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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

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September 29, 2020

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## Notices of Rulemaking and Proposed Rules

### HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### NOTICE OF EMERGENCY RULEMAKING

The New Mexico Human Services Department (HSD) is issuing a temporary emergency rule to be effective October 1, 2020. The HSD is required to make changes to 8.102.500 of the New Mexico Administrative Code (NMAC) and 8.106.500 NMAC.

Each year the Department is required to make changes to the income and resource eligibility standards and the deduction amounts available to otherwise eligible households. These amounts are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS).

The Department received notification of the adjusted amounts on July 29, 2020 and will make the adjustments effective for benefit month October 2020 for Federal Fiscal Year (FFY) 2021 to comply with federal law and regulations.

The Department received the notice of the federal Cost-of-Living Adjustments (COLA) with less than sixty days to implement the changes to be effective on October 1 and has insufficient time to follow the regular rulemaking process; it will implement an emergency rule in order to be federally compliant.

Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299.

Administration of the HSD, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

The emergency rule is being implemented to comply with the Federal mandate; failure to implement

the emergency rule would place the Department in violation of Federal law. The emergency rule will remain in effect until a permanent rule takes effect under normal rulemaking process.

The Human Services Register Vol. 43 No. 09 outlining the temporary emergency regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support/division-registers.aspx>.

### HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE OF RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.280.400 NMAC Medicaid Eligibility - Program of All-Inclusive Care for the Elderly (PACE). The PACE is a unique capitated program which addresses the long-term care needs of frail elders. It features a comprehensive medical and social service delivery system to serve individuals with long-term care needs who are over 55 years of age, meet a nursing facility level of care, live in an eligible zip code within Bernalillo, Sandoval, and Valencia Counties and who, upon enrollment, are able to live safely and independently in the community setting.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: September 29, 2020  
Hearing Date: October 30, 2020  
Adoption Date: Proposed as February 1, 2021

Technical Citations: 42 CFR 460.150 subparts (b)(4)(c)(1)

**The Department is proposing to amend the rule as follows:**

#### **8.280.400 NMAC**

##### **Section 8**

The Department's mission statement was added.

##### **Section 11**

Language is clarified concerning the requirements that apply to applicants, recipients or both groups.

The individual requirements are more clearly grouped.

A fourth subsection, D, has been added in accordance with 42 Code of Federal Regulations (CFR) 460.150 which requires all applicants, upon enrollment into PACE, to be able to live in the community setting without jeopardy to their health and safety. Amendments throughout the rule have been made changing "applicant/recipient" to "applicant or recipient" to show clarification of when language applies to both applicants and enrolled recipients, and when it does not.

The register for these proposed amendments to this rule will be available September 29, 2020 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD in Santa Fe at 505-827-1337.

The Department proposes to implement these rules effective February 1, 2021. A public hearing to receive testimony on this rule will be held via conference call on Friday, October 30, 2020 at 1:00 p.m., Mountain Time (MT).  
**Conference Number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [madrules@state.nm.us](mailto:madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on October 30, 2020. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <http://www.hsd.state.nm.us/2017-comment-period-open.aspx> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

## 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 Thursday, October

29, 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. The location of the public hearing may be subject to change due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency; and Executive Order 2020-059, 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. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed amendment of 6.29.1 NMAC, General Provisions. 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 amendment of **6.29.1 NMAC, General Provisions**, is to update the local school board requirements to include one hour of training on equity and culturally and linguistically responsive practices; to update the language to reflect the changes based on the Multi-Layered System of Supports, which is the department's proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior; to update the regulatory language for emergency drills based on enacted legislation from the 2019 legislative session; and to remove unnecessary or out-of-date terms.

#### Statutory Authorization(s):

Sections 9-24-8, 22-2-2, 22-2C-3, 22-5-13, 22-13-1.1, and 22-13-14 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](mailto: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 Thursday, October 29, 2020. The PED encourages the early submission of written comments. The public comment period is from September 29, 2020 to October 29, 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.

**SUPERINTENDENT OF  
INSURANCE,  
OFFICE OF**

**NOTICE OF PROPOSED  
RULEMAKING  
AND OF RATE AND FORM  
HEARING**

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“Superintendent”), pursuant to the New Mexico Insurance Code, Sections 59A-1 -1 et seq. NMSA 1978 (“Insurance Code”) proposes to repeal and replace parts 1 through 10 and parts 16 through 19 of Chapter 14 of Title 13 NMAC, TITLE INSURANCE.

**PURPOSE OF THE PROPOSED NEW RULES:** to modernize, streamline, update and supplement existing title rules; to harmonize rules with title statutes and statutory definitions; and to establish efficient practices for promulgating title rates and forms.

**STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed replacement rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>), the New Mexico Sunshine portal.

OSI will hold a public video/ telephonic hearing on the proposed replacement rules on November 2, 2020 at 10:00 a.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799  
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from

members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on November 13, 2020. Comments may be submitted via email to [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us) or may be filed by sending original copies to:

OSI Records and Docketing, NM  
Office of Superintendent of Insurance  
1120 Paseo de Peralta, P.O. Box 1689,  
Santa Fe, NM 87504-1689

**Docket No.: 20-00047-RULE-PC**  
IN THE MATTER OF ADOPTING  
REPLACEMENT RULES,  
CHAPTER 13 ARTICLE 14 NMAC,  
TITLE INSURANCE

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings received after 4:00 pm on a weekday will be filed to the docket the next business day.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

**NOTICE IS ALSO GIVEN** that, in conjunction with promulgating replacement rules, the Superintendent, pursuant to Chapter 59A Article 30 of the Insurance Code, will conduct a public hearing to adopt by Order the rates and forms that are proposed to be removed from the replacement

rules. Any Order adopting rates and forms will be contingent upon the Superintendent’s action in the above-referenced rulemaking.

Documents related to the rates and forms proceedings will be filed to:  
**Docket No.: 20-00048-RATE-PC**  
IN THE MATTER OF ADOPTING  
RATES AND FORMS FOR TITLE  
INSURANCE

The rate and form hearing will be conducted immediately following the rule hearing.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799  
Meeting ID: 291 627 4744

**SPECIAL NEEDS:** Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in a hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

ISSUED this 29<sup>th</sup> day of September, 2020  
/S/RUSSELL TOAL

**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.

### ACCOUNTANCY, BOARD OF PUBLIC

This is an amendment to 16.60.1 NMAC, Sections 7, 9 and 10 effective 10/1/2020.

#### 16.60.1.7 DEFINITIONS:

**A. “Acceptance letter”** means a document issued by the sponsoring organization indicating the peer review report has been accepted and, if applicable, any remedial/corrective actions to be agreed to and completed by the firm.

**B. “Accounting and auditing services”** for peer review purposes means providing any one or more of the following:

(1) engagements performed in accordance with the “statements on auditing standards”;

(2) engagements, other than preparation services, performed in accordance with the “statements on standards for accounting and review services”;

(3) examination, review or agreed upon procedures engagements performed in accordance with the “statements on standards for attestation engagements”;

(4) engagements performed in accordance with public company accounting oversight board (PCAOB) standards that are not subject to PCOAB permanent inspection.

**C. “Act”** means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

**D. “Agreed upon procedures”** are those which are to be performed in accordance with applicable attestation standards. They are also those in which a license is engaged to issue a written finding

that is based on specific procedures that the specified parties agreed are sufficient for their purpose, is restricted to the specified parties, and does not provide an opinion or negative assurance.

**E. “Attest”** means to provide the following services:

(1) An audit or other engagement performed in accordance with the statements on auditing standards;

(2) a review of a financial statement performed in accordance with the statement on standards for accounting and review services;

(3) an engagement performed in accordance with the statements on standards for attestation engagements adopted by the board; and

(4) an engagement to be performed in accordance with the auditing standards of the public company accounting oversight board.

**F. “Blended learning”** is an educational program incorporating different learning or instructional delivery methods, both asynchronous and synchronous learning activities, or different levels of guidance.

**G. Client** means the person or entity who retains a licensee for the performance of professional services.

**H. “Completion letter”** means a document issued by the sponsoring organization after a firm has provided evidence of remedial/ corrective actions taken, which were specified in the acceptance letter, and its peer review committee has determined no further actions are required.

**I. “Electronic mail or an email”** means an electronic mail message created in or received

through an electronic mail system, including all attachments that are sent over a communications network, using a computer or other electronic device.

**J. “Electronic Signature”** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**K. “Enterprise”** means any person or entity who retains a licensee for the performance of professional services.

**L. “Financial statements”** means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

**M. “He, his, him”** means masculine pronouns when used herein also include the feminine and the neuter.

**N. “Holding out to the public as a permit holder or registered firm”** means the phrase “holding himself out to the public as a permit holder or registered firm” as used in the definition of “practice of public accountancy” in Section 3L of the act, and in these rules it means any representation, other than by an individual holding a certificate or firm registration issued by this

board pursuant to the 1999 Public Accountancy Act, Sections 61-28B-7 thru 61-28B-9, 61-28B-1 or 61-28B-13, of the fact that a certificate holder holds a permit, certificate or is a registered firm in connection with the performance of, or an offer to perform, services for the public, except as allowed under the practice privilege pursuant to the 1999 Public Accountancy Act, Sections 61-28B-26. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

**O.** “Mail” as used in the rules shall include mail sent by the United States postal service or commercial courier.

**[K:] P.** “Manager” has, when used in these rules, the same meaning as the term “manager” in a limited liability company.

**[E:] Q.** “Member” has, when used in these rules, the same meaning as the term “member” in a limited liability company.

**R.** “Nano learning program” is a program designed to permit a participant to learn a given subject in a minimum of 10 minutes and less than 20 minutes through the use of electronic media (including technology applications and processes and computer-based or web-based technology) and without interaction with a real-time instructor. A nano learning program differs from a self-study program in that it is typically focused on a single learning objective and is not paper-based. A nano learning program is not a group program. Nano learning is not a substitute for comprehensive programs addressing complex issues.

**S.** “Non-technical” fields of study are subjects that contribute to the maintenance and/or improvement of the competence of a CPA in areas that indirectly relate to the CPA’s field of business and subject to board determination. These fields of study include, but are not limited to:

**(1)** Behavioral ethics.

**(2)** Business management & organization.

**(3)** Communications and marketing.

**(4)** Computer software and applications.

**(5)** Personal development.

**(6)** Personnel/human resources.

**(7)** Production.

**[M:] T.** “PCAOB” means the public company accounting oversight board.

**[N:] U.** “Peer review program” means the sponsoring organization’s entire peer review process, including but not limited to the standards for administering, performing and reporting on peer reviews, oversight procedures, training, and related guidance and materials.

**[O:] V.** “Peer review committee” means a committee comprised exclusively of CPAs practicing public accountancy and formed by a sponsoring organization for the purpose of overseeing the administration, acceptance, and completion of peer reviews.

**[P:] W.** “Peer review oversight committee” means a board appointed committee to provide oversight of the sponsoring organization in order to provide reasonable assurance that peer reviews are being administered, conducted, and reported on in accordance with the minimum standards for performing and reporting on peer reviews.

**X.** “Practice” means performing or offering to perform public accountancy for a client or potential client by a person who makes a representation to the public

as a certified public accountant or a registered firm.

**Y.** “Public Accountancy” means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters.

**[Q:] Z.** “Practice privilege” as defined in the 1999 Public Accountancy Act, Section 61-28B-26 NMSA 1978, a person whose principal place of business or residence is not in New Mexico shall be presumed to have qualifications substantially similar to New Mexico’s requirements, may exercise all the practice privileges of certificate holders of New Mexico without the need to obtain a certificate pursuant to the 1999 Public Accountancy Act, Sections 61-28B-9 NMSA 1978, if the individual meets the requirements of the 1999 Public Accountancy Act, Section 61-28B-26 NMSA 1978.

**[R:] AA.** “Professional engagement” means a written or oral agreement between a client and a licensee relative to the performance of professional services and the services performed under this agreement. Oral agreements may only be used when allowed by professional standards.

