denied readmission, if level of care remains the same.

B. Limitation:

The facility shall hold a resident's bed until the resident returns, until the

resident waives his right to have the bed held or until the maximum time allowable as defined by facility policies expires. The facility is responsible for notifying resident or family of their bedhold policy. [7.9.2.40 NMAC - Rp, 7.9.2.40 NMAC, 6/9/2020]

7.9.2.41 TRANSFER

WITHIN THE FACILITY: Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if any, and any other person designated by the resident shall be given a reasonable notice and explanation of the reasons for transfer. Transfer of a resident between rooms or beds within a facility may be made only for medical reasons or for the resident's welfare or the welfare of other residents, or voluntarily with the residents' approval.

[7.9.2.41 NMAC - Rp, 7.9.2.41 NMAC, 6/9/2020]

7.9.2.42 INDIVIDUAL

CARE: Each resident shall receive care based upon individual needs.

A. Hygiene:

(1)

Each resident shall be kept comfortably clean and well groomed.

(2)

Beds shall be made daily, with a complete change of linen to be provided as often as necessary, but at least once a week.

(3)

Residents shall have clean clothing as needed to present a neat appearance and to be free of odors. Residents who are not bedfast shall be dressed each day, in their own clothing, as appropriate to their activities, preferences, and comforts.

B. Decubiti

prevention: Nursing personnel shall employ appropriate nursing management techniques to promote the maintenance of skin integrity and to prevent development of decubiti filed in the resident's clinical record, except as provided in this section.

(1)

Verbal orders: Verbal orders from physicians or dentists may be accepted by a nurse

or pharmacist, or, in the case of verbal orders for rehabilitative therapy, by a therapist. Verbal orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a requirement may be waived if:

(a)

facility has made unsuccessful good faith effort; and

(b)

the health and environment department determines residents will not be endangered; or

(c)

staffing is sufficient to meet residents' needs.

(2)

Nursing personnel shall provide care, including proper hydration, designated to maintain current functioning and to improve the resident's ability to carry out activities of daily living, including assistance with maintaining good body alignment and proper positioning to prevent deformities.

(3) Each

resident shall be encouraged to be up and out of bed as possible, unless otherwise ordered by a physician.

(4) Any

significant changes in the condition of any resident shall be reported to the nurse in charge or on call, who shall take appropriate action.

C. Rehabilitative

measures: Residents shall be assisted in carrying out rehabilitative measures initiated by a rehabilitative therapist ordered by a physician, including assistance with adjusting to any disabilities and using any prosthetic devices.

D. Tuberculosis

retesting: Resident's shall be retested for tuberculosis infection based on the prevalence of tuberculosis in the community and the likelihood of exposure to tuberculosis in the facility.

E. Nourishment:

(1) Diets:

Residents shall be served diets as prescribed by a physician.

(2) Adaptive

devices: Adaptive self-help devices shall be available to residents assessed as capable of using such devices and

these residents shall be trained in their use to contribute to independence in eating.

(3) Assistance:

Residents who require assistance with food or fluid intake shall be helped as necessary.

(4) Food and

fluid intake and diet acceptance: A resident's food and fluid intake and acceptance of diet shall be monitored and documented, and significant deviations from normal eating patterns shall be reported to the nurse and either the resident's physician or dietician as appropriate.

[7.9.2.42 NMAC - Rp, 7.9.2.42 NMAC, 6/9/2020]

7.9.2.43 NOTIFICATION OF CHANGES IN CONDITION OR STATUS OF RESIDENT:

A. Changes in

condition: A resident's physician, guardian, if any, and any other responsible person designated in writing by the resident or guardian to be notified shall be notified promptly of any significant accident, injury, or adverse change in the resident's condition.

B. Changes in status:

A resident's guardian and other person designated in writing by the resident or guardian shall be notified promptly of any significant nonmedical change in the resident's status, including financial situation, any plan to discharge the resident, or any plan to transfer the resident within the facility or to another facility.

[7.9.2.43 NMAC - Rp, 7.9.2.43 NMAC, 6/9/2020]

7.9.2.44 TREATMENT AND ORDERS:

A. Orders:

(1)

Restriction: Medications, treatments and rehabilitative therapies shall be administered as ordered by a physician or dentist subject to the resident's rights to refuse them. No medication, treatment or changes in medication or treatment may be administered to a resident without a physician's or dentists written order which shall be filed in the resident's

clinical record, except as provided in this section.

(2) Verbal

orders: Verbal orders from physicians or dentists may be accepted by a nurse or pharmacist, or, in the case of verbal orders for rehabilitative therapy, by a therapist. Verbal orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a not specifically limited as to time or number of doses when ordered shall be automatically stopped in accordance with the stop order policy required by Subsection A of 7.9.2.57 NMAC of these regulations.

(3) Notice to

physicians or dentists: Each resident's attending physician or dentist shall be notified of stop order policies and contacted promptly for renewal of orders which are subject to automatic termination.

B. Stop orders:

Medications shall be in accordance with the stop order policy required by Subsection E of 7.9.2.57 NMAC of these regulations. Notice to physicians or dentists: Each resident's attending physician or dentist shall be notified of stop order policies and contacted promptly for renewal of orders which are subject to automatic termination.

C. Release of

medications to residents:

Medications shall be released to residents who are on leave or have been discharged only on order of the physician.

D. Administration of

medications:

(1) Personnel

who may administer medications: In a nursing home, medications may be administered only by a nurse or other licensed medical professional whose, licensed scope of practice permits administration of medication.

(2)

Responsibility for administration: Policies and procedures designed to provide safe and accurate administration of medications shall be developed by the facility and shall be followed by personnel assigned to prepare and administer medication

except when a single unit dose package distribution system is used. Person administering medication will immediately record in the resident's clinical records.

(3)

Omitted doses: If, for any reason, a medication is not administered as ordered the omission shall be noted in the resident's medication record with explanation of the omission.

(4) Self-

administration: Self-administration of medications by residents shall be permitted on order of the resident's physician.

(5) Errors

and reactions: Medication errors and suspected or apparent drug reactions shall be reported to the nurse in charge or on call as soon as discovered and any entry made in the resident's clinical record. The nurse shall take appropriate action, including notifying the physician.

(6) Day care:

The handling and administration of medications for day care clients shall comply with the requirements of this subsection.

[7.9.2.44 NMAC - Rp, 7.9.2.44 NMAC, 6/9/2020]

7.9.2.45 PHYSICAL AND CHEMICAL RESTRAINTS:

A. Definitions: As used in this subsection, the following definitions apply:

(1) Physical restraint: means any article, device, or garment which is used primarily to modify, resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room. Mechanical supports shall not be considered physical restraints.

(2)

Mechanical support: means any article, device, or garment which is used only to achieve the proper position or balance of the resident, which may include but is not limited to a geriatric chair, posey belt, or jacket, waist belt, pillows, or wedges. Necessity for mechanical support use must be documented in the resident's

record and such use must be outlined in the resident's care plan.

(3) Chemical restraint: means a medication used primarily to modify behavior by interfering with the resident's freedom of movement or mental alertness.

B. Orders required:

Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident's name, the type of restraint(s), the reason for restraint, the type of restraint authorized, and the period during which the restraint(s) is (are) to be applied.

C. Emergencies:

A physical restraint may be applied temporarily without an order if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that the physician is notified immediately and authorization for continued use is obtained from the physician within 12 hours.

D. Restriction: If the mobility of a resident is required to be restrained and can be appropriately restrained either by a physical or chemical restraint or by a locked unit, the provisions of this section shall apply.

E. Type of restraints: Physical restraints shall be of a type which can be removed promptly in an emergency, and shall be the least restrictive type appropriate to the resident.

F. Periodic care: Nursing personnel shall check a physically restrained resident as necessary, but at least every 30 minutes to see that the resident's personal needs are met and to change the resident's position if necessary. The restrained resident shall have restraints released and shall have opportunity for toileting, hydration, and exercise at least every two hours. Checks and releases will be documented.

G. Records: Any use of restraints shall be noted, dated, and documented in the resident's clinical

record on each tour of duty during which the restraints are in use. [7.9.2.45 NMAC - Rp, 7.9.2.45 NMAC, 6/9/2020]

7.9.2.46 USE OF OXYGEN:

A. Orders of oxygen: Except in an emergency, oxygen shall be administered only on order of a physician.

B. Person administering: Oxygen shall be administered to residents only by a capable person trained in its administration and use.

C. Signs: "No smoking" signs shall be posted at the entrance of the room in which oxygen is in use.

D. Flammable goods: Prior to administering oxygen, all matches and other smoking material shall be removed from the room. [7.9.2.46 NMAC - Rp, 7.9.2.46 NMAC, 6/9/2020]

7.9.2.47 RESIDENT CARE PLANNING:

A. Developmental and content of care plans: Except in the case of a person admitted for short-term care, within two weeks following admission a written care plan shall be developed, based on the resident's history and assessments from all appropriate disciplines and the physician's evaluations and orders, which shall include:

(1) Measurable goals with specific time limits for attainment.

(2) The specific approaches for delivery needed care, and indication of which professional disciplines are responsible for delivering the care.

B. Evaluations and updates: The care of each resident shall be reviewed by each of the services involved in the resident's care and the care plan evaluated and updated no less than quarterly or more often as needed.

C. Implementation: The care plans shall be substantially followed.

[7.9.2.47 NMAC - Rp, 7.9.2.47 NMAC, 6/9/2020]

7.9.2.48 MEDICAL DIRECTION IN SKILLED CARE FACILITIES:

A. Medical director:

Every skilled care facility shall retain, pursuant to a written agreement, a physician to serve as medical director on a part-time or full-time basis as is appropriate for the needs of the residents and the facility. If the facility has an organized medical staff, the medical director shall be designated by the medical staff with approval of the licensee.

B. Coordination of medical care: Medical direction and coordination of medical care in the facility shall be provided by the medical director. The medical director shall be responsible for development of written rules and regulations which shall be approved by the licensee and include delineation of the responsibilities of attending physicians. If there is an organized medical staff, by-laws also shall be developed by the medical director and approved by the licensee. Coordination of medical care shall include liaison with attending physician to provide that physicians' orders are written promptly upon admission of a resident, that periodic evaluations of the adequacy and appropriateness of health professional and supportive staff and services are conducted, and that the medical needs of the residents are met.

C. Responsibilities to the facility: The medical director shall monitor the health status of the facility's employees. Incidents and accidents that occur on the premises shall be reviewed by the medical director to identify hazards to health and safety.

[7.9.2.48 NMAC - Rp, 7.9.2.48 NMAC, 6/9/2020]

7.9.2.49 PHYSICIAN SERVICES IN ALL FACILITIES:

The facility shall assure that the following services are provided:

A. Attending physicians: Each resident shall be under the supervision of a physician of the resident's or guardian's choice who evaluates and monitors

the resident's immediate and long-term needs and prescribes measures necessary for the health, safety and welfare of the resident. Each attending physician shall make arrangements for the medical care of the physician's residents in the physician's absence.

B. Physician's visit:

(1) Each resident who requires skilled nursing care shall be seen by a physician at least every 30 days and an intermediate care resident at least every 60 days unless the physician specifies and justifies in writing an alternate schedule of visits.

(2) The physician shall review the plan of care required at the time of each visit.

(3) The physician shall review the resident's medications and other orders at least at the time of each visit.

(4) The physician shall review the resident's medications and orders at least at the time of each visit.

C. Availability of physicians for emergency patient care: The facility shall have written procedures, available at each nurse's station, for procuring a physician to furnish necessary medical care in emergencies and for providing care pending arrival of a physician. The names and telephone numbers of the physicians or medical service personnel available for emergency care shall be posted at each nursing station.

[7.9.2.49 NMAC - Rp, 7.9.2.49 NMAC, 6/9/2020]

7.9.2.50 NURSING SERVICES:

A. Definitions:

(1) Nursing personnel: means nurses, nurse aides, nursing assistants, and orderlies.

(2) Ward clerk: means an employee who performs clerical duties of the nursing personnel.

B. Director of nursing services in skilled care and intermediate care facilities:

(1) Staffing requirement: Every skilled care facility and every intermediate care facility shall employ a full-time director of nursing services who may also serve as a charge nurse. The director of nursing services shall work only on the day shift except as in an emergency or required for the proper supervision of nursing personnel.

(2) Qualifications: The director of nursing services shall:

(a) be a registered or licensed practical nurse; and

(b) be trained or experienced in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.

(3) Duties: The director of nursing services shall be responsible for:

(a) supervising the functions, activities and training of the nursing personnel;

(b) developing and maintaining standard nursing practice, nursing policy and procedure manuals, and written job descriptions for each level of nursing personnel;

(c) coordinating nursing services with other resident services;

(d) designating the charge nurses provided for by this section;

(e) ensuring that the duties of nursing personnel shall be clearly defined and assigned to staff members consistent with the level of education, preparation, experience, and licensing of each.

C. Charge nurses in skilled care facilities and intermediate care facilities:

(1) Staffing requirement:

(a) A skilled nursing facility shall have at least one charge nurse on duty at all times.

(b) An intermediate care facility shall have a charge nurse during every tour of duty.

(2)
Qualifications: Unless otherwise required under this paragraph, the charge nurses shall be registered nurses or licensed practical nurses, and shall have had training, or be acquiring training, or have had experience in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.

(3) Duties:
(a)
The charge nurse, if a registered nurse, shall supervise the nursing care of all assigned residents, and delegate the duty to provide for the direct care of specific residents, including administration of medications by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.

(b)
The charge nurse, if a licensed practical nurse, shall manage and direct the nursing and other activities of other licensed practical nurse and less skilled assistants and shall arrange for the provision of direct care to specific residents, including administration of medications, by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.
[7.9.2.50 NMAC - Rp, 7.9.2.50 NMAC, 6/9/2020]

7.9.2.51 NURSING STAFF: In addition to the requirements of Section 7.9.2.50 NMAC, the following conditions shall be met:

A. Assignments:
There shall be sufficient nursing service personnel assigned to care for the specific needs of each resident on each tour of duty. Those personnel shall be briefed on the condition and appropriate care of each resident prior to beginning hands-on care of residents.