**[S:] BB.** “Professional services” means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

**[T:] CC.** “Public communication” means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

**[U:] DD.** “Quality review” means an interchangeable term for peer review.

**[V:] EE.** “Report” As provided in Section 61-28B-3 NMSA 1978, of the act, the term

“report” includes the issuance of reports in conjunction with an accounting and auditing practice using the forms of language set out in the American institute of certified public accountants (AICPA) “statements on auditing standards,” “statements on standards of accounting and review services,” “statements on standards for attestation engagements,” and PCOAB standards.

**[W:] FF. “Services involving accounting or auditing skills”** means “services involving accounting or auditing skills” as used in the definition of “practice of public accountancy” in Sections 3K and L of the act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

**[X:] GG. “Sponsoring organization”** means a board approved professional society, or other organization responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards.

**[Y:] HH. “Statement of compliance”** means a certified statement from the human services department (HSD) stating that an applicant or licensee is in compliance with a judgment and order for support.

**[Z:] II. “Statement of non-compliance”** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

**JJ. “Technical” fields of study are technical subjects that contribute to the maintenance and/or improvement of the competence of a CPA in the profession of accountancy and that directly relate to the CPA’s field of business. These fields of study include, but are not limited to:**

- (1) Accounting.
- (2) Government accounting.

- (3) Auditing.
- (4) Government auditing.
- (5) Business law.
- (6) Economics.
- (7) Finance.
- (8) Information technology.
- (9) Management services.
- (10) Regulatory ethics.
- (11) Specialized knowledge.
- (12) Statistics.
- (13) Taxes.

[16.60.1.7 NMAC - Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 2/14/2002; A, 11/30/2007; A, 4/15/2008; A, 6/30/2008; A, 1/17/2013; A, 9/15/2015; A, 10/1/2016; A, 10/1/2020]

**16.60.1.9 BOARD OPERATION:**

**A.** The board [shall] may meet at least six times each year. The chair or a quorum of the board shall have the authority to call meetings of the board. The board shall follow and apply the rules of procedure of the State of New Mexico Open Meetings Act, Sections 10-15-1 to 10-15-4 NMSA 1978, as regards notice and conduct of meetings.

**B.** The board shall elect annually from among its members a chair, vice-chair, secretary/ treasurer and such other officers as the board may require. The officers shall assume the duties of their respective offices at the conclusion of the meeting at which they were elected. Board officers shall serve a term of 1 year but shall be eligible for reelection.

**C.** The chair or, in the event of the chair’s absence or inability to act, the vice-chair shall preside at all meetings of the board. The board shall determine duties of other officers.

[16.60.1.9 NMAC - Rp 16 NMAC 60.1.9, 2/14/2002; A 10/1/2020]

**16.60.1.10 FEES AND OBLIGATIONS:** Fees charged by

the board shall be as follows.

**A.** Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state’s cost of procuring and administering the exam.

**B.** Initial examination qualification review under Section 27F of the act shall be \$75.

**C.** Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$100.

**D.** Certificate application under Section 27B of the act shall be: initial certificate, \$175; certificate renewal, \$130.

**E.** No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

**F.** Firm permit application or renewal fee under Section 27C of the act shall be \$75 for each firm, regardless of form of entity.

**G.** Firm permit renewal delinquency fee under Section 27C of the act shall be \$100 and includes all practitioners whose renewal applications are delinquent.

**H.** Certificate/license/ firm permit reinstatement fee under Section 27H of the act shall be \$175. For certificate/individual license reinstatements only, reinstatement fee and an additional fee of the current year’s renewal fee. No delinquency fee shall be assessed.

**I.** Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

**J.** Administrative fees for services under Section 27F shall be:

- (1)** list of certificate or permit holders, \$250;
- (2)** duplicate or replacement certificate card or permit card, \$10 each;

(3) duplicate or replacement wall certificate, \$25 each;

(4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

(5) certificate application package for reciprocity, \$20 each;

(6) grade transfer candidates, \$75 each;

(7) replacement packages for by-examination candidates, \$75 each;

(8) copies of combined Accountancy Act and board rules, \$10 each;

(9) copies of records and documents, \$.25 per page; and

~~[(10) name change due to marriage, divorce, legal name change, etc. for replacement license shall be \$130; and]~~

~~[(11)]~~ (10) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

**K.** Fee for the transfer of licensure or examination information to a third party under Section 27E of the act shall be \$75.

**L.** Fee for criminal history background check under Section 8.1 of the act shall be the amount established by the department of public safety for the processing of criminal history background checks.

**M.** The board may waive charges as it deems appropriate.

**N.** All fees are non-refundable.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 2/14/2002; A, 1/15/2004; A, 4/29/2005; A, 11/30/2007; A, 6/30/2008; A, 5/29/2009; A, 11/13/2009; A, 9/15/2010; A, 1/17/2013, A, 12/1/2014; A, 9/15/2015; A, 10/1/2016; A 10/1/2020]

**ACCOUNTANCY, BOARD OF PUBLIC**

**This is an amendment to 16.60.2 NMAC, Section 10 effective 10/1/2020.**

**16.60.2.10 EXAMINATION ADMINISTRATION:**

**A.** Time and place of examination: Eligible applicants shall independently contact a test center operator identified by the board to schedule the time and place for the examination at an approved test site. Candidates may retake a test section once their score for any previous attempt of that same test section has been released.

**B.** Examination subjects: The examination required by the act shall test the knowledge and skills required for performance as an entry-level certified public accountant and shall include the subject areas of accounting and auditing and such related subjects as the board may require.

**C.** Provisional scores shall be released to the candidate following each ~~[testing window since 2004]~~ test. All examination scores shall be considered provisional until approved by the board's administrative staff. Scores must be approved by the board's administrative staff prior to the issuance of certificates requiring such scores.

**D.** Pursuant to paragraph 1 of Subsection D of 1.18.420.431 NMAC, once provisional scores have been approved by the board, they shall remain on file for 10 years beyond the date on which the final section of the examination was passed. If the candidate does not apply for an initial license within five years of passing the final section of the examination, the scores will be presented to the board to determine validity.

[16.60.2.10 NMAC - Rp 16 NMAC 60.3.9.3, 02-14-2002; A, 1/15/2004; A, 6/30/2008; A, 12/1/2014; A 10/1/2020]

**ACCOUNTANCY, BOARD OF PUBLIC**

**This is an amendment to 16.60.3 NMAC, Sections 8, 9, 12 and 15 effective 10/1/2020.**

**16.60.3.8 APPLICATION REQUIREMENTS:**

All certificate/license applications and renewals shall be made on and meet all information requirements contained in board prescribed forms. Applications will not be considered complete and filed with the board until all required information and board prescribed fees have been received. Electronic signatures are acceptable for applications submitted pursuant to 16.60.1 NMAC through 16.60.50 NMAC.

[16.60.3.8 NMAC - Rp. 16 NMAC 60.4.8.1, 2/14/2002; A, 10/1/2020]

**16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:**

**A.** An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

**B.** Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts. The board may request the presence at a board meeting of an applicant for whom it has unanswered questions.

**C.** Criminal history background check: Pursuant to Section 61-28B-8.1 NMSA 1978 of the act, all applicants for initial issuance or reinstatement of a certificate and license in New Mexico

shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. ~~[As of November 5, 2013, New Mexico Department of Public Safety (DPS) will no longer accept hardcopy fingerprint cards.]~~ Applicants ~~[will conduct a fingerprinting]~~ can submit fingerprints through the ~~[Cogent]~~ board approved live scan location prescribed by ~~[DPS]~~ the New Mexico department of public safety (DPS).

(1) The applicant will register online, through the ~~[Cogent]~~ approved live scan website, with the board's ~~[ORH]~~ originating agency identification (ORI) number and make payment with registration. After the process is complete, the applicant will receive a registration confirmation.

(2) The applicant shall take their registration confirmation to an approved ~~[Cogent]~~ live scan facility and conduct the electronic fingerprinting process.

(3) Results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(4) Out-of-state applicants, who are unable to visit ~~[a Cogent]~~ an approved live scan fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to ~~[Cogent CardScan in Dublin, OH]~~ the approved live scan facility. The results will be sent to the board electronically. The board shall not issue a certificate or license until the applicant's background check has been successfully completed.

**D.** Education and examination requirements: Education and examination requirements are specified in Section 8 of the act and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

**E.** Experience required: Applicants documenting their required experience for issuance

of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

(a) one year of experience or it's 2,000 hour equivalent shall consist of full or part-time employment that extends over a period of no more than three years and includes no fewer than 2,000 hours of performance of services described above;

(b) the CPA verifying an applicant's experience must be employed by, or a consultant to, or provide professional services to, the same organization as the applicant;

(c) experience documented in support of an initial application must be obtained within the seven years immediately preceding passing of the examination or within seven years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(d) any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(e) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

**F.** Certificate and license issuance: upon receipt of a complete application packet and successful completion of a fingerprint background check that revealed no arrests, board staff are authorized to approve and issue a certificate and license to an applicant for whom no licensing issues are present. Pursuant to Section I of 16.60.2.13 NMAC, uniform CPA examination scores must be approved by the board's administrative staff prior to the issuance of a certificate and license to an applicant who sat for the uniform CPA examination as a New Mexico candidate.

**G.** Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license. Swearing in ceremonies ~~[shall]~~ may be held two times per year in locations to be determined by the board or the board's administrative staff. Upon good cause presented in writing prior to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board's administrative staff to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as deemed appropriate by the board.

**H.** Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder

is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

**I. Renewal**

requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual’s birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the CPA or RPA certificate/license holder’s birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

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

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

(4) The board shall ~~mail~~ send renewal application notices no less than 30 days prior to the renewal deadline.

**J. Expedited licensure/certification by reciprocity for military spouses licensed in another jurisdiction:**

(1) If a military service member, the spouse of a military service member, or a recent veteran submits an application for a license or certification and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application

and issue the license as soon as practicable. The terms “military service member” and “recent veteran” are defined in the Uniform Licensing Act, NMSA 1978, Section 61-1-34. Any qualified veteran applicant seeking expedited licensure pursuant to this section shall submit a copy of form DD214, Certificate of Release or Discharge from Active Duty, with the application.

(2) A license issued pursuant to this section shall not be renewed automatically, and shall be renewed only if the licensee satisfies all requirements for the issuance and renewal of a license pursuant to the 1999 Public Accountancy Act, including NMSA 1978, Section 61-28B-9 and 16.60.3.9(I) NMAC.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 2/14/2002; A, 1/15/2004; A, 6/15/2004; A, 12/30/2004; A, 4/29/2005; A, 7/29/2005; A, 11/30/2007; A, 6/30/2008; A, 2/27/2009; A, 1/17/2013; A, 12/1/2014; A, 9/15/2015; A, 10/1/2020]

**16.60.3.12 REINSTATEMENT REQUIREMENTS:**

**A.** Requests to reinstate a certificate/license that lapsed or expired as a result of non-renewal shall meet all board prescribed requirements for reinstatement including the current year’s renewal fee and continuing professional education. An individual whose certificate/license has been subject to board disciplinary action pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, may, upon application in writing and for good cause, request reinstatement of the certificate/license after completion of all requirements contained in the board’s original order or agreement.

**B.** A reinstatement application pursuant to Section 21 of the act and this rule will be processed by the board upon the basis of the materials submitted in support thereof and supplemented by such additional inquiries as the board may

require. Upon receipt of a complete reinstatement application packet and successful completion of a fingerprint background check that revealed no arrests, board staff are authorized to reinstate a certificate and license to an applicant for whom no licensing issues are present. If the individual has not held an active license in any jurisdiction within the [10] five years preceding the date of application for reinstatement, the approval of the board will be required. For reinstatement of a certificate/license, a hearing may be held, and the board may, at its discretion, impose terms and conditions on an application following procedures the board may find suitable for the particular case.

**C.** The reinstatement request shall set out in writing the reasons constituting good cause for the relief sought and shall be accompanied by at least two supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since board disciplinary action was imposed. In considering a reinstatement application, the board may consider all activities of the applicant since the disciplinary action from which relief is sought was imposed; the offense for which the applicant was disciplined; the applicant’s activities during the time the certificate/license was in good standing; the applicant’s rehabilitative efforts; restitution to damaged parties in the matter for which the penalty was imposed; and the applicant’s general reputation for trust and professional probity.

**D.** No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court-imposed probation or parole.

[16.60.3.12 NMAC - Rp 16 NMAC 60.4.11, 2/14/2002; A, 12/30/2005; A, 1/17/2013; A 10/1/2020]

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

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

**(1)** Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board. An initial license is the first license issued to an individual. CPE reporting will begin on the first day following the licensee's initial expiration date (birth month) for license renewal. No CPE will be required for the period between issue date and first expiration date (birth month).

**(2)** Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each reporting year. For any CPE reporting period which begins on or after January 1, 2010, continuing professional education must include a minimum of four hours of ethics education during the 36-month period after January 1, 2010. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

**(3)** The board may, at its discretion, accept a sworn affidavit as evidence of certificate/

license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

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

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

**(a)** The approval of an extension request is not automatic. The board has the discretion to grant or deny a request.

**(b)** The request for extension shall include documentation of the extenuating circumstances that prevented him from completing the CPE. A written plan of action to remediate the deficiency must accompany the renewal application and extension request.

**(c)** If a request for extension is received in the board office after the expiration date of the license, the license shall [not] be renewed, and the file shall be referred to the board for possible disciplinary action.

**(d)** An extension up to 60 days beyond the expiration date of the license may be granted by board staff; extenuating circumstances beyond the control of the licensee necessitating an extension beyond 60 days requires the approval of the board. Failure to complete the required CPE within the extension period shall result in disciplinary action against the licensee.

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

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

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

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

**(8)** Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was expired, the continuing professional education must include a minimum of four hours of ethics education during the 36 months preceding reinstatement.

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

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

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



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

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

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

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

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

(1) Licensees granted an exception by the board must place the word “inactive” adjacent to their CPA title on any business card letterhead, or any other document or device, with the exception of their CPA certificate, on which their CPA title appears.

Licensees granted the exception who are at least fifty-five (55) years of age may replace “inactive” with “retired”.

Any of these terms must not be applied in such a manner that could likely confuse the public as to the current status of the licensee.

(2) Licensees granted the use of “inactive” or “retired” may volunteer their time to nonprofit or governmental organizations, to the extent provided in the statute. Licensees may not be compensated for such volunteer work other than through reimbursement of actual expenses.

(3) Licensees have the responsibility to maintain professional competence relative to the volunteer services they provide even though exempt from specific CPE requirements of 16.60.3.15 NMAC.

~~[(2)]~~ C. Persons requesting to change from “inactive” or “retired” to “active” certificate/license status shall:

~~[(a)]~~ (1) complete board-prescribed change-of-status forms and remit related fees; and

~~[(b)]~~ (2) provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was inactive, the continuing professional education must include a minimum of four hours of ethics education during the 36 months preceding application for change of status to “active”.

~~[(c)]~~ (3) If an individual has not held an active license within ~~[+0]~~ five years preceding the date of the application for “change of status”, the approval of the board will be required.

~~[(c)]~~ D. Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include

such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

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

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

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

(b) a full one day program will be considered to equal eight hours;

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

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

(e) Nano-learning – The credit to be earned for a single nano-learning program is one fifth-credit. Only a total of eight CPE credit hours can be reported in a three year reporting cycle using nano-learning credits.

(f) For blended learning programs included in rule 16.60.3.15 NMAC, the CPE credit must equal the sum of the CPE credit determination for the various completed components of the program.

~~[(e)]~~ (g) for reporting periods on or after

January 1, 2010, acceptable ethics topics may include, but are not limited to, instruction focusing on the AICPA code of professional conduct, the New Mexico occupational and professional licensing code of professional conduct applicable to certified public accountants, Treasury Circular 230, malpractice avoidance, organization ethics, moral reasoning, and the duties of the CPA to the public, clients, and colleagues; ethics hours may be earned as part of any professional development program otherwise qualifying under this rule, provided the ethics content and the time devoted to such content are separately identifiable on the program agenda.

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

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

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

(5) [~~Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.~~] Authors of published articles, books and other publications may receive credit for their research and writing time to the extent it maintains or improves their accountancy professional competence. For the author to receive CPE credit the

article, book or CPE program must be formally reviewed by an independent subject matter expert or reviewed and approved by the board. Not more than fifty percent of the total CPE credits required for the CPE reporting period can be claimed for author CPE credit. The board will determine the amount of credit awarded.

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

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

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

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

(c) a qualified instructor conducts the program; and

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

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

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

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

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

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit

shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

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

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

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

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

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

(12) For each three year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical [~~subjects such as audit, attestation, financial reporting, tax, management consulting, financial advisory or consulting, and other areas acceptable to the board as directly related to the professional competence of the individual.~~] fields of study. Technical fields of study are technical subjects that contribute to the maintenance and improvement of the competence of a CPA in the profession of accountancy and that directly relate to the CPA's field of business. Definitions of technical fields of study and non-technical fields of study can be found in 16.60.1.17 NMAC.

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

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

~~[E:]~~ **E.** Programs not qualifying for CPE:

(1) CPA examination review or “cram” courses;

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

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

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

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

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

title of program or description of content, the dates attended, and the hours claimed.

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

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

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

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

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

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed.

Fraudulent reporting is a basis for disciplinary action.

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

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

(8) Licensees reporting of CPE must document their participation and retain evidence for a period of five years after course completion. Documentation and/or evidence must include, at minimum:

(a) sponsor name and identification number;

(b) title and description of content;

(c) date(s) of completion;

(d) location [and];

(e) number of credit hours[-]; and

(f) name of the registered licensee who completed the course.

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

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 2/14/2002; A, 9/16/2002; A, 6/15/2004; A, 7/30/2004; A, 12/30/2004; A, 4/29/2005;

A, 12/30/2005; A, 5/15/2006;  
 A, 7/29/2007; A, 2/27/2009;  
 A, 9/15/2010; A, 1/17/2013; A,  
 12/01/2014; A, 9/15/2015; A,  
 3/3/2017; A, 10/1/2020]

**ACCOUNTANCY, BOARD  
 OF PUBLIC**

**This is an amendment to 16.60.4  
 NMAC, Section 8 effective  
 10/1/2020.**

**16.60.4.8 FIRM  
 PERMIT APPLICATION,  
 RENEWAL, REINSTATEMENT  
 AND NOTIFICATION  
 REQUIREMENTS:**

**A.** Pursuant to Sections 12B and 13A, B, E, F, and L of the act, any CPA or RPA acting as the sole proprietor, partner, shareholder or member of a legal business entity who performs or offers to perform accountancy for a client or potential client by holding themselves out to the public must obtain a firm permit to be granted authority to practice public accountancy as a CPA or RPA firm. Pursuant to Section 13I of the act, each office of the firm within New Mexico must obtain a firm permit. All firm permit applications for initial issue, renewal, or reinstatement shall be made on board-prescribed forms and meet all information and fee requirements to be considered complete and filed with the board.

**B.** Renewal requirements: Deadline for receipt of firm permit renewal applications is no later than 30 calendar days prior to the expiration date printed on the firm permit. Renewal applications shall be postmarked or hand-delivered no later than the last day of the month preceding the month of expiration or the next business day if the deadline falls on a weekend or holiday. The board shall [mailto] send firm permit renewal application forms to firm permit holders no less than 30 days prior to the renewal deadline date.

**C.** Reinstatement requirements:  
 (1) Reinstatement due to non-renewal/

expiration: Requests to reinstate a firm permit that lapsed or expired as a result of non-renewal shall be made on board-prescribed forms and meet all board-prescribed requirements for reinstatement including the current year’s renewal fee and peer review program requirements. This rule shall not apply to firms whose permits lapsed or expired for a period of three years or more.

(2) Reinstatement applications for relief from disciplinary penalties: A firm whose permit to practice has been subject to board disciplinary action may apply to the board for modification of the board action after completion of all requirements contained in the board’s original order:

(a) the application shall be in writing and substantiate the reasons constituting good cause for the relief sought; and

(b) shall be accompanied by at least two supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since the board action was imposed.

**D.** Action by the board: An application pursuant to Section 21 of the act will be processed by the board upon the basis of the application materials submitted, supplemented by such additional inquiries the board may require. At the board’s discretion, a hearing may be held on an application following procedures the board may find suitable for the particular case.

(1) The board may impose appropriate terms and conditions for firm permit reinstatement or modification of board disciplinary action.

(2) In considering a reinstatement application, the board may consider:

(a) all activities of the applicant since the disciplinary penalty from which relief is sought was imposed;

(b) the offense for which the applicant was disciplined;

(c) the applicant’s activities during the time the firm permit was in good standing;

(d) the applicant’s rehabilitative efforts;

(e) restitution to damaged parties in the matter for which the penalty was imposed; and

(f) the applicant’s general reputation for trust and professional probity.

(3) No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.

**E.** Notification requirements: A firm registered pursuant to Section 13 of the act shall file written notification with the board of any of the following events concerning the practice of public accountancy within this state within 30 days of occurrence:

(1) formation of a new firm;

(2) change in legal form or name of a firm;

(3) firm termination;

(4) establishment of a new branch office, (register by obtaining a new firm permit for the new branch office, pursuant to Section 61-28B-13I, NMSA 1978) or the closing or change of address of a branch office in this state; or

(5) the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the act or these rules.

**F.** Unregistered firm compliance with applicable compliance assurance requirements: Any firm not required to register in this state, but which provides attest services as permitted under section Subsection C and D of Section 13 of the Act, shall maintain records as prescribed by 16.60.4.10 NMAC regarding its participation in a comparable compliance assurance program for any period in which the

firm provided attest services in this state and shall provide copies of such records upon this board’s written request; provided, however, the board shall not make such a request except upon probable cause and in accordance with the firm mobility regulations.

**G.** Electronic signature will be acceptable for applications submitted pursuant to 16.60.1 NMAC through 16.60.5 NMAC.

[16.60.4.8 NMAC - Rp 16 NMAC 60.4.11, 2/14/2002; A, 4/29/2005; A, 5/15/2006; A, 6/30/2008; A, 9/15/2015; A, 10/1/2020]

**ACCOUNTANCY, BOARD OF PUBLIC**

**This is an amendment to 16.60.5 NMAC, Sections 11 and 13 effective 10/1/2020.**

**16.60.5.11 RULES OF**

**CONDUCT:** In addition to abiding by the AICPA code of professional conduct, New Mexico CPA/RPA certificate/license holders shall abide by the following board rules:

**A.** Responses to board communications. ~~[An individual certificate/license or firm permit holder shall, when requested, substantively and honestly respond in writing to all communications from the board requesting a response within 30 days of the mailing of such communications by registered or certified mail to the last address furnished the board by the applicant, certificate or registration holder.]~~ The individual applicant, certificate holder, or registration holder of a certificate/license or firm permit shall, when requested by the board, substantively and honestly respond in writing to all communication from the board within thirty days of receipt of board communications. Board communications may be sent by regular mail, registered or certified mail, hand delivered or by commercial courier, to the last known address on record with the board. Board communications may also come by email to the last known

email address on record with the board. The individual may respond to the board by regular mail, registered or certified mail, hand delivery, by commercial courier. Email is only a valid response to the board if the original communications from the board was delivered by email.

**(1)** Failure to respond substantively and honestly to written board communications or failure to furnish requested documentation or working papers constitutes conduct indicating lack of fitness to serve the public as a professional accountant and shall be grounds for disciplinary action.

**(2)** Each applicant, certificate or firm permit holder and each person required to be registered with the board under the act shall notify the board, in writing, of any and all changes in such person’s mailing address and the effective date thereof within 30 days before or after such effective date.

**B.** Reportable events. A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:

**(1)** Receipt of a final peer review report indicating “pass with deficiencies” or “fail” or a public company accounting oversight board (PCAOB) firm inspection report containing deficiencies or identifying potential defects in the quality control systems. For the purposes of Subsection B of 16.60.5.11 NMAC, “deficiency reports” are reports indicating either “pass with deficiencies” or “fail” as defined in the AICPA peer review standards.