B. Relief personnel:
Facilities shall obtain qualified relief personnel.

C. Records, weekly schedules: Weekly time schedules

shall be planned at least one week in advance, shall be posted and dated, shall indicate the names and classifications of nursing personnel and relief personnel assigned on each nursing unit for each tour of duty, and shall be updated as changes occur.

D. Staff meetings:
Meetings shall be held at least quarterly for the nursing personnel to brief them on new developments, raise issues relevant to the service, and for such other purposes as are pertinent.

E. Twenty-four (24) hour coverage: All facilities shall have at least one nursing staff person on duty at all times.

F. Staffing patterns: The assignment of the nursing personnel required by this subsection to each tour of duty shall be sufficient to meet each resident's needs and implement each resident's comprehensive care plan.

(1) Nursing department personnel means, the director of nursing, the assistant director of nursing, nursing department directors, licensed nursing personnel, certified nursing assistants, nursing assistants who have completed 16 hours or more of orientation and demonstrated competency and restorative nursing assistants.

(2) The director of nursing, the assistant director of nursing, and nursing department directors may be counted towards the minimum staffing requirements only for the time spent on the shift providing direct resident care services.

(a) A skilled nursing facility or facility that offers intermediate and skilled nursing shall maintain a nursing department minimum staffing level of two and a half hours per patient day calculated on a seven day average.

(b)
An intermediate care facility shall maintain a nursing department minimum staffing level of two and three-tenths (2.3) hours per patient day calculated on a seven day average.

(c)
Within one hour of shift change, facilities shall post the number of nursing personnel on duty in a conspicuous and consistent location for public review. Shifts are informally defined as the day shift, evening shift, and night shift. Employees working variations of these shifts shall be included within the shift count where a majority of the hours fall. Example: For a facility with 100 patients, two and three-tenths (2.3) hours per patient day averages one nursing department employee on duty for approximately every 10 to 11 patients. For a facility with 100 patients, two and five tenths (2.5) hours per patient day averages one nursing department employee for every nine to 10 patients. These are daily averages that will vary from shift to shift so that actual staffing might approximate:

2.3 Hours per patient day
2.5 Hours per patient day
Day Shift
1 staff for 8 patients
1 staff for 7 patients
Evening Shift
1 staff for 10 patients
1 staff for 10 patients
Night Shift
1 staff for 13 patients
1 staff for 12 patients
[7.9.2.51 NMAC - Rp, 7.9.2.51 NMAC, 6/9/2020]

7.9.2.52 DIETARY SERVICE: The facility shall provide a dietary service or contract for a dietary service which meets the requirements of this section.

A. Staff:
(1) Full or part-time supervisor: The dietary service shall be supervised by a full-time supervisor, except that an intermediate care facility with fewer than 50 residents may employ a person to work as supervisor part-time.

(2)
Qualifications: The dietary service supervisor shall be either:
(a) a dietitian; or

(b) shall receive necessary consultation from a dietitian and shall have completed a course of study of not less than 90 hours credit in food service supervision at a vocational, technical, or adult education school or equivalent, or presently be enrolled in such a course of study; or hold an associate degree as a dietetic technician.

(3) Staff:

There shall be dietary service personnel on duty at least 12 hours daily who may include the supervisor.

B. Hygiene of staff:

Dietary staff and other personnel who participate in dietary service shall be in good health and practice hygienic food handling techniques.

C. Menus:

(1) Menus

shall be planned and written at least two weeks in advance of their use, and shall be adjusted for seasonal availability of foods.

(2) Menus

shall be planned, to the extent medically possible, in accordance with the "recommended daily dietary allowances", of the food and nutrition board of the national research council, national academy of sciences.

(3) Food

sufficient to meet the needs of each resident shall be planned, prepared and served for each meal. When changes in the menu are necessary, substitutions shall provide equal nutritive value. Record of menus as served, including substitutions shall be retained for one year.

(4) The facility

shall make reasonable adjustments to accommodate each resident's preferences, habits, customs, appetite, and physical condition.

(5) A file of

tested recipes shall be maintained.

(6) A variety

of protein food, fruits, vegetables, dairy products, breads, and cereals shall be provided.

D. Therapeutic diets:

(1)

Therapeutic diets shall be served only on order of the physician, and shall be consistent with such orders.

(2)

Therapeutic menus shall be planned with supervision or consultation from a qualified dietitian.

(3) Vitamin

and mineral supplements shall be given only on order of the physician.

E. Meal service:

All diets shall be prescribed by the attending physician.

(1) Schedule:

At least three meals or their equivalent shall be offered to each resident daily, not more than six hours apart, with not more than a 14 hour span between a substantial evening meal and the following breakfast.

(2)

Identification to trays: Trays, if used, shall be identified with the resident's name and type diet.

(3) Table

service: Table service shall be provided for all residents who can and want to eat at a table.

(4) Re-

service: Food served to a resident in an unopened manufacturer's package may not be re-served unless the package remains unopened and maintained at the proper temperature.

(5)

Temperature: Food shall be served and maintained at proper temperatures, according to standards established by environmental improvement division.

(6) Snacks:

If not prohibited by the resident's diet or condition, nourishments shall be offered routinely to all residents between the evening meal and bedtime.

(7) Drinking

water: When a resident is confined to bed, a covered pitcher of drinking water and a glass shall be provided on a beside stand. The water shall be changed frequently during the day, and pitchers and glasses shall be sanitized daily. Single-service disposable pitchers and glasses may be used. Common drinking utensils shall not be used.

(8) Food

transportation: Food transported into public areas other than the dining room shall be protected from

environmental contamination.

[7.9.2.52 NMAC - Rp, 7.9.2.52 NMAC, 6/9/2020]

7.9.2.53 FOOD SUPPLIES AND PREPARATION:

A. Supplies: Food

shall be purchased or procured from approved sources or sources meeting federal, state, and local standards or laws.

B. Preparation: Food

shall be cleaned and prepared by methods that conserve nutritive value, flavor and appearance. Food shall be cut, chopped, or ground as needed for individual residents.

C. Milk: Only

pasteurized fluid milk which is certified Grade A shall be used for beverages.

Powdered milk may be used for cooking if it meets Grade A standards or is heated to a temperature of 165 degrees Fahrenheit during cooking [7.9.2.53 NMAC - Rp, 7.9.2.53 NMAC, 6/9/2020]

7.9.2.54 SANITATION:

A. Equipment and utensils:

(1) All

equipment, appliances and utensils used in preparation or serving of food shall be maintained in a functional, sanitary, and safe condition. Replacement equipment shall meet criteria established in "listing of food service equipment" by the national sanitation foundation.

(2) The floors,

walls, and ceilings of all rooms in which food or drink is stored or prepared or in which utensils are washed shall be kept clean, smooth, and in good repair.

(3) All

furnishings, table linens, drapes, and furniture shall be maintained in a clean and sanitary condition.

(4) Single-

service, individually packaged, utensils shall be stored in the original, unopened wrapper until used, may not be made of toxic material and may not be re-used or re-distributed if the original wrapper has been opened.

B. Storage and handling of food:

(1) Food shall be stored, prepared, distributed, and served under sanitary conditions which prevent contamination.

(2) All readily perishable food and drink, except when being prepared or served, shall be kept in a refrigerator which shall have a temperature maintained at or below 40 degrees Fahrenheit.

C. Animals: Animals shall not be allowed where food is prepared, served or stored, or where utensils are washed or stored except in eating areas when food is not being served.

D. Dishwashing: Whether washed by hand or mechanical means, all dishes, plates, cups, glasses, pots, pans, and utensils shall be cleaned in accordance with accepted procedures which shall include separate steps for prewashing, washing, rinsing, and sanitizing by means of hot water or chemicals or a combination approved by the department.

[7.9.2.54 NMAC - Rp, 7.9.2.54 NMAC, 6/9/2020]

7.9.2.55**REHABILITATIVE SERVICES:**

Each facility shall either provide or arrange for, under written agreement, specialized rehabilitative services as needed by residents to improve and maintain functioning.

A. Conformity with orders and plan: Rehabilitative services shall be administered under a written plan of care that is developed in consultation with the attending physician and the therapist(s). The plan of care will be based on physician orders and assessment by the therapist(s).

B. Report to physician: Within two weeks of the initiation of rehabilitative treatment, a report of the resident's progress shall be made to the physician.

C. Review of plan: Rehabilitative services shall be reevaluated at least quarterly by the physician and therapists, and the plan of care updated as necessary.

[7.9.2.55 NMAC - Rp, 7.9.2.55 NMAC, 6/9/2020]

7.9.2.56 SPECIALIZED SERVICES-QUALIFICATIONS:

A. Physical therapy: Physical therapy shall be given or supervised only by a licensed physical therapist.

B. Speech and hearing therapy:

(1) Speech and hearing therapy shall be given or supervised only by a therapist who is licensed under the New Mexico Speech-Language and Pathology and Audiology Act, (Sections 61-14B-1 through 61-14B-16 NMSA 1978).

(2) Meets the educational standards, and is in the process of acquiring the supervised experience required for the certification of speech-language pathologists.

C. Occupational therapy: Occupational therapy shall be given or supervised only by a therapist who meets the standard for registration as an occupational therapist of the American occupational therapy association.

D. Equipment: Equipment necessary for the provision of therapies required by the residents shall be available and used as needed. [7.9.2.56 NMAC - Rp, 7.9.2.56 NMAC, 6/9/2020]

7.9.2.57**PHARMACEUTICAL SERVICES:**

A. Definitions: As used in this section:

(1) Medication: has the same meaning as the term "drug".

(2) Prescription medication: has the same meaning as the term "prescription drug".

B. Services: Each facility shall provide for obtaining medications for the residents from licensed pharmacies.

C. Supervision: (1) Medication consultant: Each facility shall retain a registered pharmacist who shall visit the facility at least monthly to review

the drug regimen of each resident and medication practices.

(2) The pharmacist shall submit a written report of findings at least monthly to the facility's administrator.

D. Emergency medication kit:

(1) A facility may have one or more emergency medication kits available to each charge nurse. All emergency kits shall be under the control of a pharmacist.

(2) The emergency kit shall be sealed and stored in a locked area. The facility shall have a policy and procedures for access by staff to the emergency kit in case of need.

E. Requirements for all medication systems:

(1) Obtaining new medications: When medications are needed which are not stocked, a licensed nurse shall telephone an order to the pharmacist who shall fill the order.

(2) Storing and labeling medications: All medications shall be handled in accordance with the following provisions:

(a) The storage and labeling of medications shall be based on currently acceptable professional practices.

(b) The consulting pharmacist shall be responsible to develop policies and procedures governing all aspects of storage and labeling of medications.

(c) The consulting pharmacist shall be responsible for assuring the facility meets all requirements for storage and labeling as required by New Mexico board of pharmacy.

(3) Destruction of medications:

(a) Time limit: Unless otherwise ordered by a physician, a resident's medication not returned to the pharmacy for credit shall be removed to a locked storage area when discontinued by a physician's order. Such discontinued medications will

be destroyed within 30 days of the physician's discontinuance of use.

(b)

Procedure: Records shall be kept of all medication returned for credit or disposal.

(c)

Remaining controlled substances: Any controlled substances remaining after the discontinuance of physician's orders or the discharge or death of the resident shall be inventoried on the appropriate U.S. drug enforcement agency form and one copy shall be kept on file in the facility.

(4) Control of medication:

(a)

Receipt of medications: The administrator or a physician, nurse, or pharmacist, may be an agent of the resident for the receipt of medications.

(b)

Signatures: When the medication is received by the facility, the person completing the control record shall sign the record indicating the amount received.

(c)

Discontinuance of medications: The consulting pharmacist shall assist the facility to develop policies for the automatic discontinuance of medications.

(5) Proof-of-use record:

(a)

For schedule II drugs, a proof-of-use record shall be maintained which lists, on separate proof-of-use sheets for each type and strength of schedule II drug, the date and time administered, resident's name, physician's name, dose, signature of the person administering dose, and balance.

(b)

Proof-of-use records shall be audited daily by the registered nurse or licensed practical nurse.

(6) Resident control and use of medications:

(a)

Residents may have medications in their possession or stored at their bedside on the order of a physician.

(b)

Medications which, if ingested or brought into contact with the nasal or

eye mucosa, would produce toxic or irritant effects shall be stored and used only in accordance with the health, safety, and welfare of all residents. [7.9.2.57 NMAC - Rp, 7.9.2.57 NMAC, 6/9/2020]

7.9.2.58 DIAGNOSTIC SERVICES:

A. Requirement of services:

The facility shall provide for promptly obtaining required laboratory, x-ray, and other diagnostic services.

B. Facility-provided services:

Any laboratory and x-ray services provided by the facility shall meet the applicable requirements for hospitals.

C. Outside services:

If the facility does not provide these services, arrangements shall be made for obtaining the services from a physician's office, hospital, nursing facility, portable x-ray supplier, or independent laboratory.

D. Physician's order:

No services under the subsection may be provided without an order of a physician.

E. Notice of findings:

The attending physician shall be notified promptly of the findings of all tests provided under this subsection.

F. Transportation:

The facility shall assist the resident, if necessary, in arranging for transportation to and from the provider of service.

(1) Any

employee or agent of a regulated facility or agency who is responsible for assisting a resident in boarding or alighting from a motor vehicle must complete a state-approved training program in passenger transportation assistance before assisting any resident.

(a)

the passenger transportation assistance program shall be comprised of but not limited to the following elements:

(i)

resident assessment;

(ii)

emergency procedures;

(iii)

supervised practice in the safe operation of equipment;

(iv)

familiarity with state regulations governing the transportation of persons with disabilities;

(v)

and a method for determining and documenting successful completion of the course.