**(2)** Receipt of a second consecutive deficiency peer review report.

**(3)** Imposition upon the license of discipline, including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, suspension, revocation, or modification of a license, certificate, permit, or practice rights by:

**(a)** the securities and exchange commission (SEC), the PCAOB, or the internal revenue service (IRS); or

**(b)** another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

**(c)** any other federal or state agency regarding the licensee’s conduct while rendering professional services; or

**(d)** any foreign authority or credentialing body that regulates the practice of accountancy.

**(4)** The occurrence of any matter reportable that must be reported by the licensee to the PCAOB pursuant to Sarbanes Oxley Action Section 102(b)(2)(f) and PCAOB Rules and forms adopted pursuant thereto.

**(5)** Notice of disciplinary charges filed by the SEC, the PCAOB, the IRS, or another state board of accountancy, or a federal or state taxing, insurance or securities regulatory authority, or a foreign authority or credentialing body that regulates the practice of accountancy.

**(6)** Unless prohibited by the terms of the agreement, any judgment, award or settlement of a civil action or arbitration proceeding of \$150,000 or more in which the licensee was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall only notify the board regarding civil judgments, settlements, or arbitration awards directly involving the firm’s practice of public accounting in this state.

**(7)** Criminal charges, deferred prosecution or conviction or plea of no contest to which the licensee is a defendant if the crime is:

(a) any felony under the laws of the United States or of any state of the United States or any foreign jurisdiction; or

(b) a misdemeanor if an essential element of the offense is dishonesty, deceit, or fraud.

C. Frivolous complaints. An individual certificate/license or firm permit holder who, in writing to the board, accuses another certificate/license or firm permit holder of violating the act or board rules shall assist the board in any investigation or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule.

D. Compliance with the Parental Responsibility Act. If an applicant for a certificate/license or a CPA or RPA certificate/license or firm permit holder is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support, the board or its legally authorized designee shall: deny an application for a license; deny the renewal of a license; have grounds for suspension or revocation of a license; and shall initiate a notice of contemplated action under provisions of the Uniform Licensing Act.

(1) If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division. An applicant or licensee can provide the board with a subsequent statement of compliance, which shall preclude the board from taking any action based solely on the prior statement of non-compliance from HSD.

(2) When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application

or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

E. Specialty designations. A CPA/RPA certificate/license holder may only represent a claim of special expertise through the use of "specialty designations" in conjunction with the CPA/RPA designation if the specialty designation is:

(1) consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience, or examination, and

(2) cannot be construed by the public or clients of the CPA/RPA practitioner to be a false fraudulent, misleading, or deceptive claim unsubstantiated by fact.

F. A CPA firm permit holder shall display the firm permit in a clearly visible place to the public in the office or space for which the permit is issued. The license(s) of the qualifying CPA and any licensed CPA employee or CPA associated with the firm shall be displayed in a clearly visible place to the public in the office or space for which the firm permit is issued/registered. Any licensed CPA or firm permit holder shall provide a copy of their license or firm permit upon request.

[16.60.5.11 - Rp 16 NMAC 60.7, 16 NMAC 60.9, and 16 NMAC 60.10, 2/14/2002; A, 6/30/2008; A, 1/1/2011; A, 1/17/2013; A, 9/15/2015; A, 10/1/2020]

**16.60.5.13 UNAUTHORIZED USE OF THE CPA TITLE:**

A. Pursuant to Section 61-28B-26 and 61-28B-13 NMSA 1978, a person whose principal place of business is not in New Mexico can use the term CPA while serving clients in New Mexico as long as [(+)] the CPA is actively licensed in good standing in his principal place of business and is eligible for practice privileges in New Mexico [-and (2)-

~~the out-of-state firm obtains a New Mexico firm permit if attest services are performed through mobility for New Mexico clients. However, anyone residing in this state who is not licensed by the New Mexico public accountancy board as a CPA or not granted the practice privilege by 61-28B-26 of the 1999 Public Accountancy Act is restricted to using the term "accountant" in connection with his or her name on all reports, letters of transmittal, or advice, and on all stationery and documents used in connection with his or her services as an accountant, and must refrain from the use in any manner of any other title or designation in such practice while in this state. The exception to this restriction is when an individual residing in this state who is licensed by another jurisdiction wishes to provide a résumé to a prospective employer, the individual may use "CPA" or "certified public accountant" on his or her résumé. However, the individual must clearly indicate the jurisdiction in which he or she holds a CPA certificate as well as the status of that certificate if other than active (inactive, lapsed, retired, etc.). Pursuant to Section 61-28B-17 NMSA 1978, it is unlawful for any person who has not received a certificate as a certified public account or not been granted a practice privilege, under Section 61-28B-26 NMSA 1978, admitting the person to practice as a certified public accountant to assume or use such a title, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a certified public accountant].~~

B. A person licensed as a CPA in another jurisdiction who moves to New Mexico with the intention of using the CPA title (whether in public practice, industry, government, or education) must obtain a certificate of from the board prior to using the CPA title in any way in this state. Oral or written statements such as "I am a licensed CPA in another jurisdiction" when used in connection with the

individual's name on all reports, letters of transmittal, or advice, and on all stationery and documents used in connection with the individual's services as an accountant do not exempt the individual from obtaining a certificate of qualification from the board. Non-resident CPAs who wish to practice in New Mexico may do so only in accordance with Section 61-28B-26 NMSA 1978.

[16.60.5.13 NMAC - N, 9/15/2015; A, 10/1/2020]

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

**This is an amendment to 3.3.33 NMAC, Sections 5 and 8, effective 09/29/2020.**

**3.3.33.5 EFFECTIVE DATE:** [02/29/2012] February 29, 2012, unless a later date is cited at the end of a section.

[3.3.33.5 NMAC - N, 02/29/2012; A, 09/29/2020]

**3.3.33.8 GENERAL PROVISIONS:**

**A.** The agricultural biomass personal income tax credit is available to taxpayers filing a personal income tax return for taxable years beginning on or after January 1, 2011 and ending prior to [~~January 1, 2020~~] January 1, 2030. Certificates of transportation pursuant to 3.3.33 NMAC may be issued by the department for agricultural biomass transported during taxable years beginning on or after January 1, 2011 and ending prior to [~~January 1, 2020~~] January 1, 2030.

**B.** The amount of the agricultural biomass income tax credit is calculated at [~~five dollars~~] \$5.00 per wet ton. The maximum amount of the annual combined total of all agricultural biomass income tax credits and all agricultural biomass corporate income tax credits allowed is [~~five million dollars~~] \$5,000,000.

[3.3.33.8 NMAC - N, 02/29/2012; A, 09/29/2020]

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

**This is an amendment to 3.4.20 NMAC, Sections 5 and 8, effective 09/29/2020.**

**3.4.20.5 EFFECTIVE DATE:** [02/29/2012] February 29, 2012, unless a later date is cited at the end of a section.

[3.4.20.5 NMAC - N, 02/29/2012; A, 09/29/2020]

**3.4.20.8 GENERAL PROVISIONS:**

**A.** The agricultural biomass corporate income tax credit is available to taxpayers filing a corporate income tax return for taxable years beginning on or after January 1, 2011 and ending prior to [~~January 1, 2020~~] January 1, 2030. Certificates of transportation pursuant to 3.4.20 NMAC may be issued by the department for agricultural biomass transported during taxable years beginning on or after January 1, 2011 and ending prior to [~~January 1, 2020~~] January 1, 2030.

**B.** The amount of the agricultural biomass income tax credit is calculated at [~~five dollars~~] \$5.00 per wet ton. The maximum amount of the annual combined total of all agricultural biomass personal income tax credits and all agricultural biomass corporate income tax credits allowed is [~~five million dollars~~] \$5,000,000.

[3.4.20.8 NMAC - N, 02/29/2012; A, 09/29/2020]

**HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION**

**This is an emergency amendment to 8.102.500 NMAC, Section 8 effective 10/1/2020.**

**8.102.500.8 GENERAL REQUIREMENTS:**

**A. Need determination process:** Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

**B. Gross income limits:** The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)
one person	[ <del>\$885</del> ] <u>\$904</u>
	(b)
two persons	[ <del>\$1,199</del> ] <u>\$1,221</u>
	(c)
three persons	[ <del>\$1,511</del> ] <u>\$1,539</u>
	(d)
four persons	[ <del>\$1,824</del> ] <u>\$1,856</u>

five persons	[ <del>\$2,138</del> ]	<u>\$2,173</u>
six persons	[ <del>\$2,451</del> ]	<u>\$2,491</u>
seven persons	[ <del>\$2,763</del> ]	<u>\$2,808</u>
eight persons	[ <del>\$3,077</del> ]	<u>\$3,125</u>
(i)		
add [ <del>\$314</del> ] <u>\$318</u> for each additional person.		

**C. Eligibility for support services only:** Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

(1)	one person	[ <del>\$1,041</del> ] <u>\$1,064</u>
(2)	two persons	[ <del>\$1,410</del> ] <u>\$1,437</u>
(3)	three persons	[ <del>\$1,778</del> ] <u>\$1,810</u>
(4)	four persons	[ <del>\$2,146</del> ] <u>\$2,184</u>
(5)	five persons	[ <del>\$2,515</del> ] <u>\$2,557</u>
(6)	six persons	[ <del>\$2,883</del> ] <u>\$2,930</u>
(7)	seven persons	[ <del>\$3,251</del> ] <u>\$3,304</u>
(8)	eight persons	[ <del>\$3,620</del> ] <u>\$3,677</u>
(9)	add [ <del>\$369</del> ] <u>\$374</u> for each additional person.	

**D. Standard of need:**  
 (1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state

funded qualified aliens, and EWP cash assistance benefit group is:

(a)	one person	\$266
(b)	two persons	\$357
(c)	three persons	\$447
(d)	four persons	\$539
(e)	five persons	\$630
(f)	six persons	\$721
(g)	seven persons	\$812
(h)	eight persons	\$922
(i)	add \$91 for each additional person.	

**E. Special needs:**  
**(1) Special clothing allowance:** A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, EWP cash assistance, or wage subsidy.

(2) **Layette:**  
 A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:** Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

**F. Non-inclusion of legal guardian in benefit group:** Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001; A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01//2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020; A/E, 10/01/2020]

**HUMAN SERVICES  
 DEPARTMENT  
 INCOME SUPPORT DIVISION**

**This is an emergency amendment to 8.106.500 NMAC, Section 8 effective 10/1/2020.**

**8.106.500.8 GA - GENERAL REQUIREMENTS:**

**A.** Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

**B. Need determination process:** Eligibility



for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

**C. GA payment determination:** The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

**D. Gross income test:** The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)
one person	<del>[\$885]</del> <u>\$904</u>
	(b)
two persons	<del>[\$1,199]</del> <u>\$1,221</u>
	(c)
three persons	<del>[\$1,511]</del> <u>\$1,539</u>
	(d)
four persons	<del>[\$1,824]</del> <u>\$1,856</u>
	(e)
five persons	<del>[\$2,138]</del> <u>\$2,173</u>
	(f)
six persons	<del>[\$2,451]</del> <u>\$2,491</u>
	(g)
seven persons	<del>[\$2,763]</del> <u>\$2,808</u>
	(h)
eight persons	<del>[\$3,077]</del> <u>\$3,125</u>
	(i)

add ~~[\$314]~~ \$318 for each additional person

**E. Standard of need:**  
(1) As published monthly by the department,

the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:** The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

**F. Net income test:** The total countable earned and unearned income of the benefit group after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group.

After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

**G. Special clothing allowance for school-age dependent children:** A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age as defined by PED.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

**H. Supplemental issuance:** A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

**I. Minimum Benefit Amount:** Benefits less than ten dollars (\$10.00) will not be issued for the initial month or subsequent months. ISD shall certify household beginning the month of application. [8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020 A/E, 10/01/2020]

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## PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 8/25/2020 hearing, to repeal its rule 6.101.2 NMAC, Fair Hearings Related to Vocational Rehabilitation, filed 12/31/1998 and replace it with 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation, adopted on 9/15/2020 and effective 9/29/2020.