(b)

the course requirements above are examples and may be modified as needed.

(2) Any

employee or agent of a regulated facility or agency who drives a motor vehicle provided by the facility or agency for use in the transportation of clients must complete:

(a)

a state approved training program in passenger assistance; and

(b)

a state approved training program in the operation of a motor vehicle to transport clients of a regulated facility or agency.

(c)

the motor vehicle transportation assistance program shall be comprised of but not limited to the following elements:

(i)

resident assessment, emergency procedures, supervised practice in the safe operation of motor vehicles, familiarity with state regulations governing the transportation of persons with disabilities, maintenance and safety record keeping, training on hazardous driving conditions and a method for determining and documenting successful completion of the course;

(ii)

the course requirements above are examples and may be modified as needed.

(d)

a valid New Mexico drivers license for the type of vehicle being operated consistent with state of New Mexico requirements.

(3) Each

regulated facility and agency shall establish and enforce written policies

(including training) and procedures for employees who provide assistance to clients with boarding or alighting from motor vehicles.

(4) Each regulated facility and agency shall establish and enforce written policies (including training and procedures for employees who operate motor vehicles to transport clients. [7.9.2.58 NMAC - Rp, 7.9.2.58 NMAC, 6/9/2020]

7.9.2.59 BLOOD AND BLOOD PRODUCTS: Any blood-handling and storage facilities shall be safe, adequate, and properly supervised. If the facility provides for maintaining and transferring blood and blood products, it shall meet the appropriate requirements for licensed hospitals. If the facility only provides transfusion services, it shall meet the requirements of applicable regulations. [7.9.2.59 NMAC - Rp, 7.9.2.59 NMAC, 6/9/2020]

7.9.2.60 DENTAL SERVICES:
A. Advisory dentist: The facility shall retain an advisory dentist to participate in the staff development program for nursing and other appropriate personnel to recommend oral hygiene policies and practices for the care of residents.

B. Attending dentists:
(1) Arrangements for dental care: The facility shall make arrangements for dental care for residents who do not have a private dentist.

(2) Transportation: The facility shall assist the resident, if necessary, in arranging for transportation to and from the dentist's office.

C. Dental examination of residents: Dental health care shall be provided or arranged for the resident as needed.

D. Emergency dental care: The facility shall arrange for emergency dental care when a resident's attending dentist is unavailable. [7.9.2.60 NMAC - Rp, 7.9.2.60 NMAC, 6/9/2020]

7.9.2.61 SOCIAL SERVICES:

A. Provision of services: Each facility shall provide for social services in conformance with this section.

B. Staff:
(1) Social worker: Each facility shall employ or retain a person full-time or part-time to coordinate the social services, to review the social needs of residents, and to make referrals.

(2) Qualifications: The person shall:
(a) have a bachelor's degree in social work, sociology, or psychology; and have one year of social work experience in a health care setting; or

(b) have a master's degree in social work from a graduate school of social work accredited by the council on social work education; or

(c) if the designated person is not a qualified social worker, the facility shall receive at least monthly consultation from a social worker who meets the required standards.

C. Admission:
(1) Interviews: Before or at a time of admission, each resident and guardian, if any, and any other person designated by the resident or guardian, shall be interviewed by the social service designee to assist the patient in adjusting to the social and emotional aspects of illness, treatment, and stay in the facility.

(2) Admission history: A social history of each resident shall be prepared.

D. Care planning:
(1) Within two weeks after admission, an evaluation of social needs and potential for discharge shall be completed for each resident.

(2) A social component of the plan of care, including preparation for discharge, if appropriate, shall be developed and included in the plan of care; required by these regulations.

(3) Social services care and plan shall be evaluated every 90 days.

E. Services: Social services staff shall provide the following:

(1) Referrals: If necessary, referrals for legal services, or to appropriate agencies in cases of legal, financial, psychiatric, rehabilitative or social problems which the facility cannot serve.

(2) Adjustment assistance: Assistance with adjustment to the facility, and continuing assistance to and communication with the resident, guardian, family, or other responsible persons.

(3) Discharge planning: Assistance to other facility staff and the resident in discharge planning at the time of admission and prior to removal under this chapter.

(4) Training: Participation in in-service training for direct care staff on the emotional and social problems and needs of the aged and ill and on methods for fulfilling these needs.

[7.9.2.61 NMAC - Rp, 7.9.2.61 NMAC, 6/9/2020]

7.9.2.62 ACTIVITIES:

A. Program:
(1) Every facility shall provide an activities program which meets the requirements of this section. The program may consist of any combination of activities provided by the facility and those provided by other community resources.

(2) The activities program shall be planned for group and individual activities, and shall be designed to meet the needs and interests of each resident and to be consistent with each resident's plan of care.

B. Staff:
(1) Definition: "Qualified activities coordinator" means, in a skilled nursing facility, a person who:

(a) has a bachelor's degree in recreation therapy and is eligible for registration

as a therapeutic recreation specialist with the National therapeutic recreation society; or

(b)

is an occupational therapist or occupational therapy assistant who meets the requirements for certification by the American occupational therapy association; or

(c)

has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a patient activities program in a health care setting; or

(d)

has completed a state approved program.

(e)

in an intermediate care facility, a staff member who is qualified by experience or training in directing group activity.

(2)

Supervision: The activity program shall be supervised by:

(a) a

qualified activities coordinator; or

(b)

an employee who receives at least monthly consultation from a qualified activities coordinator.

[7.9.2.62 NMAC - Rp, 7.9.2.62 NMAC, 6/9/2020]

7.9.2.63 EQUIPMENT AND SUPPLIES:

A. Beds:

(1) Each

resident shall be provided a bed which is at least 36 inches wide, is equipped with a headboard of sturdy construction and is in good repair. Roll-away beds, day beds, cots, or double or folding beds shall not be used.

(2) Each bed

shall be in good repair and provided with a clean, firm mattress of appropriate size for the bed.

(3) Side rails

shall be installed for both sides of the bed when required by the resident's condition.

B. Bedding:

(1) Each

resident shall be provided at least one clean, comfortable pillow. Additional

pillows shall be provided if requested by the resident or required by the resident's condition.

(2) Each

bed shall have a mattress pad unless contraindicated by special use equipment.

(3) If mattress

is not moisture-proof, a moisture-proof mattress cover shall be provided. A moisture-proof pillow cover shall be provided to keep each mattress and pillow clean and dry.

(a)

A supply of sheets and pillow cases sufficient to keep beds clean, dry and odor-free shall be stocked. At least two sheets and two pillow cases shall be furnished to each resident each week.

(b) Beds

occupied by bedfast or incontinent residents shall be provided drawsheets or appropriate pads.

(4) A

sufficient number of blankets shall be provided to keep each resident warm. Blankets shall be changed and laundered as often as necessary to maintain cleanliness and freedom from odors.

(5) Each

bed shall have a clean, washable bedspread.

C. Other furnishings:

(1) Each

resident who is confined to bed shall be provided with a bedside storage unit containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment. All other residents shall be provided with a storage unit in the resident's room, containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment.

(2) At least

one arm chair shall be available for each room for each bed. A folding chair shall not be used.

(3) A properly

shaded reading light in working condition shall be installed over or at each bed.

(4) Adequate

compartment or drawer space shall be provided in each room for each

resident to store personal clothing and effects and to store, as space permits, other personal possessions in a reasonably secure manner.

(5) A sturdy

and stable table that can be placed over the bed or armchair shall be provided to every resident who does not eat in the dining room.

D. Towels,

washcloths, and soap:

(1) Clean

towels and washcloths shall be provided to each resident as needed. Towels shall not be used by more than one resident between launderings.

(2) An

individual towel rack shall be installed at each resident's bedside or at the lavatory.

(3) Single

service towels and soap shall be provided at each lavatory for use by staff.

E. Window coverings:

Every window in patient care area shall be supplied with flame retardant shades, draw drapes or other covering material or devices which, when properly used and maintained, shall afford privacy and light control for the resident.

[7.9.2.63 NMAC - Rp, 7.9.2.63 NMAC, 6/9/2020]

7.9.2.64 RESIDENT CARE EQUIPMENT:

A. Personal need

items: When a resident because of his or her conditions needs a mouthwash cup, a wash basin, a soap dish, a bedpan, an emesis basin, or a standard urinal and cover, that item shall be provided to the resident. This equipment may not be interchanged between residents until it is effectively washed and sanitized.

B. Thermometers: If

reusable oral and rectal thermometers are used, they shall be cleaned and disinfected between use.

C. First aid supplies:

Each nursing unit shall be supplied with first aid supplies, including bandages, sterile gauze dressings, bandage scissors, tape, and a sling tourniquet.

D. Other equipment:
Other equipment, such as wheelchairs with brakes, footstools, commodes, foot cradles, footboards, under-the-mattress bedboards, walkers, trapeze frames, transfer boards, parallel bars, reciprocal pulleys, suction machines, patient lifts and stryker or froster frames, shall be used as needed for the care of the residents.
[7.9.2.64 NMAC - Rp, 7.9.2.64 NMAC, 6/9/2020]

7.9.2.65 MAINTENANCE:
All facility furnishings and equipment shall be maintained in a usable, safe and sanitary condition.
[7.9.2.65 NMAC - Rp, 7.9.2.65 NMAC, 6/9/2020]

7.9.2.66 STERILIZATION OF SUPPLIES AND EQUIPMENT:
Each facility shall provide sterilized supplies and equipment by one or more of the following methods:
A. use of an autoclave;
B. use of disposable, individually wrapped, sterile supplies such as dressings, syringes, needles, catheters, and gloves;
C. sterilization services under a written agreement with another facility; or
D. other sterilization procedures when approved in writing by the department.
[7.9.2.66 NMAC - Rp, 7.9.2.66 NMAC, 6/9/2020]

7.9.2.67 SANITIZATION OF UTENSILS: Utensils such as individual bedpans, urinals and wash basins which are in use shall be sanitized in accordance with acceptable sanitization procedures on a routine schedule. These procedures shall be done in an appropriate area.
[7.9.2.67 NMAC - Rp, 7.9.2.67 NMAC, 6/9/2020]

7.9.2.68 DISINFECTION OF RESIDENT GROOMING UTENSILS: Hair care tools such as combs, brushes, metal instruments, and shaving equipment which are used for more than one resident shall be disinfected before each use.
[7.9.2.68 NMAC - Rp, 7.9.2.68 NMAC, 6/9/2020]

7.9.2.69 OXYGEN:
A. No oil or grease shall be used on oxygen equipment.
B. When placed at the resident's bedside, oxygen tanks shall be securely fastened to a tip-proof carrier or base.
C. Oxygen regulators shall not be stored with solution left in the attached humidifier bottle.
D. When in use at the resident's bedside, cannulas, hoses, and humidifier bottles shall be changed at least every 30 days.
E. Disposable inhalation equipment shall be pre-sterilized and kept in contamination-proof containers until used, and shall be replaced at least every 30 days when in use.
F. With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days.
[7.9.2.69 NMAC - Rp, 7.9.2.69 NMAC, 6/9/2020]

7.9.2.70 HOUSEKEEPING SERVICES:
A. Requirement:
Facilities shall develop and implement written policies that ensure a safe and sanitary environment for personnel and residents at all times.
B. Cleaning:
(1) General:
The facility shall be kept clean and free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards.
(2) Floors:
Floors and carpeting shall be kept clean. Polishes on floors shall provide a non-slip finish. Carpeting or any other material covering the floors that is worn, damaged, contaminated or badly soiled shall be replaced, repaired or cleaned.
(3) Other surfaces: Ceiling and walls shall be kept clean and in good repair at all times. The interior and exterior of the buildings shall be painted or stained as needed to protect the surfaces. Loose, cracked, or peeling wallpaper or paint shall be replaced or repaired.

(4)
Furnishings: All furniture and other furnishings shall be kept clean and in good repair at all times.

(5)
Combustibles in storage areas: Attics, cellars and other storage areas shall be kept safe and free from dangerous accumulations of combustible materials. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

(6) Grounds:
The grounds shall be kept free from refuse, litter, and wastewater. Areas around buildings, sidewalks, gardens, and patios shall be kept clear of dense undergrowth.

C. Poisons: All poisonous compounds shall be clearly labeled as poisonous and, when not in use, shall be stored in a locked area separate from food, kitchenware, and medications.

D. Garbage:
(1) Storage containers: All garbage and rubbish shall be stored in leak-proof, non-absorbent containers with close-fitting covers, and in areas separate from those used for the preparation and storage of food. Containers shall be cleaned regularly. Paperboard containers shall not be used.

(2) Disposal:
Garbage and rubbish shall be disposed of promptly in a safe and sanitary manner.

E. Linen and towels:
Linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection. Soiled linen shall not be sorted, rinsed, or stored in bathrooms, residents' rooms, kitchens, food storage areas, nursing units, common hallways.

F. Pest control:
(1)
Requirement: The facility shall be maintained reasonably free from insects and rodents, with harborage and entrances of insects and rodents eliminated.

(2) Provision of service: Pest control shall be provided when required for the control of insects and rodents.

(3) Screening of windows and doors: All windows and doors used for ventilation purposes shall be provided with wire screening of not less than number 16 mesh or its equivalent, and shall be properly installed and maintained to prevent entry of insects. Hinged screen days when in use.

(4) With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days. [7.9.2.70 NMAC - Rp, 7.9.2.70 NMAC, 6/9/2020]

7.9.2.71 PHYSICAL ENVIRONMENT:

A. General: The buildings of the nursing facility shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery services appropriate to the needs of the community and with due for protecting the health and safety of the patients. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted. Existing waivers at the time these regulations are enacted would continue to be accepted unless it is determined that the facility is unable to protect the health and safety of the resident.

B. Definitions: The definitions in the applicable Life Safety Code required under these regulations apply to this subchapter. In addition, in this subchapter:

(1) Existing construction: means a building which is in place or is being constructed with plans approved by the department prior to the effective date of this chapter.

(2) Life Safety Code: means the National Fire Protection Association's standard 101.

(3) 1981 Code: means facilities with construction plans first approved by the department on or after November 26, 1982, shall be free from dangerous accumulations of combustible materials.

Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

(4) Fire safety evaluation system: means a proposed or existing facility not meeting all requirements of the applicable Life Safety Code shall be considered in compliance if it achieves a passing score on the Fire Safety Evaluation System (FSES), developed by the United State department of commerce, National bureau of standards, to establish safety equivalencies under the Life Safety Code.

(5) New construction: means construction for the first time of any building or addition to an existing building, the plans for which are approved after the effective date of this chapter.

(6) Remodeling: means to make over or rebuild any portion of a building or structure and thereby modify its structural strength, fire hazard character, exists, heating and ventilating system, electrical system or internal circulation, as previously approved by the department. Where exterior walls are in place but interior walls are not in place at the time of the effective date of this chapter, construction of interior walls shall be considered remodeling. "Remodeling" does not include repairs necessary for the maintenance of a building structure.

C. Approvals: The facility shall keep documentation of approvals on file in the facility following all inspections by state and local authorities.

D. Fire protection:

(1) Basic responsibility: The facility shall provide fire protection adequate to ensure the safety of patients, staff and others on the premises. Necessary safeguards such as extinguishers, sprinkling and detection devices, fire and smoke barriers, and ventilation control barriers shall be installed to ensure rapid and effective fire and smoke control.

(2) New construction: Any new construction

or remodeling shall meet the applicable provisions of the 1981 edition of the Life Safety Code.

(3) Existing facilities: Any existing facility shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the facility complied with and continues to comply with the applicable provisions of the 1967, 1973, or 1981 edition of the Life Safety Code, with or without waivers.

(4) Equivalent Compliance: An existing facility that does not meet all requirements of the applicable Life Safety Code may be considered in compliance with it if it achieves a passing score on the Fire Safety Evaluation System (FSES) developed by the U.S. department of commerce National bureau of standard, to establish safety equivalencies under the Life Safety Code.

(5) Note: See Appendix C of the 1981 Life Safety Code.

E. General construction: All capital investment plans subject to these regulations, shall be submitted to the department for review and approval.

(1) One copy of preliminary or schematic plans shall be submitted to the department for review and approval.

(2) One copy of final plans and specifications which are used for bidding purposes shall be submitted to the department for review and approval before construction is started. Plans must be prepared and stamped by an architect registered in the state of New Mexico.

(3) If on-site construction above the foundation is not started within 12 months of the date of approval of the final plans and specifications, the approval under these regulations shall be void and the plans and specifications shall be resubmitted for reconsideration of approval.

(4) Any changes in the approved final plans affecting the application of the requirements of this subchapter

shall be shown on the approved final plans and shall be submitted to the department for approval before construction is undertaken. The department shall notify the facility in writing of any conflict with this subchapter found in its review of modified plans and specifications.

(5) General: Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exit ways, and fire protection shall be so maintained that the safety of the occupants will not jeopardized during construction.

(6) Minimum requirements: All requirements listed in new construction, relating to new construction projects, are applicable to renovation projects involving additions or alterations, except that when existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted if the intent of the requirements is met and if the care and safety of patients will not be jeopardized.

(7) Non-conforming conditions: When doing renovation work, if it is found to be unfeasible to correct all of the nonconforming conditions in the existing facility in accordance with these standards, acceptable compliance status may be recognized by the licensing agency if the operation of the facility, necessary access by the handicapped, and safety of the patients, are not jeopardized by the remaining non-conforming conditions.

(8) Note #1: Plan approval by construction industries division, labor and human relations under these regulations is also required for any new construction or remodeling.

(9) Note #2: Copies of the 1967, 1973, and 1981 Life Safety Codes and related codes can be obtained from the National Fire Protection Association, Battery March Park, Quincy, PA 02269.

F. Constructions and inspections:

(1) General: Construction, of other than minor alterations, shall not be commenced until plan-review deficiencies have been satisfactorily resolved.

(a) The completed construction shall be in compliance with the approved drawings and specifications, including all addenda or modifications approved for the project.

(b) A final inspection of the facility will be scheduled for the purpose of verifying compliance with the approved drawings and specifications including all addenda or modifications approved for the project.

(2) In addition to compliance with these standards, all other applicable building codes, ordinances, and regulations under city, county, or other state agency jurisdiction shall be observed. Compliance with local codes shall be prerequisite for licensing. In areas not subject to local building codes, the state building codes, as adopted, shall apply insofar as such codes are not in conflict with these standards.

(a) New construction is governed by the current editions of the following Codes Standards:

(b) Uniform Building Code (UBC), Uniform Plumbing Code (UPC), Uniform Mechanical Code (UMC), National Electrical Code (NEC), National Fire Protection Association Standards (NFPA), American National Standard Institute (ANSI), American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), department of health and human services (DHHS) guidelines for construction and equipment of hospital and medical facilities.

G. Resident safety and disaster plan:

(1) Disaster plan:

(a) Each facility shall have a written procedure which shall be followed in case of fire or other disasters, and which shall specify persons to be notified, locations of alarm signals

and fire extinguishers, evacuation routes, procedures for evacuating helpless residents, frequency of fire drills and assignment of specific tasks and responsibilities to the personnel of each shift and each discipline.

(b) The plan developed by the facility shall be submitted to qualified fire and safety experts, including the local fire authority, for review and approval. The facility shall maintain documentation of approval by the reviewing authority.

(c) All employees shall be oriented to this plan and trained to perform assigned tasks.

(d) The plan shall be available at each nursing station.

(e) The plans shall include a diagram of the immediate floor area showing the exits, fire alarm stations, evacuation routes and location of fire extinguishers. The diagram shall be posted in conspicuous locations in the corridor throughout the facility.

(2) Drills: Fire drills shall be held at irregular intervals at least four times a year on each shift and the plan shall be reviewed and modified as necessary. Records of drills and dates of drills shall be maintained.

(3) Fire inspections: The administrator of the facility shall arrange for fire protection as follows:

(a) At least annual inspection of the facility shall be made by the local fire inspection authorities. Signed certificates of such inspections shall be kept on file in the facility.

(b) Certification by the local fire authority as to the fire safety of the facility and to the adequacy of a written fire plan for orderly evacuation of residents shall be obtained and kept on file in the facility.

(c) Where the facility is located in a city, village, or township that does not have an official established fire department, the licensee shall obtain

and maintain a continuing contract for fire protection service with the nearest municipality providing such service. A certification of the existence of such contract shall be kept on file in the facility.

(4) Fire equipment: All fire protection equipment shall be maintained in readily usable condition and inspected annually. In addition to any other equipment, a fire extinguisher suitable for grease fires shall be provided in or adjacent to the kitchen. Each extinguisher shall be provided with a tag for the date of inspection.

(5) Fire Report: All incidents of fire in a facility shall be reported to the department within 72 hours.

(6) Smoking: Smoking by residents shall be permitted only in designated areas supervised in accordance with the conditions, needs, and safety of residents.

(7) Prevention of ignition: Heating devices and piping shall be designed or enclosed to prevent the ignition of clothing or furniture.

(8) Floor coverings: Scatter rugs and highly polished, slippery floors are prohibited, except for non-slip entrance mats. All floor coverings and edging shall be securely fastened to the floor or so constructed that they are free of hazards such as curled and broken edges.

(9) Roads and sidewalks: The ambulatory and vehicular access to the facility shall be kept passable and open at all times of the year. Sidewalks, drives, fire escapes, and entrances shall be kept free of ice, snow, and other obstructions.

H. Safety and systems:

(1) Maintenance: The building shall be maintained in good repair and kept free of hazards such as those created by any damaged or defective building equipment.

(2) Corridors:
(a) Handrails: Corridors used by

residents shall be equipped with handrails firmly secured on each side of the corridor.

(b) Size: All corridors in resident use areas shall be at least eight feet wide.

(3) Doors:
(a) Size: Doors to residents' rooms shall not be less than three feet eight inches wide and six feet eight inches in height, and shall be at least one and three-quarter inches solid core wood or equivalent construction.

(b) Latches: Each designated fire exit door shall have such latches or hardware that the door can be opened from the inside by pushing against a single bar or plate or by turning a single knob or handle.

(c) Locks on exit doors from the building and from nursing areas and wards may not be hooked or locked to prevent exit from the inside, shall be installed on the door of the resident's room, unless the lock is operable from inside the room with a simple one-hand, one-motion operation without the use of a key unless the resident is confined; a master-key is available to emergency personnel such as the fire department.

(4) Toilet room doors: Resident toilet room doors shall be not less than three feet zero inches by six feet eight inches, and shall not swing into the toilet room unless they are provided with two way hardware.

(5) Thresholds: Raised thresholds which cannot be traversed easily by a bed on wheels, a wheelchair, a drug cart, or other equipment on wheels shall not be used.

I. Emergency power: Emergency electrical service with an independent power source which covers lighting as nursing stations, telephone switchboards, exit and corridor lights, boiler room, and fire alarm systems, shall be provided. The service may be battery operated if effective for at least four hours.

J. Fire protection:
(1) Carpeting:

Carpeting shall not be installed in rooms used primarily for the following purposes: food preparation and storage, dish and utensil washing, soiled utility workroom, janitor closet, laundry processing, hydro-therapy, toilet and bathing, resident isolation, and resident examination.

(2) Carpet fireproofing: Carpeting, including underlying padding, if any, shall have a flamespread rating of 75 or less when tested in accordance with standard 255 of the National Fire Protection Association (NFPA), or a critical radiant flux of more than 0.45 watts per square centimeter when tested in accordance with NFPA standard 253, 1978 edition. Certified proof by the manufacturer of the aforementioned test for the specific product shall be available in the facility. Certification by the installer that the material installed is the product referred to in the test shall be obtained by the facility. Carpeting shall not be applied to walls in any case except where the flamespread rating can be shown to 25 or less.

(3) Acoustical tile: Acoustical tile shall be non-combustible.

(4) Wastebaskets: Wastebaskets shall be of non-combustible materials.

(5) Vertical exit stairways: At least one interior exit stairway shall be provided to that an enclosed protected path of at least one-hour fire resistive construction is available for occupants to proceed with safety to the exterior of the facility.

(6) Housing blind, non-ambulatory, or handicapped residents: In an existing facility of two or more stories which is not of at least two-hour fire resistive construction, blind, non-ambulatory, or physically handicapped residents shall not be housed above the street level floor unless the facility is either of one-hour protected non-combustible construction (as defined in national fire protection standard 200), fully sprinklered one-hour protected ordinary construction, or fully sprinklered one-hour protected wood frame construction.

(7) Storage of oxygen: Oxygen tanks, when not in use, shall be stored in a ventilated closet designated for that purpose only or stored outside the building of the home in an enclosed secured area. Oxygen storage areas must comply with NFPA 99.

K. Sprinklers for fire protection: Facilities shall have automatic sprinkler protection throughout buildings. In the event of an addition to, or remodeling of a facility, the entire facility shall have automatic sprinkler protection throughout unless there is a two hour fire rated partition wall between the old and new construction, in which case only the new or remodeled area shall be sprinklered.

L. Mechanical systems:

(1) Water supply:

(a) A portable water supply shall be available at all times. If a public water supply is available, it shall be used. If a public water supply is not available, the well or wells shall comply with applicable regulations.

(b) An adequate supply of hot water shall be available at all times. The temperature of hot water at plumbing fixtures used by residents may not exceed 110 degrees Fahrenheit (43 degrees C.) and shall be automatically regulated by control valves or by another approved device.

(2) Sewage disposal: All sewage shall be discharged into a municipal sewage system if available. Otherwise, the sewage shall be collected, treated, and disposed of by means of an independent sewage system approved under applicable state law and local authority.

(3) Plumbing: The plumbing for potable water and drainage for the disposal of excreta, infectious discharge, and wastes shall comply with applicable state plumbing standards.

(4) Heating and air conditioning:

(a) The heating and air conditioning systems shall be capable of maintaining adequate temperatures and providing freedom from drafts.

(b) A minimum temperature of at least 70 degrees Fahrenheit (21 degrees C.) in all bedrooms and in all other areas used by residents, unless resident preference is documented for deviations.

(5) Incineration:

(a) Facilities for the incineration of soiled dressings and similar wastes, as well as garbage and refuse, shall be provided when other methods of disposal are not available.

(b) An incinerator shall not be flue fed nor shall any upper floor charging chute be connected with the combustion chamber.

(6) Telephone: There shall be at least one operational non-pay telephone on the premises and as many additional telephones as are deemed necessary in an emergency.

(7) General lighting:

(a) Adequate lighting shall be provided in all areas of the facility. Lighting shall be of a type that does not produce discomfort due to high brightness, glare or reflecting surface. No candles, oil lanterns, or other open flame method of illumination may be used.

(b) Facilities shall have lighting during the evening and night hours that is commensurate with staff needs.

(8) Ventilation:

(a) The facility shall be well-ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air on a

basis commensurate with the type of occupancy.

(b) All inside bathrooms and toilet rooms shall have mechanical ventilation to the outside.

(c) Mechanical ventilation shall be provided to the resident area corridors, solaria, dining, living and recreation areas, and nursing stations. These areas shall be under positive pressure;

(d) All rooms in which food is stored, prepared or served, or in which utensils are washed shall be well-ventilated. Refrigerated storage rooms need not be ventilated.

(e) Kitchens, bathrooms, utility rooms, janitor closets, and soiled linen rooms shall be ventilated.

(9) Elevators: At least one elevator shall be provided in the facility if resident beds or activities are located on more than one floor. The platform size of the elevator shall be large enough to hold a resident bed and an attendant.