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**PUBLIC EDUCATION  
DEPARTMENT**

**TITLE 6 PRIMARY AND  
SECONDARY EDUCATION  
CHAPTER 101 VOCATIONAL  
REHABILITATION -  
PROCEDURAL SAFEGUARDS  
PART 2 FAIR  
HEARINGS AND ALTERNATIVE  
DISPUTE RESOLUTIONS  
RELATED TO VOCATIONAL  
REHABILITATION**

**6.101.2.1 ISSUING  
AGENCY:** Public Education

Department.  
[6.101.2.1 NMAC - Rp, 6.101.2.1  
NMAC, 9/29/2020]

**6.101.2.2 SCOPE:** The provisions of this regulation apply to persons applying for or receiving vocational rehabilitation and aggrieved by any action or inaction of DVR or the director of DVR.  
[6.101.2.2 NMAC - Rp, 6.101.2.2 NMAC, 9/29/2020]

**6.101.2.3 STATUTORY  
AUTHORITY:** This regulation is adopted pursuant to Sections 22-14-8 and 22-14-12 NMSA 1978.  
[6.101.2.3 NMAC - Rp, 6.101.2.3 NMAC, 9/29/2020]

**6.101.2.4 DURATION:**  
Permanent.  
[6.101.2.4 NMAC - Rp, 6.101.2.4 NMAC, 9/29/2020]

**6.101.2.5 EFFECTIVE  
DATE:** September 29, 2020, unless a later date is cited at the end of a section.  
[6.101.2.5 NMAC - Rp, 6.101.2.5 NMAC, 9/29/2020]

**6.101.2.6 OBJECTIVE:**  
To establish a means by which an individual who has applied for or is a recipient of vocational rehabilitation services can appeal or request mediation of: a determination of a

counselor concerning the furnishing or denial of services; or any action or inaction of the division of vocational rehabilitation or the director of vocational rehabilitation. A request for a fair hearing or mediation is to be construed liberally to allow a client to seek redress for DVR decisions that affect their case.  
[6.101.2.6 NMAC - Rp, 6.101.2.6 NMAC, 9/29/2020]

**6.101.2.7 DEFINITIONS:**  
**A. “Client assistance program”** means the independent private or public agency designated to:

(1) advise and inform applicants for and recipients of vocational rehabilitation services of services and benefits available under the federal Rehabilitation Act of 1973;

(2) assist and advocate for applicants for and recipients of vocational rehabilitation services in their relationships with projects, programs, and community rehabilitation programs providing services under the Rehabilitation Act of 1973; and

(3) inform individuals with disabilities in New Mexico, especially individuals with disabilities who traditionally have been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under the federal Rehabilitation Act of 1973 and Title I of the federal Americans with Disabilities Act of 1990.

**B. “Division of vocational rehabilitation”** or **“DVR”** means the division of vocational rehabilitation.

**C. “Fair hearing”** means an agency proceeding in which a person’s rights and duties are decided after notice and an opportunity to be heard.

**D. “Mediation”** means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

[6.101.2.7 NMAC - Rp, 6.101.2.7 NMAC, 9/29/2020]

**6.101.2.8 CLIENT ASSISTANCE PROGRAM:** DVR shall inform applicants for and recipients of vocational rehabilitation services, or their representatives, of the availability and purpose of a designated client assistance program including:

**A.** information on how to contact the client assistance program and obtain their assistance; and

**B.** the client assistance program’s obligation to provide assistance in informing and advising all applicants for and recipients of vocational rehabilitation services of all benefits and services available under vocational rehabilitation programs.

[6.101.2.8 NMAC - Rp, 6.101.2.8 NMAC, 9/29/2020]

**6.101.2.9 FAIR HEARING:**

**A. Requesting a fair hearing.** A request for hearing shall be made to the DVR director. A hearing request should indicate the contested decision and the counselor assigned to the case. A hearing request shall be made within 45 days of the disputed decision.

**B. Appointment of a hearing officer.** A hearing officer shall be appointed on a random basis or by agreement between the client and the DVR director. The selection of a hearing officer shall be made from a pool of qualified hearing officers established jointly by the state rehabilitation advisory council and the DVR director. The hearing officer shall not be an employee of DVR.

**C. Time of hearing.** The hearing shall be held within 60 days from the date of the request for hearing. The time limit may be extended by the hearing officer upon the request of either party, for good cause shown. The time limit may also be extended upon agreement of both parties.

**D. Opportunity to present evidence.** At the hearing,

the client or client’s representative shall be allowed to present evidence, information, and witnesses to the hearing officer, and to examine all witnesses and other sources of evidence and information.

**E. Duties of hearing officer.** The hearing officer shall:

- (1) conduct a pre-hearing conference on a date reached by mutual agreement between the parties;
- (2) administer oaths and affirmations to the witnesses;
- (3) regulate the course and conduct of the hearing;
- (4) assure that all properly raised and relevant issues are considered;
- (5) rule on the introduction of testimony and other evidence (the technical rules of evidence do not apply);
- (6) assure that the proceedings are properly recorded;
- (7) review the evidence and testimony; and
- (8) make a decision based upon the facts presented at the hearing, the provisions of the approved state plan, the federal Rehabilitation Act of 1973 and accompanying federal regulations, and consistent state regulations and policies, the manual of operating procedures, and good rehabilitation practice.

**F. Decision of hearing officer.** The hearing officer shall issue a written decision within 30 days of the completion of the hearing. The decision shall fully set forth the findings of the hearing officer and the grounds for the decision. A decision by a hearing officer shall be final unless a party brings civil action under Subsection I of 6.101.2.9 NMAC.

**G. Review by director.** The director of DVR may not overturn a hearing officer’s decision.

**H. Provision of services pending appeal.** Pending a

final determination of a civil action, DVR shall not suspend, modify, or terminate services being provided under an individualized written rehabilitation program, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with a disability.

**I. Civil action.** Any party aggrieved by a final decision described in section Subsection F of 6.101.2.9 NMAC may bring a civil action for review of such decision. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any action brought under this subparagraph, the court shall:

- (1) receive the records relating to the hearing and the records relating to the state review, if applicable;
- (2) hear additional evidence at the request of the party to the action; and
- (3) base the decision of the court on the preponderance of the evidence and shall grant such relief as the court determines to be appropriate. [6.101.2.9 NMAC - Rp, 6.101.2.9 NMAC, 9/29/2020]

**6.101.2.10 ALTERNATIVE DISPUTE RESOLUTIONS:**

**A. Requesting mediation.** A request for a mediation proceeding shall be made to the director of DVR. The request shall indicate the contested decision and the counselor assigned to the case. The request shall be made within 45 days of the disputed decision.

**B. Appointing a mediator.** A qualified and impartial mediator shall be appointed on a random basis or by agreement between the client and the DVR director. The selection of a mediator shall be made from a pool of qualified mediators established jointly by the state rehabilitation advisory council

and the DVR director. The mediator shall not be an employee of DVR.

**C. Time of mediation.**

The mediation shall be held within 60 days from the date of the request for mediation. The time limit may be extended by the mediator upon the request of either party, for good cause shown. The time limit may also be extended upon agreement of both parties.

**D. Mediation**

**procedures.** Mediations shall be scheduled and conducted in a timely manner, and held in a location and manner that is convenient to the parties to the dispute.

- (1) During mediation processes, applicants for and recipients of vocational rehabilitation services may be represented by counsel or another advocate of their selection;
- (2) The applicant for or recipient of vocational rehabilitation services, or their representative, shall have opportunity during the mediation to submit evidence or other information in support of their position;
- (3) Either party may terminate mediation at any point in the mediation process. If mediation is terminated, either party may pursue resolution through an impartial hearing, pursuant to 6.101.2.9 NMAC;
- (4)

Discussions that occur during a mediation process shall be kept confidential and may not be used as evidence in any subsequent fair hearing or civil proceeding. Parties to a mediation process may be required to sign a confidentiality pledge prior to the commencement of the process;

- (5) An agreement reached by the parties to the dispute in mediation shall be described in a written mediation agreement that is developed by the parties with the assistance of the mediator, and signed by both parties. Copies of the agreement shall be mailed to both parties; and
- (6) DVR shall

pay the costs of mediation, except that DVR shall not be required to pay for

the costs related to the representation of an applicant for or recipient of vocational rehabilitation services.

**E. Duties of mediator.**

The mediator shall:

- (1) schedule the mediation session(s);
- (2) regulate the course and conduct of the mediation; and
- (3) assure that all properly raised and relevant issues are considered.

**F. Provision of services pending appeal.** Pending resolution through mediation, DVR shall not suspend, modify, or terminate services being provided under an individualized written rehabilitation program, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with a disability. [6.101.2.10 NMAC - Rp, 6.101.2.10 NMAC, 9/29/2020]

**HISTORY OF 6.101.2 NMAC:** 6.101.2 NMAC, Fair Hearings Related to Vocational Rehabilitation, filed 12/31/1998, was repealed and replaced by 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation, effective 9/29/2020.

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS  
PART 18 PARTIAL CREDIT FOR ADJUDICATED OR MOBILE STUDENTS**

**6.30.18.1 ISSUING AGENCY:** Public Education Department, hereinafter the “department”. [6.30.18.1 NMAC - N, 9/29/2020]

**6.30.18.2 SCOPE:** This rule shall apply to all public schools in New Mexico. [6.30.18.2 NMAC - N, 9/29/2020]

**6.30.18.3 STATUTORY AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-12A-14 NMSA 1978. [6.30.18.3 NMAC - N, 9/29/2020]

**6.30.18.4 DURATION:** Permanent. [6.30.18.4 NMAC - N, 9/29/2020]

**6.30.18.5 EFFECTIVE DATE:** September 29, 2020, unless a later date is cited at the end of a section. [6.30.18.5 NMAC - N, 9/29/2020]

**6.30.18.6 OBJECTIVE:** The purpose of this rule is to establish the parameters for awarding partial credits to students identified as adjudicated or mobile and who experience classroom disruption. [6.30.18.6 NMAC - N, 9/29/2020]

**6.30.18.7 DEFINITIONS:**  
**A. “Adjudicated student”** means a student identified as one of the following:

- (1) neglected or abused as determined by the children, youth and families department pursuant to the Abuse and Neglect Act;
- (2) part of a family in need of court-ordered services; or
- (3) delinquent if the parent wishes to disclose the adjudication of delinquency.

**B. “Mobile student”** means a student identified as one of the following:

- (1) migrant;
- (2) foster care;
- (3) military dependent;
- (4) placed in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children’s Mental Health and Development Disabilities Act or placement in treatment foster care; or
- (5) homeless as defined in the McKinney-Vento Homeless Act.

**C. “Partial credit form”** means the department-

approved form that all public schools shall complete upon a student’s transfer.

**D. “Receiving school”** means the public school receiving the partial credit form.

**E. “Sending school”** means the public school sending the partial credit form. [6.30.18.7 NMAC - N, 9/29/2020]

**6.30.18.8 SENDING SCHOOL REQUIREMENTS:**

**A.** Sending schools shall award partial credit for work completed to students identified as adjudicated or mobile as defined in 6.30.18.7 NMAC.

**B.** Sending schools shall provide the transferring student’s records, including a department-approved partial credit form, within two business days of receiving a request from the receiving school.

**C.** Sending schools shall certify that the school district, charter school, or institution has implemented a student information system to track student credit accrual and facilitate accurate and timely transfer of student academic credit. [6.30.18.8 NMAC - N, 9/29/2020]

**6.30.18.9 RECEIVING SCHOOL REQUIREMENTS:**

**A.** Receiving schools shall request the transferring students’ records from the sending school within two business days.

**B.** Receiving schools shall apply all partial credits to the same or equivalent course and prioritize the adjudicated or mobile student’s placement in courses required for graduation within two business days of receiving the partial credit form.

**C.** Receiving schools shall certify that the school district, charter school, or institution has implemented a student information system to track student credit accrual and facilitate accurate and timely transfer of student academic credit. [6.30.18.9 NMAC - N, 9/29/2020]

**6.30.18.10 DETERMINATION OF PARTIAL CREDIT:** An adjudicated or mobile student shall receive credit for any work completed prior to the transfer.