(10) Electrical: (a) In all facilities, non-conductive wall plates shall be provided where the system is not properly grounded.

(b) In new construction begun after the effective date of these regulations, at least two duplex-type outlets shall be provided for each bed. [7.9.2.71 NMAC - Rp, 7.9.2.71 NMAC, 6/9/2020]

7.9.2.72 RESIDENTS' ROOMS:

A. Assignment of residents: Residents co-habiting a double occupancy room or a ward shall be of the same sex unless residents are married, related, or are consenting adults.

B. Location: No bedroom housing or resident shall:

- (1) Open directly to a kitchen or laundry.
- (2) Be located so that a person must pass through a resident's bedroom, toilet room, or

bathroom to gain access to any other part of the facility.

(3) Be located so that a person must pass through a kitchen or laundry to gain access to the resident's room or other part of the facility.

C. Access to corridor and outside: Each bedroom shall have direct access to a corridor and outside exposure with the floor at or above grade level.

D. Size:

(1) The minimum floor area per bed shall be 100 square feet in single rooms and 80 square feet per bed in multiple bedrooms, exclusive of vestibule, closets, built-in vanity and wardrobe, toilet rooms and built-in lockers. The department may waive this requirement in individual cases where the facility has demonstrated in writing that such variations are in accordance with the particular needs of the residents and will not adversely affect their health and safety.

(2) Resident rooms shall be large enough to permit the sides and feet of all beds to be not less than two feet from the nearest walls.

(3) Ceilings shall be at least eight feet in height.

E. Windows: The bottom sill of windows in bedrooms shall be no more than three feet from the floor.

F. Bed Capacity: No rooms shall house more than four beds.

G. Bed arrangements: The beds shall be arranged so that the beds shall be at least three feet apart and clear aisle space of at least three feet from the entrance to the room to each bed shall be provided.

H. Closet space: A closet or locker shall be provided for each resident in each bedroom. Closets or lockers shall afford a space of not less than 15 inches wide by 18 inches deep by five feet in height for each resident bed.

I. Cubicle curtains: Each bed in a multiple-bed room shall have a flame retardant or flameproof cubicle curtain or an equivalent

divider that will assure resident privacy.

J. Room

identification: Each bedroom shall be identified with a unique number placed on or near the door.

K. Design and

proximity to baths: Residents' bedrooms shall be designed and equipped for adequate nursing care and the comfort and privacy of residents. Each bedroom shall have or shall be conveniently located near adequate toilet and bathing facilities. [7.9.2.72 NMAC - Rp, 7.9.2.72 NMAC, 6/9/2020]

7.9.2.73 TOILET AND BATHING FACILITIES:

A. General: All lavatories required by this subsection shall have hot and cold running water. Toilets shall be water flushed and equipped with open front seats without lids.

(1) Toilet facilities shall be provided in conjunction with each resident's rooms, with not more than two residents' rooms, and not more than four beds per toilet room.

(2) One toilet and one lavatory for not more than four residents shall be provided and separate facilities shall be provided for each sex.

(3) One tub or shower for every 20 residents shall be provided. The bath or shower shall be located on the same floor as the residents served. Facilities for showering with a wheeled shower chair shall be provided.

(4) Every tub, shower, or toilet shall be separated in such a manner that it can be used independently and afford privacy.

(5) On floors where wheelchair residents are cared for, there shall be a toilet room large enough to accommodate a wheelchair and attendant.

B. Employee and family facilities: Toilets, baths, and lavatories for use by employees or family members shall be separate from those used by residents.

C. Grab bars: Firmly

secured grab bar shall be installed in every toilet and bathing compartment used by residents.

D. Wheelchair

facilities:

(1) On floors housing residents who use wheelchairs, there shall be at least one toilet room large enough to accommodate wheelchairs.

(2) In all facilities licensed for skilled care, a bathtub or shower room large enough to accommodate a wheelchair and attendant shall be provided.

E. The requirement of separate facilities for male and female residents is not applicable to facilities used by married couples sharing a room, or those referenced in Subsection A of 7.9.2.72 NMAC if the facilities are not used by other residents.

[7.9.2.73 NMAC - Rp, 7.9.2.73 NMAC, 6/9/2020]

7.9.2.74 NURSING FACILITIES:

A. All facilities: Each facility shall have:

(1) A medicine storage area.

(2) Space for storage of linen, equipment, and supplies.

(3) Utility rooms, which shall be located, designed and equipped to provide areas for the separate handling of clean and soiled linen, equipment, and supplies.

B. Each resident care area on each floor shall have:

(1) A centrally located nurse station located to provide visual control of all resident room corridors; equipped with storage for records and charts, a desk or work counter, operational telephone, and nurse call system as required in 7.9.2.75 NMAC.

(2) A medicine preparation room immediately adjacent to the nurse station with a work counter, refrigerator, sink, and a well-lighted medicine cabinet with lock and space for medicine cart. The room shall be mechanically ventilated.

(3) A soiled utility room with a flush-rim siphon jet service sink cabinet counter, and sink with hot and cold running water. The utility shall be mechanically ventilated and under negative pressure.

(4) A cleaning area or room with a sink with hot and cold running water, counter, and cabinets.

(5) Staff toilet and lavatory facilities separate from those of residents, near nursing station.

(6) If a kitchen is not open at all times, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving between meal nourishment. Each station may service more than one nursing area.
[7.9.2.74 NMAC - Rp, 7.9.2.74 NMAC, 6/9/2020]

7.9.2.75 NURSE CALL SYSTEM: A nurse call station shall be installed at each resident's bed, in each resident's toilet room, and at each bathtub and shower. The nurse call at the toilet, bath, and shower rooms shall be an emergency call equipped with pull cords of sufficient length to extend to within 18 inches off the floor. All calls shall register at the nurse station and shall actuate a visible signal in the corridor where visibility to corridors is obstructed at the room door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. An emergency call station shall also be provided in any enclosed room used by residents.
[7.9.2.75 NMAC - Rp, 7.9.2.75 NMAC, 6/9/2020]

7.9.2.76 DINING, RECREATION AND ACTIVITY AREAS:

A. Multi-purpose space: The facility shall provide one or more furnished multi-purpose areas of adequate size for dining, diversional, and social activities of residents.

B. Lounge: At least one dayroom or lounge, shall be provided for use of the residents.

C. Size of dining rooms: Dining rooms shall be of sufficient size to seat all residents at no more than two shifts. Dining tables and chairs shall be provided. TV trays or portable card tables shall not be used as dining tables.

D. Space: If a multi-purpose room is used for dining and diversional and social activities of residents, there shall be sufficient space to accommodate all activities and minimize their interference with each other.

E. Total area: The combined floor space of dining, recreation, and activity areas shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space.
[7.9.2.76 NMAC - Rp, 7.9.2.76 NMAC, 6/9/2020]

7.9.2.77 FOOD SERVICE - GENERAL:

A. The facility shall have a kitchen or dietary area which shall be adequate to meet food service needs and shall be arranged and equipped for the refrigeration, storage and preparation, and serving of food, as well as for dish and utensil cleaning and refuse storage and removal.

B. Dietary areas shall comply with the local health or food handling codes. Food preparation space shall be arranged for the separation of functions and shall be located to permit efficient services to residents and shall not be used for non-dietary functions.

(1) Kitchen and dietary: Kitchen and dietary facilities shall be provided to meet food service needs and arranged and equipped for proper refrigeration, heating, storage, preparation, and serving of food. Adequate space shall be provided for proper refuse handling and washing of waste receptacles, and for storage of cleaning components.

(2) Traffic: Only traffic incidental to the receiving, preparation and serving of food and drink shall be permitted.

(3) Toilets: No toilet facilities may open directly into the kitchen.

(4) Food storage: Food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside.

(5) Handwashing: A separate handwashing sink with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen.

(6) Dishwashing: A separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided.

(7) Sink: At least a three-compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drainboards, at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drainboard shall be available for prewashing. The additional sink may also be used for liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least fifty percent of the largest utensil used. In lieu of the additional sink for prewashing, a well type garbage disposal with overhead spray wash may be provided.

(8) Mechanical dishwashers: Mechanical dishwashers and utensil washers, where provided, shall meet the requirements of the current approved list from the national sanitation foundation or equivalent with approval of the department.

(9) Temperature: Temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of in immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus two degrees Fahrenheit or one degree (C.).

(10) Fire extinguishers: Approved automatic

fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment.

(11) **Walls:** The walls shall be of plaster or equivalent material with smooth, light - colored, non-absorbent, and washable surface.

(12) **Ceiling:** The ceiling shall be of plaster or equivalent material with smooth, light-colored, non-absorbent, washable, and seamless surface.

(13) **Floors:** The floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be non-absorbent and easily cleaned.

(14) **Screens:** All room openings to the out - of-doors shall be effectively screened. Screen doors shall be self-closing.

(15) **Lighting:** All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted.

(16) **Sewage contamination:** Rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or wastelines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

[7.9.2.77 NMAC - Rp, 7.9.2.77 NMAC, 6/9/2020]

7.9.2.78 **STORAGE:**

A. General storage: A general storage area shall be provided for supplies, equipment, and wheelchairs.

B. Linen: Facilities shall provide a linen storage space or cabinet for each nursing unit.

[7.9.2.78 NMAC - Rp, 7.9.2.78 NMAC, 6/9/2020]

7.9.2.79 **FAMILY AND EMPLOYEE LIVING QUARTERS:**

Any family and employee living quarters shall be separate from the residents' area. [7.9.2.79 NMAC - Rp, 7.9.2.79 NMAC, 6/9/2020]

7.9.2.80 EMPLOYEE FACILITIES: The following shall be provided for employees, and shall not be located in food preparation, food storage, utensil washing area or in resident's rooms:

A. An area, room, or rooms for employee wraps, with lockers for purses and other personal belongings when on duty.

B. Handwashing lavatories with soap dispenser, single service towel dispenser, or other approved hand drying equipment.

C. Toilet facilities separate from those used by residents. [7.9.2.80 NMAC - Rp, 7.9.2.80 NMAC, 6/9/2020]

7.9.2.81 **JANITOR FACILITIES:**

Facilities shall have a mechanically ventilated janitor closet of adequate size on each floor and in the food service area, equipped with hot and cold running water and a service sink or receptor.

[7.9.2.81 NMAC - Rp, 7.9.2.81 NMAC, 6/9/2020]

7.9.2.82 **LAUNDRY FACILITIES:**

A. Facilities: A laundry room shall be provided unless commercial laundry facilities are used. Laundry facilities shall be located in areas separate from resident units and shall be provided with necessary washing and drying equipment.

B. Work room: When commercial laundries are used, a room for sorting, processing, and storing soiled linen shall be provided and shall have mechanical exhaust ventilation.

C. In addition to the requirements of Subsection A of 7.9.2.82 NMAC and Subsection B of 7.9.2.82 NMAC, facilities shall have:

(1) A soiled linen sorting room separate from the laundry, which shall be mechanically ventilated and under negative pressure.

(2) A lavatory with both hot and cold running water, soap, and individual towels in the laundry area.

[7.9.2.82 NMAC - Rp, 7.9.2.82 NMAC, 6/9/2020]

7.9.2.83 ISOLATION: For every 100 beds or fraction thereof, facilities shall have available one separate room, equipped with separate toilet, handwashing, and bathing facilities, for the temporary isolation of a resident. The isolation room bed shall be considered part of the licensed bed capacity of the facility.

[7.9.2.83 NMAC - Rp, 7.9.2.83 NMAC, 6/9/2020]

7.9.2.84 **ADMINISTRATION AND ACTIVITY AREAS:**

A. Administration and resident activity areas:

Administration and resident activities areas shall be provided. The sizes of the various areas will depend upon the requirements of the facility. Some functions allotted separate spaces or rooms under Subsection B of 7.9.2.84 NMAC may be combined, provided that the resulting plan will not compromise acceptable standards of safety, medical and nursing practices, and the social needs of residents.

B. Administration department areas shall include:

- (1) business office;
- (2) lobby and information center;
- (3) office of administrator;
- (4) admitting and medical records area;
- (5) public and staff toilet room;
- (6) office of director of nurses; and
- (7) in-service training area.

C. Resident activities areas shall include:

- (1) occupational therapy;
- (2) physical therapy;
- (3) activity area; and
- (4) beauty and barber shop.

[7.9.2.84 NMAC - Rp, 7.9.2.84 NMAC, 6/9/2020]

7.9.2.85 MIXED

OCCUPANCY: Rooms or areas within the facility may be used for occupancy by individuals other than residents and facility staff if the following conditions are met:

- A.** the use of these rooms does not interfere with the services provided to the residents; and
- B.** the administrator takes reasonable steps to ensure that the health and safety and rights of the residents are protected.

[7.9.2.85 NMAC - Rp, 7.9.2.85 NMAC, 6/9/2020]

7.9.2.86 LOCATION AND SITE:

A. Zoning: The site shall adhere to local zoning regulations.

B. Outdoor areas: Areas shall be provided for outdoor recreation area, exclusive of driveways and parking area.

C. Parking: Space for off-street parking for staff and visitors shall be provided.

[7.9.2.86 NMAC - Rp, 7.9.2.86 NMAC, 6/9/2020]

7.9.2.87 SUBMISSION OF PLANS AND SPECIFICATIONS:

For all new construction:

A. One copy of schematic and preliminary plans shall be submitted to the department for review and approval of the functional layout.

B. One copy of working plans and specifications shall be submitted to and approved by the department before construction is begun. The department shall notify the facility in writing of any divergence in the plans and specifications, as submitted, from the prevailing rules.

C. The plans specified in Subsection B of 7.9.2.87 NMAC shall show the general arrangement of the buildings, including a room schedule and fixed equipment for each room and a listing of room numbers, together with other pertinent information. Plans submitted shall be drawn to scale.

D. Any changes in the approved working plans affecting the application of the requirements herein established shall be shown on the approved working plans and shall be submitted to the department for approval before construction is undertaken. The department shall notify the facility in writing of any divergence in the plans and specifications as submitted, from the prevailing rules.

E. If on-site construction above the foundation is not started within six months of the date of approval of the working plans and specifications under Subsection B of 7.9.2.87 NMAC, the approval shall be void and the plans and specifications shall be resubmitted for reconsideration of approval.

F. If there are no divergences from the prevailing rules, the department shall provide the facility with written approval of the plans as submitted.

[7.9.2.87 NMAC - Rp, 7.9.2.87 NMAC, 6/9/2020]

7.9.2.88 RELATED REGULATIONS AND CODES:

Long term care facilities subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:

A. Health facility licensure fees and procedures, New Mexico department of health, 7 NMAC 1.7 (10/31/1996).

B. Health facility sanctions and civil monetary penalties, New Mexico department of health, 7 NMAC 1.8 (10/31/1996).

C. Adjudicatory hearings, New Mexico department of health, 7 NMAC 1.2 (2-1-96).

[7.9.2.88 NMAC - Rp, 7.9.2.88 NMAC, 6/9/2020]

History of 7.9.2 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the Supreme Court Law Library:

New Mexico Department of Public Health Licensing Regulations Part 3, Nursing Homes, June 1964.

The commission of public records, state records center and archives: HED 89-2, Regulations Governing Long Term Care Facilities, 5/2/1989.

History of Repealed Material:

7.9.2 NMAC - Requirements for Long Term Care Facilities (filed 8/31/2000) - Repealed effective 6/9/2020.

Other History:

7 NMAC 9.2, Requirements for Long Term Care Facilities, filed 10/18/1996, reformatted, renumbered and amended to 7.9.2 NMAC, effective 8/31/2000.

7.9.2 NMAC - Requirements for Long Term Care (filed 8/31/2000), was replaced by 7.9.2 NMAC, - Requirements for Long Term Care, effective 6/9/2020.

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved (*and adopted*), at its 5/19/2020 hearing, to repeal its rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Family Engagement (filed 7/24/2018).

The New Mexico Public Education Department approved at its 5/19/2020 hearing, to repeal its rule 6.30.12 NMAC, K-3 Plus Program, filed 10/30/2014 and replace it with 6.30.12 NMAC, K-5 Plus Program, adopted on 5/28/2020 and effective 6/9/2020.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS PART 12 K-5 PLUS PROGRAM

6.30.12.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.30.12.1 NMAC – Rp, 6.30.12.1 NMAC, 6/9/2020]

6.30.12.2 SCOPE: This rule applies to all school districts and public schools, including charter schools.

[6.30.12.2 NMAC - Rp, 6.30.12.2 NMAC, 6/9/2020]

6.30.12.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, and 22-13D-1 et seq. NMSA 1978.

[6.30.12.3 NMAC - Rp, 6.30.12.3 NMAC, 6/9/2020]

6.30.12.4 DURATION: Permanent.

[6.30.12.4 NMAC - Rp, 6.30.12.4 NMAC, 6/9/2020]

6.30.12.5 EFFECTIVE DATE: June 9, 2020, unless a later date is cited at the end of a section.

[6.30.12.5 NMAC - Rp, 6.30.12.5 NMAC, 6/9/2020]

6.30.12.6 OBJECTIVE: This rule provides criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes for students. Development and implementation includes assisting school districts and charter schools as they build capacity to offer K-5 plus programs. Development and implementation also includes assessing and evaluating K-5 plus programs.

[6.30.12.6 NMAC - Rp, 6.30.12.6 NMAC, 6/9/2020]

6.30.12.7 DEFINITIONS:

A. “Capacity” means having the appropriate numbers of teachers and students participating in the K-5 plus program to meet program eligibility requirements.

B. “Evidence-based scientific math strategies and program” means instructional strategies and mathematics programs that apply rigorous, systematic, and objective procedures to obtain valid measures relevant to math instruction and that are developmentally

appropriate and integrate standards for mathematical practices.

C. “Evidence-based scientific reading strategies and program” means instructional strategies and reading programs that apply rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

D. “High-priority schools” means, for the purpose of the K-5 plus program, a public school:

(1) in which eighty percent or more of the elementary school’s students are eligible for free or reduced-fee lunch at the time the public school applies for the K-5 plus program;

(2) that is a low-performing elementary school;

(3) that participated in K-3 plus or K-5 plus programs in the most recent school year;

(4) that is identified as a comprehensive support and improvement school; or

(5) that is identified as a targeted support and improvement school.

E. “Instructional day” means at least five and one-half instructional hours per day for qualifying schools.

F. “K-5 plus program” means a voluntary program, for approved elementary schools, that extends the school year by 25 or more additional instructional days for the purpose of literacy and numeracy instruction. The additional 25 or more instructional days will commence prior to the regular school year.

G. “K-5 plus program units” means the number of students participating in a department-approved K-5 plus program multiplied by a factor of 0.3.

H. “Local education agency or “LEA” means a school district, or a locally chartered, or state-chartered charter school.

I. “Multi-layered system of support” means an umbrella framework that encompasses

response to intervention and positive behavioral intervention and supports.

J. “Progress monitoring” means a scientifically-based practice that teachers use to evaluate the effectiveness of their instruction for individual students and their entire class through:

(1) the identification of goals;

(2) measurement of progress toward meeting those goals, comparing expected and actual rates of learning; and

(3) adjustments in instruction.

K. “School-wide” means the program is offered as many of grade levels an elementary school has.

L. “Screening assessment” means the standardized assessment administered multiple times per year for all students to assess specific skills and to identify academically at-risk students.

[6.30.12.7 NMAC - Rp, 6.30.12.7 NMAC, 6/9/2020]

6.30.12.8 PROGRAM DEVELOPMENT AND IMPLEMENTATION:

The department shall support schools in their capacity-building to increase participation in the K-5 plus program. Capacity-building includes professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design and evaluation.

[6.30.12.8 NMAC - N, 6/9/2020]

6.30.12.9 PROGRAM ELIGIBILITY:

To be eligible for K-5 plus program units a school shall commit to:

A. provide 25 or more additional instructional days of K-5 plus programming prior to the start of the regular school year;

B. keep students who participate in the K-5 plus program with the same teacher and cohort of students for the following regular school year;

C. provide K-5 plus teachers additional professional development on how young children learn to read; and

D. implement the program school-wide.
[6.30.12.9 NMAC - Rp, 6.30.12.8 NMAC, 6/9/2020]

6.30.12.10 PROGRAM ELEMENT INSTRUCTION:

A. K-5 plus programs shall include:

(1) a daily classroom schedule with time for all students to practice independent reading;

(2) instruction and intervention provided to students based on screening assessment data to guide instruction to meet student needs;

(3) a comprehensive evidence-based early literacy core basal reading program or intervention in alignment with the English language arts common core state standards established in 6.29.13.8 NMAC that:

(a) identify the concepts and skills necessary to establish the foundation of success in early reading;

(b) include instructional strategies that ensure children learn identified concepts and skills; and

(c) include key early literacy skills instruction including but not limited to phonological awareness, phonics, reading fluency, vocabulary, comprehension, and writing to support comprehension.

(4) a sequential comprehensive, developmentally appropriate early mathematics program that aligns with the mathematics common core state standards established in 6.29.14 NMAC that:

(a) identify the concepts and skills necessary to establish the foundation of success in early mathematics; and

(b) include instructional strategies that ensure children learn identified concepts and skills; and

(5) implementation of the department's multi-layered system of support.

B. Schools shall provide intervention services in literacy and numeracy for students enrolled in the K-5 plus program who are not meeting grade level requirements.

[6.30.12.10 NMAC - Rp, 6.30.12.9 NMAC, 6/9/2020]

6.30.12.11 PROGRAM ELEMENT - ASSESSMENT:

K-5 plus schools shall administer a common screening assessment for student literacy that diagnoses the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency at the following times:

A. beginning of the K-5 plus program;

B. end of the K-5 plus program;

C. beginning of the regular school year;

D. middle of the regular school year; and

E. end of the regular school year.

[6.30.12.11 NMAC - Rp, 6.30.12.10 NMAC, 6/9/2020]

6.30.12.12 PROFESSIONAL DEVELOPMENT:

A. The LEA shall provide professional development to K-5 plus teachers in the following areas:

(1) early literacy research and its implications for instruction for phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency in kindergarten and grades one through five;

(2) best practices of culturally and linguistically responsive instruction, including instruction for English language learners; and

(3) best practices in early mathematics instruction.

B. To support successful implementation of K-5

plus programs, the department shall develop and disseminate information on best practices in the areas of professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design.

[6.30.12.12 NMAC - Rp, 6.30.12.11 NMAC, 6/9/2020]

6.30.12.13 APPLICATION AND REVIEW PROCESS:

A. Pursuant to the K-5 Plus Act, the department shall review all applications for approval. Priority will be given to those schools identified as high-priority schools.

The department shall approve applicants that meet the application deadlines and demonstrate the capacity to meet K-5 plus program requirements as set forth in statute, regulation and department guidance, provided there is sufficient funding.

B. No later than October 15 of each year, a school district or charter school that wishes to apply for a new K-5 plus program for the next fiscal year shall submit to the department the actual number of students who participated in its K-5 plus programs in the current calendar year and an estimate of the number of students the school district or charter school expects will participate in the K-5 plus programs in the next calendar year.

C. No later than November 15 of each year, the department shall notify the legislature of the number of students participating in K-5 plus programs in the current school year and of the number of students projected to participate in K-5 plus programs in the next school year.

[6.30.12.13 NMAC - Rp, 6.30.12.12 NMAC, 6/9/2020]

6.30.12.14 FUNDING MECHANISMS:

A. Funding for individual school K-5 plus programs shall be calculated based on the approved number of K-5 plus program units .

B. A school district or charter school that provides a

department-approved K-5 plus program to all elementary students shall be eligible to generate K-5 plus program units using the total average number of elementary school students enrolled on the second and third reporting date of the previous school year.

[6.30.12.14 NMAC - Rp, 6.30.12.13 NMAC, 6/9/2020]

6.30.12.15 EVALUATION AND REPORTING AND AUDITING:

A. Schools shall comply with annual and interim reports as required by the department for student and program assessment and evaluation.

B. All students participating in K-5 plus shall be reported to the department through the department’s data collection and reporting system. Required fields include the following:

- (1) daily attendance;
- (2) demographic information;
- (3) services rendered under the multi-layered system of support;
- (4) assigned teacher; and
- (5) number of years the student has participated in the K-5 plus program.

C. The department may request additional information regarding staffing, endorsements, licensure levels, program elements, class roster reports, professional development activities, parent and family involvement activities, implementation successes and challenges, and suggested modifications.

D. Site monitoring visits by the department or by evaluators designated by the department shall be conducted. District and school personnel shall attend site visits as needed as determined by the department.

E. The department shall report annually to the legislature and the governor on the development and progress of the K-5 plus program.

F. The department shall establish a K-5 plus advisory committee composed of representatives of school districts and charter schools that participate in the K-5 plus program, the legislative education study committee, the legislative finance committee and other stakeholders. The advisory committee shall meet twice a year to advise the department on K-5 plus implementation.

[6.30.12.15 NMAC – Rp, 6.30.12.14 NMAC 6/9/2020]

HISTORY OF 6.30.12 NMAC:
6.30.12 NMAC, K-3 Plus Program, filed 10/30/2014, was repealed and replaced by 6.30.12 NMAC, K-5 Plus Program, effective 6/9/2020.

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.7 NMAC, Sections 7, 9, and 10, effective 6/9/2020.

6.60.7.7 DEFINITIONS:

A. “Applicant”
means a person who has submitted an application or who intends to submit an application to the department.

B. “Application”
means a formal written or online request, on a department-approved form, to the department for issuance of a department license, license renewal, license continuation, license advancement, certification, or license endorsement.

C. “Application fee”
means all fees, monies, remittances, or charges owed for the processing of a department application but does not include any additional fees, monies, or charges owed for the processing of a background check.

D. “Indigence”
means the financial inability to pay or afford, without extreme hardship, an application fee.

E. “Military member” means an active duty member or reservist, or spouse or dependent of a person currently serving in the armed forces or armed

forces reserve, of the United States.

[F.] E. “PDD” means the professional development dossier defined in 6.69.4.11 NMAC for advancing from a level one to level two license or from a level two to level three license.

[F.] G. “PDD strand” means one of three categories used to measure evidence of teacher competency on the professional development dossier. Submission of any of the following strands will incur fees:

- (1) the instruction strand;
- (2) the student learning strand; and
- (3) the professional learning strand.

H. “Veteran” means an individual who has received an honorable discharge or separation from the armed forces of the United States.

[6.60.7.7 NMAC - Rp, 6.60.7.7 NMAC, 8/13/2019, A, 6/9/2020]

6.60.7.9 FEE SCHEDULE:

A. Initial licensure applications. Applicants for initial licensure shall pay an application fee of one hundred fifty dollars (\$150) unless another application fee is specified below:

(1) applicants for initial licensure as an educational assistant shall pay an application fee of fifty dollars (\$50);

(2) applicants for initial licensure as a school health assistant shall pay an application fee of fifty dollars (\$50);

(3) applicants for initial licensure as a substitute teacher shall pay an application fee of fifty dollars (\$50);

(4) applicants for initial licensure as an athletic coach shall pay an application fee of ~~[thirty five dollars (\$35)]~~ fifty dollars (\$50); and

(5) applicants for initial licensure for Native American language and culture certification shall pay a fee of fifty dollars (\$50).