**A.** Public schools shall award up to a maximum of one credit as follows for courses:

(1) 0.25 credit when a student was enrolled anywhere between ten and twenty-five percent of the total course;

(2) 0.50 credit when a student was enrolled anywhere between twenty-six and fifty percent of the total course;

(3) 0.75 credit when a student was enrolled anywhere between fifty-one and seventy-five percent of the total course; or

(4) one credit when a student was enrolled anywhere between seventy-six and one hundred percent of the total course.

**B.** Public schools shall award up to a maximum of a half credit as follows for semester long courses:

(1) 0.25 credit when a student was enrolled anywhere between five and fifty percent of the total course; or

(2) 0.50 credit when a student was enrolled anywhere between fifty-one and one hundred percent of the total course. [6.30.18.10 NMAC - N, 9/29/2020]

**HISTORY OF 6.30.18 NMAC:**  
[RESERVED]

**PUBLIC EDUCATION DEPARTMENT**

This is an amendment to 6.80.4 NMAC, Sections 1, 3, 7, 8, 9, 12, 13, 14, 17, 18, and 19 effective 9/29/2020.

**6.80.4.1 ISSUING AGENCY:** Public Education Department, hereinafter the department.

[6.80.4.1 NMAC - Rp, 6.80.4.1 NMAC, 6/29/2007; A, 9/29/2020]

**6.80.4.3 STATUTORY AUTHORITY:** [~~Sections 22-2-1, 22-8-1 through 22-8-47 and 22-8B-1 through 22-8B-17 NMSA 1978.~~] Sections 9-24-8, 22-2-1, 22-2-2, 22-8-1 et seq., and 22-8B-1 et seq. NMSA 1978.

[6.80.4.3 NMAC - Rp, 6.80.4.3 NMAC, 6/29/2007; A, 9/29/2020]

**6.80.4.7 DEFINITIONS:**

**A. "Applicant"** means one or more teachers, parents, or community members or a public postsecondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

**B. "Application for start-up charter school"** means an application requesting the establishment of either a locally chartered or state-chartered charter school.

~~[B:]~~ **C. "Authorizer"** means either a local school board or the commission that permits the operation of a charter school.

~~[C:]~~ **D. "Charter school"** means a conversion school or start-up charter school authorized by a chartering authority to operate as a public school.

~~[D:]~~ **E. "Chartering authority"** means either a local school board or the commission that permits the operation of a charter school.

~~[E:]~~ **"Chief executive officer"** means the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.]

**F. "Commission"** means the public education commission.

**G. "Conversion school"** means an existing public school within a school district that was authorized by a local school board or the commission to become a charter school prior to July 1, 2007.

**H. "Days"** means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period

referenced is 11 days or more. In computing the amount of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity [~~must~~] shall act under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

~~[F:]~~ **"Department"** means the public education department.]

~~[F:]~~ **L. "Division"** means the charter schools division of the department [~~which maintains offices in both Santa Fe and Albuquerque~~].

~~[K:]~~ **J. "Governing body"** means the governing [~~body~~] structure of a charter school as set forth in the charter school's charter.

~~[F:]~~ **K. "Head administrator"** means the duly licensed school administrator who is the [~~chief executive officer~~] director of the charter school, which is the person with duties similar to that of a superintendent as set forth in Section 22-5-14 NMSA 1978.

~~[M:]~~ **L. "Locally chartered charter school"** means a charter school authorized by a local school board.

~~[N:]~~ **M. "MEM"** means membership, which is the total enrollment of qualified students on the current roll of a class or school on a specified day.

~~[O:]~~ **"New Mexico coalition for charter schools"** means the non-profit membership organization representing charter schools in New Mexico.

~~[P:]~~ **"New Mexico school boards association"** means the organization consisting of the local public school boards and the governing bodies of charter schools in New Mexico.]

~~[Q:]~~ **N. "Organizer"** means one or more persons or entities who

seek to arrange, form, or otherwise [put together] establish a charter school.

~~[R:]~~ **Q.** ~~“Prospective applicant”~~ **“Prospective applicants”** means one or more teachers, parents, or community members or a public post-secondary educational institution or nonprofit organization who submits a notice of intent to a chartering authority.

~~[S:]~~ **P.** **“Secretary”** means the New Mexico secretary of public education.

~~[F:]~~ **Q.** **“Start-up charter school”** means a public school developed by one or more parents, teachers, or community members who applied to and were authorized by a chartering authority to become a charter school.

~~[U:]~~ **“Application for start-up charter school”** means an application requesting the establishment of either a locally-chartered or state-chartered school.]

~~[V:]~~ **R.** **“Special education plan”** means a comprehensive written design [scheme] or method that includes specific details on how the charter school shall:

(1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;

(2) provide educational services, related services, and supplementary aids and services to children with disabilities in accordance with each child’s individualized education program; and

(3) address a continuum of alternative educational placements to meet the needs of students with disabilities, in accordance with applicable law.

~~[W:]~~ **S.** **“State-chartered charter school”** means a charter school authorized by the commission. [6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018; A, 9/29/2020]

**6.80.4.8 NOTICE OF INTENT TO ESTABLISH A CHARTER SCHOOL:**

**A.** The organizers of a proposed charter school shall provide a signed written notification to the commission and the school district in which the charter school is to be located of the organizers’ intent to establish a charter school. The date for submitting a notice shall be no later than the second Tuesday of January of the year in which the prospective applicant plans to submit an application.

**B.** Written notification to the commission shall be made to the division [at its Albuquerque office] written notification to a local school board shall be made to the superintendent of that school district who shall provide copies of the written notification to the local school board during a duly noticed board meeting.

**C.** If the second Tuesday of January falls on a legal holiday, the written notification shall be timely if personally delivered on the first day following the legal holiday that the division or office of the pertinent superintendent is open for business. Notice will also be considered timely if it is postmarked four calendar days prior to the second Tuesday of January, regardless of the date on which it is received. Failure to provide timely written notification may result in an application being rejected unless the organizers can demonstrate good cause why timely written notification was not given. [6.80.4.8 NMAC - N, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 9/29/2020]

**6.80.4.9 CONTENTS OF APPLICATION FOR START-UP CHARTER SCHOOL:** A charter school application shall be a proposed agreement between the chartering authority and the charter school and shall include the following: [assurances, descriptions, outlines and plans.]

**A.** The mission statement of the charter school; [The mission statement must answer the following questions: “Who do you serve?”; “What do you seek to accomplish?”; “What methods will

you use?” and “How will we know if you are achieving your mission?”]

**B.** The goals, objectives, and student performance [standards] outcomes to be achieved by the charter school; [which address how the charter school will comply with the department’s required content standards, benchmarks, and performance standards, state accreditation, standardized testing and school report card in accordance with Sections 22-2C-1 et seq. NMSA-1978. The goals and objectives must be measurable and student-centered.]

**C.** A description of the charter school’s educational program, student performance standards, and curriculum that meets or exceeds the department’s educational standards and [must] shall be designed to enable each student to achieve those standards. [and addresses the following:

(1) documentation, research or rationale that supports a particular curricular approach;

(2) a description of the curriculum including scope and sequence, and student performance standards;

(3) a timeline for alignment of the curriculum with the department’s content standards, benchmarks, and performance standards, if alignment has not been completed at the time the application is submitted;

(4) strategies and methods to be used in delivering the curriculum and how the curriculum will address students’ needs and assist each student in reaching those standards;

(5) length of school day and school year;

(6) total number of grades the charter school proposes to provide, either immediately or in phases, class size and total projected student enrollment, and, if the charter school will be located in a school district that has a total enrollment of not more than 1,300 students, a statement that the proposed charter school’s proposed enrollment for all grades, in

combination with any other charter school's enrollment for all grades, will neither equal nor exceed ten percent of the total MEM of that school district;

~~(7) proposed requirements for graduation, if applicable.]~~

D. A description of the way a charter school's educational program will meet the individual needs of students, ~~[including] particularly~~ those students determined to be at risk, including Native American students, economically disadvantaged students, students with disabilities, and English learners, and which will ~~[address]~~ include the following:

(1) suggested modifications to the proposed educational program to meet individual student needs, such as bilingual, limited English proficient, and special education;

(2) an outline of a special education plan, the final plan of which ~~[must]~~ shall be completed and submitted to the charter authorizer by the end of the planning year;

(3) how the charter school will provide access to other services including but not limited to counseling and health;

(4) assurances that the charter school will establish an executive director's equity council with members selected from the charter school community in an open and transparent process; and

(5) assurances the charter school head administrator and governing body, in consultation with the school equity council, will develop a culturally and linguistically relevant framework to help prepare students for college, career, and civic life through support of students' identities, and holistic development, including social, emotional, and physical wellness.

E. A description ~~[or outline]~~ of ~~[a]~~ the charter school's plan ~~[the charter school considers adopting]~~ for evaluating student performance, the types of assessments that will be used to measure student

progress toward achievement of the state's standards, and the school's student performance standards, the timeline for achievement of the standards, and the procedures for taking corrective action in the event that student performance falls below the standards. ~~[and which description or outline addresses the following:~~

~~(1) remediation for students not achieving standards, including a timeline for implementation of the remediation plan;~~

~~(2) assessments that might be considered in addition to the statewide mandated testing;~~

~~(3) documentation and reporting of student data.]~~

F. Assurances that the charter school will be economically sound, including the submission of a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted; ~~[and addresses the following:~~

~~(1) a proposed budget for year one and the following four years based on the current unit value;~~

~~(2) a description of the administrative operations of the charter school.]~~

G. An assurance that the fiscal management of the charter school will comply with all applicable federal and state laws ~~[regulations and rules relative]~~ and rules related to fiscal procedures; ~~[In addition to this basic assurance, the applicant shall clearly state in its assurance that the following information will be provided to the chartering authority by the end of the planning year or within 10 days of receipt of any federal or state stimulus funds:~~

~~(1) a detailed plan indicating how the charter school will manage its fiscal responsibilities;~~

~~(2) a description of its internal control procedures that the charter school will utilize to safeguard assets,~~

~~segregate its payroll and other check-disbursement duties, provide reliable financial information, promote operational efficiency, and ensure compliance with all applicable federal statutes and regulations and state statutes and rules relative to fiscal procedures.]~~

H. The names of the members of the governing body and a description of the operation of the charter school, including:

(1) the method of selecting the governing body;

(2) the qualifications and terms of members, the filling of vacancies, and the procedures for changing governing body membership; and

~~[(3) an assurance that the governing body will meet and conduct its meetings in accordance with the Open Meetings Act, Sections 10-15-1 et seq., NMSA 1978;]~~

~~[(4) (3) the nature and extent of parental, professional educator, and community involvement in the governance and the operation of the school.~~

~~[(5) an assurance that the charter school will adopt policies and procedures of the governing body, that address governance, relationship to staff, professional development, the role of the governing body in policy-making, personnel decisions, budgeting, and operation of the charter school, including how decisions will be made;~~

~~(6) for locally chartered charter schools, an assurance that it will amend its charter within one year of approval to include procedures agreed upon with its chartering authority for the resolution of disputes between them;~~

~~(7) a description of how the charter school proposes to account to the chartering authority with respect to the charter school's compliance with applicable statutes, regulations, rules and charter provisions;~~

~~(8) an assurance by each governing body member that they have read the application and agree to~~

its submission to the chartering authority.]

**I.** An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any; [and which address the following:

~~(1) personnel policies and procedures that comply with all applicable federal statutes and regulations, the School Personnel Act, Sections 22-10-1 et seq., NMSA 1978, and the Charter Schools Act, Sections 22-8B-1 et seq. NMSA 1978 or, if personnel policies and procedures have not been developed at the time of the application, a statement that the policies and procedures developed will comply with applicable federal and state labor laws, regulations and rules implementing them;~~

~~(2) a description of the evaluation process for staff which shall include evaluation of teachers by a licensed school administrator;~~

~~(3) the discipline process for staff, that provides for due process and demonstrates an understanding of applicable state and federal laws, regulations and rules;~~

~~(4) an assurance that the governing body or head administrator will recognize and work with employee labor representatives, if any;~~

~~(5) a proposed salary schedule;~~

~~(6) proposed job descriptions of staff;~~

~~(7) a proposed pupil-teacher ratio.]~~

**J.** The employment and student discipline policy of the proposed charter school; [that complies with the department's rule on students' rights and responsibilities.]

**K.** [For charter schools, a] A proposed agreement between the charter school and the authorizer regarding their respective legal liability and applicable insurance coverage;

**L.** A description of how the charter school plans to meet the transportation and food service needs of its students; [The description shall address whether the applicant intends to contract with a school district or other party for the provision of transportation and food services; the identity of the school district or that other party, if known, with whom the applicant proposes to contract; a description of the proposed terms of any contract; and for these services a description of the status of any preliminary negotiations with any school districts or other parties regarding the provision of transportation or food service.]

**M.** A description of both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from [either] the local school board or the department [or both] and the charter school's plan for addressing and using these waiver requests; and [that:

~~(1) lists the specific policy by number and title for which waivers are requested from local school board policy;~~

~~(2) lists the specific waivers that are requested from the department's requirements, rules, and provisions of the Public School Code, Sections 22-1-1 et seq. NMSA 1978, pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties, driver education, and graduation requirements.]~~

**N.** A description of the facilities the charter school plans to use; including an assurance that the facilities will meet the standards required in Section 22-8B-4.2 NMSA 1978. [taking phase-in and availability into account. The charter school shall provide a detailed description of its proposed capital-outlay needs, including projected requests for capital-outlay assistance for the charter school. Additionally, the charter school shall provide an assurance that:

~~(1) the facility it seeks to use is safe and suitable for use as a school;~~

~~(2) it will develop and maintain a plan for addressing code, accessibility requirements and any other health and safety requirements, if necessary;~~

~~(3) it will develop and maintain a plan for operation, maintenance and repair of a facility;~~

~~(4) it will produce a certificate of occupancy for use of the facility; and~~

~~(5) prior to opening that the facility to be used meets all applicable federal and state health, safety and code requirements.~~

~~**O.** A description of the enrollment procedures to be used by the charter school that complies with Section 22-8B-4.1 NMSA 1978 and Subsection D of 6.80.4.12 NMAC.~~

~~**P.** An explanation of how approval of the charter school would be in the best interest of students, school district, and community where it intends to locate and serves a purpose in that community.]~~

[6.80.4.9 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 9/29/2020]

**6.80.4.12 INITIAL REQUIREMENTS AND REVIEW PROCESS FOR START-UP CHARTER SCHOOLS:**

**A.** Local school boards may approve the establishment of charter schools to be located in their respective school districts. The commission may approve the establishment of a charter school to be located anywhere in the state.

**B.** An applicant shall apply to only one chartering authority at a time. An applicant whose application has been denied by a chartering authority or approved with amendments unacceptable to the applicant may file the same application the following fiscal year with a different chartering authority.

**C.** Applications for start-up charter schools shall be submitted between June 1 and July



1 to be eligible for consideration for the following fiscal year. If July 1 falls on a Saturday or a Sunday, the deadline for filing applications shall be extended to the close of business of the [very] next Monday, even in the case of a school district closed for summer break. Applications will also be considered timely if they are postmarked four calendar days prior to July 1, regardless of the date on which they are received. Failure to submit a timely application shall result in an application being rejected by the authorizer, unless the parties agree to waive the filing deadline in accordance with Section 22-8B-6 NMSA 1978. Any such waiver shall be in writing and signed by persons authorized to take such action by the applicant and the chartering authority.

**D.** Enrollment in a start-up charter school shall be guided by the following.

(1) A charter applicant [must] shall enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available.

(2) A charter applicant shall advertise its enrollment process using newspapers, bulletin boards, and other methods designed to disseminate its availability to seek student enrollment and to ensure that there is equal opportunity for all parents and students to learn about the school and apply.

(3) A charter school shall not charge tuition or have admission requirements, except as otherwise provided in the Public School Code, Sections 22-1-1 et seq., NMSA 1978.

(4) In subsequent years of its operation, a charter school will give enrollment preference to previously properly admitted students who remain in attendance and siblings of students already admitted to or attending the school.

**E.** Any revision or amendment to the terms of the charter contract may be made only with the written approval of the authorizer.

**F.** A charter school

shall be a nonsectarian, nonreligious, and non-home-based public school that operates within the geographic boundaries of a [public] school district.

**G.** A charter school shall comply with the following federal laws: Age Discrimination Act of 1975; Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and Part B of the Individuals with Disabilities Education Act.

**H.** A charter school shall comply with the same federal and state audit requirements as do other public schools in the state.

**I.** A charter school shall meet all applicable federal, state, and local health and safety requirements.

**J.** A charter school shall operate in accordance with and under authority of state law.

**K.** A charter school shall provide equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

**L.** A charter school shall have an admissions process that does not discriminate against anyone on the basis of race, gender, national origin, color, disability, or age.

**M.** A charter school's head administrator or governing body shall not employ or approve the employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, or sister-in-law of a member of the governing body or the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

**N.** Applications to the commission for establishment of a [state chartered] state-chartered charter school shall be made to the division [at its Albuquerque office]. Applications to a local school board for establishment of a locally chartered charter school shall be made

to the superintendent of that school district.

**O.** An application for a start-up school may be made by one or more teachers, parents, community members, by a public [post-secondary] postsecondary educational institution, or a nonprofit organization.

**P.** The chartering authority shall be responsible for reviewing all applications for charter schools. Prior to the submission of the applications, the division shall provide at least three technical assistance workshops for prospective applicants on preparing a start-up application. The chartering authority shall not charge application fees.

**Q.** A review coordinator shall be used by the chartering authority to assist prospective applicants in the preparation of proposed charters. The [assistant secretary for] director of the division shall designate a review coordinator in the division for the commission. The superintendent shall appoint a review coordinator for the local school board, unless the superintendent of a school district performs this duty. Prior to the deadline for submission of applications established by the chartering authority, the review coordinator or superintendent and any prospective applicants shall confer in an attempt to identify:

(1) any concerns regarding noncompliance with requirements of the Charter Schools Act (Sections 22-8B-1 et seq., NMSA 1978), this rule, or other applicable state or federal laws or [regulations] rules which would arise from the establishment or operation of the proposed charter school;

(2) any licensure, curriculum, or other educational concerns which would arise from the establishment or operation of the proposed charter school; and

(3) any interests of the students, the school district, or the community which would be adversely affected by the establishment or operation of the

proposed charter school and describe the apparent adverse effects.

**R.** Prospective applicants are to direct any request for technical assistance and information through the authorizer's designated review coordinator. The review coordinator or superintendent shall ensure that the appropriate staff members respond to requests from prospective applicants for information on school operations, policies, or practices which prospective applicants regard as necessary to enable them to present an approvable application. Prospective applicants may request information using the Inspection of Public Records Act [~~Chapter 14, Article 2 NMSA 1978~~] Sections 14-2-1 et seq. NMSA 1978. A review coordinator may require that requests for information not made pursuant to the Inspection of Public Records Act be in a format or directed to a specific person or office in the school district or department. Prospective applicants should not contact school district or department employees directly to obtain information.

**S.** Prior to the public meeting at which the decision is made, the chartering authority shall hold at least one public hearing to obtain information and community input to assist it in its decision whether to grant a charter school application. At any such hearing, which shall be duly noticed and held pursuant to the Open Meetings Act [~~Chapter 10, Article 15 NMSA 1978~~] Sections 10-15-1 et seq. NMSA 1978 and the requirements contained in the [~~Laws 2009 Chapter 12~~] Section 22-8B-6 NMSA 1978, members of the chartering authority may ask questions of the charter applicant and that applicant shall have an opportunity, subject to reasonable time limitations, to respond to any questions or concerns raised by any members of the chartering authority, and present to the chartering authority information that clarifies and verifies the information in the application that the applicant believes will assist the chartering authority in making its decision. Community input may include written or oral comments

in favor of or in opposition to the application by the applicant, members of the local community, and other interested individuals. Community input shall be provided within a time limit established by the chartering authority.

**T.** A charter applicant shall respond to requests for information that the chartering authority regards as necessary to verify and clarify issues identified in the charter application. The charter applicant and the chartering authority [each] shall communicate in good faith in an attempt to verify and clarify issues identified in the charter application.

**U.** No earlier than three days after the public hearing to obtain information and community input, the chartering authority shall rule on the application in a public meeting. The public meeting at which the decision is made shall be held by September 1. The charter applicant and the chartering authority may, however, jointly waive the September 1 deadline provided they do so in a signed written statement. If not ruled upon by September 1, or the stipulated deadline, the charter application will be automatically reviewed by the secretary pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

**V.** A chartering authority may approve, approve with conditions, or deny an application. A chartering authority may deny an application where:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act [~~Chapter 22, Article 8B NMSA 1978~~] Sections 22-8B-1 et seq. NMSA 1978;
- (3) the proposed head administrator or other administrative or fiscal persons were involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the

proposed head administrator or other administrative or fiscal member was discharged from a public school for fiscal mismanagement;

(4) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978;

(5) for a proposed state-chartered charter school, it does not request the governing body to be designated as a board of finance, or the governing body does not qualify as a board of finance;

(6) for a proposed charter school on tribal land, it fails to receive approval from the tribal government prior to the authorizer's decision on the proposed charter school; or

~~(6)~~ (7) the application is otherwise contrary to the best interests of the charter school's projected students, the local community, or the school district in whose geographic boundaries the applicant seeks to operate.

**W.** If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or imposition of conditions in writing within 14 days of the meeting. The written decision [~~must~~] shall be based upon the vote that was taken at the public meeting and reflect the stated reasons for the vote of the chartering authority to deny a charter school application or approve the application with conditions. The written decision shall include specific reference to those reasons enumerated in Subsection V of 6.80.4.12 NMAC as well as a detailed explanation of the reason(s) that formed a basis for denial of the application, or approval with conditions, on a form developed by the department. If the chartering authority grants a charter, it shall deliver the approved charter to the applicant. The time within which to file notice of appeal shall commence upon receipt of the written denial. The chartering authority shall maintain a copy of the charter for its files.

X. If the approved charter contains a waiver request for release from department rules or the Public School Code, the applicant ~~[must]~~ shall follow the procedures on requesting waivers from the department. The department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

Y. If the authorizer denies a charter school application or imposes conditions for approval that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978 and Section 6.80.4.14 NMAC. [6.80.4.12 NMAC - Rp, 6.80.4.9 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 9/29/2020]

**6.80.4.13 CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS:**

A. The governing body of a charter school seeking to renew its charter shall file its renewal application with a chartering authority no earlier than 270 days prior to the date the charter expires. Commencing with any charters that are due to expire at any time after January 1, 2008, all applications for renewal shall be submitted no later than October 1 of the fiscal year prior to the expiration of the school’s charter. The chartering authority shall rule in a public meeting on the renewal application no later than January 1 of the fiscal year in which the charter expires.

B. The governing body may submit its charter renewal application to either the commission or to the local school board of the school district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.

C. The application shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards, and

other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act (Sections 22-2C-1 et seq., NMSA, 1978);

(2) a financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) any changes to the original charter the governing board is requesting and any amendment to the initial charter, which were previously approved;

(4) a certified petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a certified petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school as identified in the school’s 120-day report of the fiscal year prior to the expiration of the charter;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; ~~[and]~~

(7) a statement of the term of the renewal requested, if less than five years; if a charter school renewal application does not include a statement of the term of the renewal, it will be assumed that renewal is sought for a term of five years; and

(8) for charter schools located on tribal land, documentation of ongoing tribal consultation pursuant to Section 22-8B-12.2 NMSA 1978 and applicable federal laws and rules.