B. Renewal
applications of an existing educator license. Applicants for renewal of an existing educator license shall pay an application fee of one hundred twenty dollars (\$120) unless another application fee is specified below:

(1) applicants for renewal of an existing educator license as an administrator shall pay an application fee of one hundred thirty dollars (\$130);

(2) applicants for renewal of an existing educator license as an educational assistant shall pay an application fee of fifty dollars (\$50);

(3) applicants for renewal of an existing educator license as a school health assistant shall pay an application fee of fifty dollars (\$50); and

(4) applicants for renewal of an existing educator license as a substitute teacher shall pay an application fee of fifty dollars (\$50).

C. Renewal
applications of an existing certification.

(1) Applicants for renewal of an existing educator certification shall pay a renewal application fee of one hundred twenty dollars (\$120).

(2) Applicants for renewal of Native American language and culture certification shall pay a fee of fifty dollars (\$50).

D. Advancement
applications.

(1) Applicants who have not previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay three hundred twenty dollars (\$320).

(2) Applicants who have previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay:

(a) one hundred ten dollars (\$110) for an application that includes one PDD strand;

(b) two hundred twenty dollars (\$220) for

an application that includes two PDD strands; or

(c) three hundred twenty dollars (\$320) for an application that includes three PDD strands.

(3) Applicants who concurrently submit a renewal of existing educator license application and an advancement application shall pay no renewal of existing application fee.

(4) In order to concurrently submit a renewal of existing educator license application and an advancement application the following must occur:

(a) the advancement application must be submitted on the same date or before the renewal of an existing educator license application;

(b) the advancement application fees must be received upon the date of the advancement application submission; and

(c) the renewal of existing educator license application must be received by the department within five business days of the advancement application.

E. Endorsement
applications. Applicants seeking to add an endorsement to an existing license shall pay a fee of one hundred twenty dollars (\$120).

[6.60.7.9 NMAC - Rp, 6.60.7.9 NMAC, 8/13/2019, A, 6/9/2020]

6.60.7.10 LICENSURE APPLICATION FEE EXEMPTIONS:

A. An application fee shall not be charged for any of the following applications:

(1) application for name change;

(2) application for address change;

(3) application for replacing lost or misplaced licenses; and

(4) applicants with an alternative license who meet the requirements to transition their license to a standard level one license.

B. An application fee shall not be charged to an individual who qualifies as indigent.

C. An application fee charged to an individual who qualifies as indigent may be returned.

D. An application fee shall not be charged for the first three years a license is issued to an individual who qualifies as a military member or veteran and who has provided one of the following:

(1) DD Form 214;

(2) United States uniformed services identification card; or

(3) marriage license and a copy of spouses' orders for mobilization or deployment.

E. A license issued to an applicant identified as a military member or veteran with an expired educator license shall not be valid for more than one year.

[6.60.7.10 NMAC - Rp, 6.60.7.10 NMAC, 8/13/2019, A, 6/9/2020]

HISTORY OF 6.60.7 NMAC: [RESERVED]

6.60.7 NMAC, Educator Licensure Application Fee, filed 10/13/2000, was repealed and replaced by 6.60.7 NMAC, Educator Licensure Application Fee, effective 8/13/2019.

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an amendment to 13.10.13 NMAC, Section 12, effective July 1, 2020.

13.10.13.12 COST SHARING:

A. All cost sharing (including copayments, deductibles, co-insurance, or similar charges) required of covered persons by the health care insurer or managed health care plan for the provision of health care services shall be reasonable and shall include any applicable state and federal taxes.

B. Any cost sharing requirement for the provision of testing and delivery of health care services for COVID-19 (including

testing/screening for pneumonia and influenza, treatment for pneumonia when due to or a result of COVID-19 infection, and treatment for influenza when a co-infection with COVID-19) or any disease or condition which is the cause of, or subject of, a public health emergency is presumptively unreasonable and is prohibited. For purpose of this rule, a public health emergency exists when declared by the state of New Mexico or federal government [~~or by order of the superintendent~~].

C. Cost sharing requirements, including any variations in contribution requirements based on the type of health care service rendered or provider used, shall be disclosed to covered persons in MHCP contracts, enrollment materials, and in the evidence of coverage.

D. No female covered person shall be assessed a higher cost sharing requirement, over and above the cost sharing required of all covered persons to be seen by a primary care physician, for choosing a women's health care provider as her primary care physician

E. Health care services for any disease or condition for which cost sharing is prohibited under Paragraph B of this section shall be subject to the Surprise Billing Protection Act, Sections 59A-57A-1 through 13, NMSA 1978 (the "Act"). Where there is no data available in the Act's benchmarking databases for a particular billing code, then the health care insurer or managed health care plan shall reimburse under the Act at one hundred fifty percent of the Medicare reimbursement rate applicable for the year in which the benchmarking data first becomes available.

[13.10.13.12 NMAC - Rp,
13.10.13.27 NMAC, 09/01/2009; A/E,
3/12/2020; A, 7/01/2020]

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2020-030
**RENEWING THE STATE OF
PUBLIC HEALTH EMERGENCY
INITIALLY DECLARED IN
EXECUTIVE ORDER 2020-004,
OTHER POWERS INVOKED IN
THAT ORDER, AND ALL OTHER
ORDERS AND DIRECTIVES
CONTAINED IN EXECUTIVE
ORDERS TIED TO THE PUBLIC
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020.

On March 11, 2020, I issued Executive Order 2020-004, which declared a state of public health emergency under the Public Health Emergency Response Act and invoked powers provided by the All Hazards Emergency Management Act and the Emergency Licensing Act. That public health emergency was declared for a period of 30 days. The President approved a Major Disaster Declaration for the State of New Mexico on April 5, 2020. On April 6, 2020, I renewed and extended

the public health emergency through April 30, 2020. On April 30, 2020, I renewed and extended the public health emergency through May 15, 2020.

Cases of COVID-19 and deaths related to COVID-19 continue to proliferate globally, nationally, and locally. The WHO reports more than 4.2 million worldwide infections and more than 292,000 related deaths. According to the United States Centers for Disease Control and Prevention (“CDC”), more than 1.3 million people have been infected in the United States, including confirmed cases in every state, with more than 83,000 related deaths. The numbers of reported cases and deaths are continuing to increase dangerously throughout the United States and in many parts of the world. It is also highly likely that there are many unreported cases and deaths.

Despite some hopeful signs in recent weeks, the numbers have also risen steadily in our State since I declared a public health emergency. As of May 14, 2020, the New Mexico Department of Health reported 5,503 confirmed cases of COVID-19 in New Mexico and at least 242 related deaths. Unfortunately, the number of deaths in our State has more than doubled since the last extension of the public health emergency approximately two weeks ago. There are confirmed cases of COVID-19 in 30 of New Mexico’s 33 counties. Despite proactive measures taken by the State and our citizens, the increases in cases and deaths present a significant risk and COVID-19 is expected to continue its spread in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly

thereafter. Nearly all of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its potentially devastating effects. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health.

Due to the continued spread of the COVID-19, it is necessary for all branches of State government to continue taking actions to minimize the spread of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022 and 2020-026, shall be renewed and extended through May 31, 2020.

2. All other powers invoked, directives, and orders contained in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding and the following orders: Executive Order 2020-012; Executive Order 2020-013; Executive Order 2020-016; Executive Order 2020-

017; Executive Order 2020-020; Executive Order 2020-021; Executive Order 2020-024; and Executive Order 2020-025.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until June 1, 2020 unless renewed or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 15TH DAY OF
MAY 2020**

ATTEST:

**/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

**/S/ MICHELLE LUJAN
GRISHAM
GOVERNOR**

**GOVERNOR,
OFFICE OF THE**

EXECUTIVE ORDER 2020-036

**RENEWING THE STATE OF
PUBLIC HEALTH EMERGENCY
INITIALLY DECLARED IN
EXECUTIVE ORDER 2020-004,
OTHER POWERS INVOKED
IN THAT ORDER, AND
ALL OTHER ORDERS AND
DIRECTIVES CONTAINED IN
EXECUTIVE ORDERS TIED
TO THE ONGOING PUBLIC
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization ("WHO"). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as "COVID-19."

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. Nearly all of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

On March 11, 2020, I issued Executive Order 2020-004, which declared a state of public health emergency under the Public Health Emergency Response Act and invoked powers provided by the All Hazards Emergency Management Act and the Emergency Licensing Act. That public health emergency was declared for a period of 30 days. The President approved a Major Disaster Declaration for the State of New Mexico on April 5, 2020. On April 6, 2020, I renewed and extended the public health emergency through April 30, 2020. On April 30, 2020, I renewed and extended the public health emergency through May 15, 2020. On May 15, 2020, I renewed and extended the public health emergency through May 31, 2020.

Cases of COVID-19 and deaths related to COVID-19 continue to proliferate globally, nationally, and locally. The WHO reports nearly 6 million worldwide infections and more than 367,000 related deaths. According to the United States Centers for Disease Control and Prevention ("CDC"),

more than 1.7 million people have been infected in the United States, including confirmed cases in every state, with more than 103,000 related deaths. The numbers of reported cases and deaths are continuing to increase significantly throughout the United States and in many parts of the world.

Although New Mexicans have worked together and made sacrifices to mitigate its spread, COVID-19 continues to pose a significant risk to our communities. As of May 31, 2020, the New Mexico Department of Health reported 7,689 confirmed cases of COVID-19 in New Mexico, including cases in 31 of our State's 33 counties, and at least 356 related deaths.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State's response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of the COVID-19, it is necessary for all branches of State government to continue taking actions to minimize the spread of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, hereby **ORDER** and **DIRECT**:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, and 2020-030 shall be renewed and extended through June 30, 2020.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding and the following orders: Executive Order 2020-012; Executive Order 2020-013; Executive Order 2020-016; Executive Order 2020-017; Executive Order 2020-020; Executive Order 2020-021; Executive Order 2020-024; and Executive Order 2020-025.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until July 1, 2020 unless renewed or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 1ST DAY OF JUNE
2020**

ATTEST:
**/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

**/S/ MICHELLE LUJAN
GRISHAM
GOVERNOR**

**GOVERNOR,
OFFICE OF THE**

EXECUTIVE ORDER 2020-037

**AMENDED ORDER DIRECTING
INDIVIDUALS TRAVELING TO
NEW MEXICO THROUGH AN
AIRPORT TO SELF-ISOLATE
OR SELF-QUARANTINE
FOR A LIMITED PERIOD
AND DIRECTING THE NEW
MEXICO DEPARTMENT
OF HEALTH TO INITIATE**

**LAWFUL ISOLATION AND
QUARANTINE PROCEEDINGS
FOR INDIVIDUALS WHO DO
NOT SELF-ISOLATE OR SELF-
QUARANTINE**

WHEREAS, on March 11, 2020, Executive Order 2020-004 declared a statewide public health emergency pursuant to the Public Health Emergency Response Act and invoked gubernatorial powers under the All Hazard Emergency Management Act. See Order Declaring A State of Public Health Emergency and Invoking the Powers Provided by the All Hazard Emergency Management Act and the Emergency Licensing Act, Executive Order 2020-004. That Order is incorporated by reference herein.

WHEREAS, despite the best efforts of our State and local governments and the citizens of New Mexico, COVID-19 has continued to spread and ongoing efforts are still necessary to mitigate and contain the spread of COVID-19 ;

WHEREAS, many of the current confirmed positive cases of COVID-19 in New Mexico have resulted from interstate and international travel to New Mexico via airplane. Because some individuals infected with COVID-19 are asymptomatic or have very mild symptoms, travelers may be unaware they are carrying the virus. For this reason, persons arriving in New Mexico's airports must self-isolate for a period of time sufficient to ensure that the public health and safety is not jeopardized.

WHEREAS, the All Hazards Emergency Management Act vests my office with the authority to take all actions necessary to protect the public health, safety and welfare and to direct State agencies to provide aid during an emergency response. NMSA 1978, § 12-10-4(B)(3); NMSA 1978, § 12-10-10(A).

WHEREAS, during a declared state of public health emergency, the Public Health Emergency Response Act authorizes

the New Mexico Department of Health to isolate or quarantine individuals or groups as necessary to prevent or limit the spread of a threatening communicable disease, subject to certain statutory procedures. See NMSA 1978, §§ 12-10A-7 to -11.

THEREFORE, for the reasons set forth above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby order and direct as follows:

1. I direct all persons whose travel to New Mexico has gone through an airport and whose point of departure originates outside of New Mexico to self-isolate or self-quarantine for a period of at least 14 days from the date of their entry into the State of New Mexico or for the duration of their presence in the State, whichever is shorter.

2. The terms "self-isolate" or "self-quarantine" refer to the voluntary physical separation of a person or group of people in a residence or other place of lodging. Any person who is self-isolating or self-quarantining may only leave a residence or place of lodging to receive medical care and should not allow others into the residence or place of lodging except for those providing medical care, emergency response, or other individuals designated by the New Mexico Department of Health. Family or household members may visit an isolated or quarantined person, but those visitors are directed to then self-isolate or self-quarantine for a period of no less than 14 days. All persons self-isolating or self-quarantining shall be responsible for all costs associated with the isolation or quarantine.

3. This Order's direction to self-quarantine does not apply to persons employed by airlines, those performing public safety or public health functions, military personnel, federal employees, those employed by a federal agency or national defense contractor,

emergency first responders, health care workers, those arriving in the State pursuant to a Court order, and persons traveling into New Mexico to conduct business activities.

4. Individuals who do not comply with the self-isolation and self-quarantine directives set forth above shall be subject to involuntary isolation or quarantine by the New Mexico Department of Health under the Public Health Emergency Response Act.

5. I further direct the New Mexico Department of Health, with the cooperation and assistance of all other executive agencies, to take all necessary steps to ensure the screening and appropriate isolation and quarantine of individuals covered by this Order. This will include making temporary holds of individuals or groups, obtaining court orders requiring isolation or quarantine in compliance with the provisions of the Public Health Emergency Response Act, and imposing any civil or criminal penalties warranted under the Public Health Emergency Response Act and the Public Health Act when individuals do not self-isolate or self-quarantine as required by this Order.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on June 1, 2020 and shall remain in effect through the duration of the public health emergency declared in Executive Order 2020-004 and any extensions of that emergency declaration or until it is rescinded.

DONE AT THE EXECUTIVE OFFICE THIS 1ST DAY OF JUNE 2020

ATTEST:
/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/ MICHELLE LUJAN
GRISHAM
GOVERNOR

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
CABINET SECRETARY
KATHYLEEN M. KUNKEL**

MAY 15, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, April 30, 2020, and May 5, 2020, Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; **all New Mexicans should be staying in their homes for all but the most essential activities and services.**

When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this

Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places

3. The May 5, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, and April 30, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan

Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 5,500 and confirmed cases in the United States have risen to more than 1.4 million;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid

gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy

populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance,

and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bicycle repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;

m. Hardware stores and self-storage facilities;

n. Laundromats and dry cleaner services;

o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

p. Funeral homes, crematoriums and cemeteries;

q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

r. Real estate services including brokers, title companies, and related services;

s. Businesses providing mailing and shipping services, including post office boxes;

t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

u.

Restaurants, but only for delivery or carry out and local breweries, wineries, or distillers but only for carry out;

v. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

w. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) "Individuals" means natural persons.

(3) "Gathering" means any grouping together of individuals in a single connected location.

"Mass gathering" means any public gathering, private gathering, organized event, ceremony, or other grouping that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space.

(4) "Mass gathering" does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(5) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) "Close-contact business" includes barbershops, adult entertainment venues, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services.

(7) "Recreational facilities" include movie theaters, swimming pools, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, performance venues, go-kart courses, indoor shopping malls, and other places of indoor recreation or indoor entertainment.

(8) "COVID-Safe

Practices" ("CSP") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". That document may be obtained at the following link <https://cv.mnhealth.org/covid-safe-practices/>.

(9) "Places of lodging" means all hotels, motels, RV parks, co-located short term condominium rentals with a central check-in desk, and short-term vacation rentals.

(10) "Retail space" means any essential business that sells goods or services directly to consumers or end-users such as grocery stores or hardware stores and includes the essential businesses identified in the categories above: l(d), l(l), l(m), l(p), and l(s).

I HEREBY DIRECT AS FOLLOWS:

(1) Except as provided elsewhere in this Order, all "mass gatherings" are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act.

(2) "Essential businesses" must operate in accordance with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(3) "Close-contact businesses" and "recreational facilities" must remain closed.

(4) Any business that is not identified as an "essential business", a "close-contact business", or a "recreational facility" may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department. Businesses identified as a "retail space" may operate provided that the total number of persons situated within the business does

not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". If customers are waiting outside of a business, the business must take reasonable measures to ensure that customers maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.

(5) "Houses of worship" may hold services and other functions provided that they comply with the "COVID-Safe Practices (CSPs) for Houses of Worship" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". Further, "houses of worship" may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(6) "Places of lodging" shall not operate at more than 25% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. Further, short-term vacation rentals shall limit guests to New Mexico residents only.

(7) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or exercising. Further, all individuals should comply with the "COVID-Safe Practices (CSPs) for All New Mexicans" section of the

"All Together New Mexico: COVID Safe Practices for Individuals and Employers".

(8) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(9) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

(10) Golf courses may open for golf only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses".

(11) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses".

(12) State parks may open on a modified basis and subject to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.

(13) Summer youth programs may operate on a limited basis that complies with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(14) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(15) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-IOA-6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through May 31, 2020. This Order shall be effective in all counties of New Mexico except for Cibola County, McKinley County, and San Juan County. Cibola County, McKinley County, and San Juan County are subject to the terms of the May 5, 2020 Public Health Emergency Order through May 31, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

-- Self-quarantine or self-isolate for at least fourteen days after all out-of-state travel.

DONE AT THE EXECUTIVE OFFICE THIS 15TH DAY OF MAY 2020

ATTEST:

/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
CABINET SECRETARY
KATHYLEEN M. KUNKEL**

MAY 27, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, April 30, 2020, May 5, 2020 and May 15, 2020, Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19").

Continued social distancing and self isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; **all New Mexicans should be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places

3. The May 5, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, and April 30, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 5,500 and confirmed cases in the United States have risen to more than 1.4 million;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy

and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-IOA-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:
Definitions: As used in this

Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, foodbanks, and other services providing care to indigent or needy populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works

construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bicycle repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;

m. Hardware stores and self-storage facilities;

n. Laundromats and dry cleaner services;

o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

p. Funeral homes, crematoriums and cemeteries;

q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

r. Real estate services including brokers, title companies, and related services;

s. Businesses providing mailing and shipping services, including post office boxes;

t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

u. Restaurants, but only for delivery or carry out and local breweries, wineries, or distillers but only for carry out. Restaurant, but not Bars, may also offer dine-in service in outdoor seating areas only at up to 50% of their outdoor area fire code occupancy, if applicable. No dine-in service may be provided in indoor seating areas. Outdoor dine-in service may only be provided to patrons who are seated. Tables must be placed with at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted;

v. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

w. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) "Individuals" means natural persons.

(3) "Gathering" means any grouping together of individuals in a single connected location. "Mass gathering" means any public gathering, private gathering, organized event, ceremony, or other grouping that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space.

(4) "Mass gathering" does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(5) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) "Close-contact business" includes barbershops, adult entertainment venues, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services.

(7) "Recreational facilities" include movie theaters, swimming pools, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, performance venues, go-kart courses, indoor shopping malls, and other places of indoor recreation or indoor entertainment.

(8) "COVID-Safe Practices" ("CSP") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". That document may be obtained at the following link <https://cv.mnhealth.org/covid-safe-practices/>.

(9) "Places of lodging" means all hotels, motels, RV parks, co-located short term condominium rentals with a central check-in desk, and short-term vacation rentals.

(10) "Retail space" means any essential business that sells goods or services directly to consumers or end-users such as grocery stores or hardware stores and includes the essential businesses identified in the categories above: l(d), l(l), l(m), l(p), and l(s).

I HEREBY DIRECT AS FOLLOWS:

(1) Except as provided elsewhere in this Order, all "mass gatherings" are hereby prohibited under the powers and authority set forth in the Public Health Act.

(2) "Essential businesses" must operate in accordance with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(3) "Close-contact businesses" and "recreational facilities" must remain closed.

(4) Any business that is not identified as an "essential business", a "close-contact business", or a "recreational facility" may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department. Businesses identified as a "retail space" may operate provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(5) If customers are waiting outside of a business, the business must take reasonable measures to ensure that customers maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.

(6) Bars are not permitted to operate other than for take-out and delivery if otherwise permitted under their applicable licenses.

(7) "Houses of worship" may hold services and other functions provided that they comply with the "COVID-Safe Practices (CSPs) for Houses of Worship" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". Further, "houses of worship" may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(8) "Places of lodging" shall not operate at more than 25% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. Further, short-term vacation rentals shall limit guests to New Mexico residents only.

(9) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or exercising. Further, all individuals should comply with the "COVID-Safe Practices (CSPs) for All New Mexicans" section of the "All Together New Mexico: COVID Safe Practices for Individuals and Employers".

(10) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(11) This Order does not limit animal shelters, zoos, and other facilities with animal care operations

from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

(12) Golf courses may open for golf only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses".

(13) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses".

(14) State parks may open on a modified basis and subject to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.

(15) Summer youth programs may operate on a limited basis that complies with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(16) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(17) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-IOA-6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall

be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through May 31, 2020. This Order shall be effective in all counties of New Mexico except for Cibola County, McKinley County, and San Juan County. Cibola County, McKinley County, and San Juan County are subject to the terms of the May 5, 2020 Public Health Emergency Order through May 31, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.
- Self-quarantine or self-isolate for at least fourteen days after all out-of-state travel.

DONE AT THE EXECUTIVE OFFICE THIS 27TH DAY OF MAY 2020

ATTEST:
/S/ **MAGGIE TOULOUSE OLIVER**
SECRETARY OF STATE

WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO

/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF
NEW MEXICO DEPARTMENT
OF HEALTH

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
CABINET SECRETARY
KATHYLEEN M. KUNKEL**

JUNE 1, 2020

**Public Health Emergency Order
Clarifying that Current Guidance
Documents, Advisories, and
Emergency Public Health Orders
Remain in Effect; and Amending
the March 23, 2020, April 6,
2020, April 11, April 30, 2020,
May 5, 2020 and May 15, 2020,
Public Health Emergency Orders
Closing All Businesses and Non-
Profit Entities Except for those
Deemed Essential and Providing
Additional Restrictions on Mass
Gatherings Due to COVID-19**

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; all New Mexicans

should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places

3. The May 5, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, and April 30, 2020 Public Health Emergency

Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 5,500 and confirmed cases in the United States have risen to more than 1.4 million;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-IOA-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers

or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, foodbanks, and other services providing care to indigent or needy populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection

and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bicycle repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;

m. Hardware stores and self-storage facilities;

n. Laundromats and dry cleaner services;

o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

p. Funeral homes, crematoriums and cemeteries;

q. Banks, credit unions, insurance providers, payroll services, brokerage services,

and investment management firms;

r. Real estate services including brokers, title companies, and related services;

s. Businesses providing mailing and shipping services, including post office boxes;

t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

u. Restaurants are those operations that generated at least 50% of their sales from dine-in services from the sale of food during the last calendar year. Sales made to customers for off-site consumption such as the sale of growlers, wholesale revenues, and to-go items are excluded from this calculation. Restaurants may provide dine-in service, but they may not exceed more than 50% occupancy of the maximum occupancy of any enclosed space on the restaurant's premises, as determined by the relevant fire marshal or fire department. Restaurants choosing to open must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at tables, and patrons may not consume food or beverages while standing. Restaurants must operate in compliance with applicable occupancy restrictions and COVID-Safe Practices (CSPs) for Restaurants" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". Local breweries, wineries, or distillers may operate but only for carry out service.

v. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

w. Logistics, and also businesses that store, transport, or deliver groceries, food,

materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) "Individuals" means natural persons.

(3) "Gathering" means any grouping together of individuals in a single connected location.

(4) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, or other grouping that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(5) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) "Close-contact business" includes barbershops, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services for up to two trainees.

(7) "Recreational facilities" include indoor movie theaters, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, event venues, performance venues, go-kart courses, adult entertainment venues, and other places of indoor recreation or indoor entertainment.

(8) "Bars" are defined as food and beverage service establishments that derived more than 50% of their revenue in the prior calendar year from the sale of alcoholic beverages. Bars must remain closed during the pendency of this Public Health Order.

(8) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses

and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". That document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

(9) "Places of lodging" means all hotels, motels, RV parks, co-located short-term condominium rentals with a central check-in desk, and short-term vacation rentals.

(10) "Retail space" means any essential business that sells goods or services directly to consumers or end-users such as grocery stores or hardware stores and includes the essential businesses identified in the categories above: 1 (d), 1(l), 1(m), 1(p), and 1(s).

I HEREBY DIRECT AS FOLLOWS:

(1) "Except as provided elsewhere in this Order, all "mass gatherings" are hereby prohibited under the powers and authority set forth in the Public Health Act.

(2) "Houses of worship" may hold services and other functions provided that they comply with the "COVID-Safe Practices (CSPs) for Houses of Worship" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". Further, "houses of worship" may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(3) Essential businesses" may open but must operate in accordance with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers and also any identified occupancy restrictions.

(4) "Recreational facilities" must remain closed.

(5) Any business that is not identified as an “essential business” or a “recreational facility” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(6) Businesses identified as a “retail space” may operate provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP’s set out in the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.

(7) Indoor shopping malls are permitted to operate provided that the total number of persons within the mall at any given time does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department. Further, loitering within the indoor shopping mall is not permitted and food courts must remain closed.

(8) Gyms and similar exercise facilities may operate at up to 50% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department, but may not conduct group fitness classes.

(9) Public swimming pools may open but such facilities are limited to lane-swimming and lessons with up to two students only. Play and splash areas shall be closed. Public swimming pools may not exceed 50% of their maximum occupancy.

(10) If customers are waiting outside of a business, the business must take reasonable measures to ensure that customers

maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.

(11) Bars are not permitted to operate other than for take-out and delivery if otherwise permitted under their applicable licenses.

(12) “Places of lodging” shall not operate at more than 50% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. All places of lodging should comply with the “COVID-Safe Practices (CSPs) for Hotels, Resorts, & Lodging” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.

In the case of vacation rentals, occupancy shall be determined based upon the number properties managed by a property manager.

(13) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or exercising. Further, all individuals should comply with the “COVID-Safe Practices (CSPs) for All New Mexicans” section of the “All Together New Mexico: COVID Safe Practices for Individuals and Employers”.

(14) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(15) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals.

Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict

adherence to all social distancing protocols.

(16) Golf courses may open provided that they operate in accordance with the “COVID-Safe Practices (CSPs) for Golf Course” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.”. Restaurants and other golf course concessions must adhere to operative CSP’s.

(17) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses”.

(18) State parks may open on a modified basis and subject to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.

(19) Summer youth programs may operate on a limited basis that complies with the pertinent CSP’s set out in the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.

(20) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(21) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-IOA- 6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate

languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through June 30, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.
- Self-quarantine or self-isolate for at least fourteen days after all out-of-state travel.

DONE AT THE EXECUTIVE OFFICE THIS 1ST DAY OF JUNE 2020

ATTEST:

**/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

**/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH**

**End of Other Material
Related to Administrative
Law**

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Submittal Deadlines and Publication Dates

Volume XXXI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 6	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 28	June 9
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Issue 19	October 1	October 13
Issue 20	October 15	October 27
Issue 21	October 29	November 10
Issue 22	November 13	November 24
Issue 23	December 3	December 15
Issue 24	December 17	December 29

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