D. A chartering authority may refuse to renew a charter if it determines that:

(1) the charter school committed a material violation of any of the conditions, standards, or procedures set forth in the charter contract;

(2) the charter school failed to meet or make substantial progress toward achievement of the department’s minimum educational standards or student performance standards. ~~[Failure to meet or make substantial progress toward achievement of the department’s standards of excellence or student performance standards identified in the charter contract and defined by the following criteria:~~

~~(a) Charter school earns a tier four rating as defined in the charter school academic performance framework, developed and approved by the [public education] commission, in the charter contract for the most recent two consecutive years or for three of the last four years, if available; or~~

~~(b) charter school earns an F rating pursuant to Section 22-2E-1 NMSA 1978 for the most recent two consecutive years or any combination of D ratings or F ratings over the last three years;]~~

(3) the charter school failed to meet generally accepted standards of fiscal management;

(4) the charter school violated any provision of law from which the charter school was not specifically exempted; ~~[or]~~

(5) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978; or

(6) for a charter school located on tribal land, the charter school failed to comply with ongoing tribal consultation pursuant to Section 22-8B-12.2 NMSA 1978, Paragraph (8) of Subsection C of 6.80.4.13 NMAC, or applicable federal laws and rules.

E. If the chartering authority refuses to approve a charter school renewal application or approves the renewal application with

conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within 14 days of the public meeting at which the vote was taken. The written decision [must] shall restate the motion that was voted on in the public meeting and [must] shall restate the reasons that were voted on in the public meeting during which the vote was taken. The written decision shall include specific reference to those reasons enumerated in Subsection D of 6.80.4.13 NMAC as well as a detailed explanation of the reason(s) that formed a basis for denial of the application, or approval with conditions, on a form developed by the department.

**F.** If the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the chartering authority.

**G.** If the approved charter contains a waiver request for release from department rules or the Public School Code, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

**H.** If the authorizer refuses to approve a charter school renewal application or imposes conditions for renewal that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Sections 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC.

**I.** The chartering authority and charter school shall consult with the tribe(s), pursuant to Subsections C and D of Section 22-8B-12.2 NMSA 1978, prior to the suspension, revocation, or non-renewal of a charter school located on tribal land.

**[F:] J.** The provisions of this section shall apply to conversion schools.

[6.80.4.13 NMAC - Rp, 6.80.4.8 NMAC, 6/29/2007; A, 6/30/2008; A, 6/30/2009; A, 12/31/2018; A, 9/29/2020]

#### **6.80.4.14 APPEALS TO THE SECRETARY:**

##### **A. Right of appeal.**

A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC [~~“(Suspension of Authority of a Local School Board, Superintendent or Principal”)~~].

**B. Notice of appeal** and appellant’s argument in support of appeal.

**(1)** Filing and service of notice and argument in support of appeal. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal, or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal and its argument in support of appeal within 30 days after service of the chartering authority’s decision. One original copy plus four copies of the notice of appeal and argument in support of appeal together with the required attachments shall be filed with the secretary at the department’s main office in Santa Fe. No notice of appeal or argument in support of appeal, including exhibits or required attachments, shall be filed using compact disks, floppy disks, or email; instead, paper documents [must] shall be filed with the department.

**(2)** Appellant’s argument in support of appeal. The appellant’s argument in support of appeal shall include a statement of the reasons and argument in support of why the appellant contends the chartering authority’s decision was in error with reference to the standards set forth in Subsection B of Section 22-8B-7 NMSA 1978 that

the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer’s written reasons for denial, nonrenewal, revocation, or imposition of conditions.

**(3)** Required attachments. The appellant shall attach to each copy of the notice of appeal:

**(a)** a copy of the chartering authority’s written decision, together with a copy of the authorizer’s minutes or draft minutes of the meeting if available; and

**(b)** a copy of the charter or proposed charter in question.

**C. Filing and service of other documents.** An original document shall be filed with the secretary at the department’s main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party’s address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC [below], by email to the secretary provided that the email includes any attachments, as well as the sender’s name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

**D. Pre-hearing procedures.**

**(1)** Within 10 days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time, and location for the appeal hearing.

**(2)** Except for brief inquiries about scheduling, logistics, procedure, or similar

questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary ~~[must]~~ shall disqualify himself or herself from hearing an appeal if the secretary determines, after learning of a prohibited communication, that the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

(3) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which ~~[a] the~~ chartering authority ~~[may deny]~~ denied the ~~[an]~~ application, ~~as~~ set forth in Subsection ~~[K] M~~ of Section 22-8B-6 NMSA 1978 or the grounds for non-renewal or revocation as set forth in Subsection ~~[F] K~~ of ~~[Section 22-8-12 NMSA 1978]~~ Section 22-8B-12 NMSA 1978, and the standards for affirmance or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence, or otherwise not in accordance with the law.

(4) Within 15 days of the mailing date of the appellant's notice of appeal and reasons to the chartering authority, the chartering authority shall file one original copy and four copies with the secretary and serve upon the appellant one copy of the chartering authority's response to the appellant's arguments.

~~[(5) The division shall review each party's submissions and prepare a report for the secretary which:~~

~~(a) analyzes and outlines the parties' contentions on appeal with reference~~

~~to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;~~

~~(b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.~~

~~(6) At least five days before the hearing date, the division shall deliver its report and recommendations to the secretary and shall simultaneously serve a copy upon each party.]~~

~~[(7) (5) While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.~~

**E. Secretary hearing and decision.**

(1) Within 60 days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority, and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be three hours. Both parties shall be allowed up to 30 minutes for their presentations. Department staff shall be allowed 20 minutes for their presentation. The appellant

may reserve part of its 30 minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority, and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their 30 minutes but ~~[must]~~ shall include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions, or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties, or the secretary's counsel at any time and may take up to one hour after the staff's and the parties' presentations for further questions, discussion, and a decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection ~~[K] M~~ of Section 22-8B-6; Subsections B, C, or E of Section 22-8B-7; and Subsection ~~[F] K~~ of Section 22-8B-12 NMSA 1978.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

- (a) acted arbitrarily or capriciously;
- (b) rendered a decision not supported by substantial evidence; or
- (c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application, or revoking a charter if the secretary finds that the decision

was based upon a determination by the public school capital outlay council that the facilities of the proposed or existing charter school did not meet the standards required by Section 22-8B-4.2 NMSA 1978 and that the decision was:

- (a) arbitrary or capricious;
- (b) not supported by substantial evidence; or
- (c) otherwise not in accordance with the law.

(7) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. The provisions of this section shall apply to conversion schools.  
[6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/2007; A, 6/30/2008; A, 10/15/2013; A, 12/31/2018; A, 9/29/2020]

**6.80.4.17 NEW MEXICO SCHOOL FOR THE ARTS:**

A. Upon approval by the commission, a state-chartered charter school may operate as the New Mexico school for the arts ("the school"), which shall be a statewide residential charter school for grades nine through 12 offering intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

B. An application to the commission for approval of a charter shall contain assurances of compliance together with a plan for how the school will accomplish the following requirements contained in the New Mexico School for the Arts Act, [~~being Laws 2008, Chapter 15, Sections 1 to 9~~] Sections 22-15F-1 et seq. NMSA 1978:

(1) paying for all expenses associated with outreach activities and for room and board costs for students unable to pay all or part of the cost of room and board from a foundation or other private funding sources;

(2) working with a foundation or soliciting other private funding sources to obtain gifts, grants, and donations to ensure that the school has adequate revenue to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(3) not using money received from the state other than charter school stimulus funds to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(4) admitting an equal number of students from each of the state's congressional districts, to the greatest extent possible and without jeopardizing admissions standards;

(5) conducting its admissions process in a way that provides equal opportunity regardless of a student's prior exposure to artistic training and to the student's ability to pay for room and board; and

(6) conducting admissions criteria-free outreach activities throughout the state each year that acquaint potential students with the programs at the school, to include programs specifically for middle school students and workshops for teachers.

C. By July 1 after the first year the school has provided preprofessional instruction in the performing and visual arts and by July 1 every year thereafter, the school shall submit a report simultaneously to the division and the commission containing:

(1) non-personally identifiable demographic information about both applicants and students admitted to the school delineated by counties, congressional districts, socioeconomic status, gender, and ethnicity; and

(2) the number of students who requested financial

assistance for room and board, the total amount of financial assistance provided, and the amounts distributed delineated by the source of gifts, grants, and donations received by the school.

D. During the planning year, the school shall develop a sliding-fee scale subject to the following considerations:

(1) the purpose of the sliding-fee scale is to defray all or part of the costs of room and board for students whose parents or guardians are financially unable to pay these fees;

(2) in determining ability to pay, the school may use a variety of methods including but not limited to:

(a) self-disclosures in a financial aid application developed by the school;

(b) poverty thresholds as maintained by the United States census bureau;

(c) poverty guidelines as maintained by the United States department of health and human services;

(d) whether the public school that the student applicant most recently came from was a recipient of funds under Title I, Part A of the federal Elementary and Secondary Education Act of 1965, as amended;

(e) whether the student applicant for enrollment was eligible to receive free or reduced-price school meals at the public school previously attended; and

(f) the amount or percentage of assistance an enrolled student received for room and board the prior school year from the school; and

(3) the school shall submit its sliding-fee scale to the commission for initial approval during the planning year and may request changes at subsequent commission meetings for good cause shown.

E. It shall be the responsibility of the school to obtain adequate funding from private sources

to pay annual outreach costs and to defray all or part of room and board fees for students financially unable to pay. No state funds except for charter school stimulus funds received and used during the planning year may be used for these purposes. Private funding sources available to the school shall include the use of a foundation or the soliciting and receipt of gifts, grants, and donations. Failure to secure adequate funding for these purposes shall constitute grounds for denial or revocation of a charter.

**F.** Except for provisions of this rule related to admission of students by lottery, admission on a first-come, first-serve basis, the ability to charge for residential fees, admissions criteria, and location of the school anywhere in the state, all other provisions of this rule related to state-chartered charter schools shall apply to the school. [6.80.4.17 NMAC - N, 6/30/2008; A, 12/31/2018; A, 9/29/2020]

**6.80.4.18 DISTANCE LEARNING:**

**A.** A charter school offering or seeking to offer distance learning courses to students shall comply with 6.30.8 NMAC.

**B.** Any charter school offering or seeking to offer distance learning courses in New Mexico pursuant to the Charter Schools Act, [Chapter 22, Article 8B NMSA 1978] Sections 22-8B-1 et seq. NMSA 1978, [must] shall be physically located in the state of New Mexico. [6.80.4.18 NMAC - N, 6/30/2008; A, 9/29/2020]

**6.80.4.19 LOTTERY WHEN CHARTER SCHOOL CAP IS EXCEEDED:**

**A.** For purposes of compliance with Section 22-8B-11 NMSA 1978, the first five-year period shall be deemed to have ended in 2003 and the successive five-year periods begin in 2003.

**B.** If by October [first] 1, the chartering authorities have authorized more charter schools than permitted by Section 22-8B-11

NMSA 1978, the department shall notify all chartering authorities with newly authorized charter schools that those charter schools may not be established for operations until a lottery is held.

**C.** Within 45 days after determining that the cap for charter schools has been exceeded, the department shall conduct a lottery at a publicly noticed meeting to determine the available slots for charter schools. The department shall randomly draw the names of charter schools from the available pool of all charter schools that were authorized by October [first] 1. The charter schools whose names were drawn shall be given the available charter school slots until the maximum numbers of slots have been selected. The charter schools that are selected shall be approved for operation in the first fiscal year after the lottery. The charter schools whose names were not drawn shall be approved for operation in the second fiscal year after the lottery.

**D.** A charter school that was approved for operation in the second fiscal year after participation in a lottery shall not be subject to a second lottery in the event that in the second fiscal year more charter schools are authorized than permitted by Section 22-8B-11 NMSA 1978.

**E.** Any charter school authorized after October [first] 1 in a year in which the department conducts a lottery pursuant to this rule, shall be approved for operation no earlier than the second fiscal year after the school was authorized. [6.80.4.19 NMAC - Rn, 6.80.4.17 NMAC, 6/30/2008; 6.80.4.19 NMAC - N, 6/30/2009; A, 9/29/2020]

**SECRETARY OF STATE,  
OFFICE OF**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION  
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS  
PART 15 ALTERNATIVE AND ELECTION DAY VOTING ADMINISTRATION**

**1.10.15.1 ISSUING**

**AGENCY:** Office of the New Mexico Secretary of State. [1.10.15.1 NMAC - N, 9/29/2020]

**1.10.15.2 SCOPE:** This rule applies to the administration of all elections conducted pursuant to the Election Code. [1.10.15.2 NMAC - N, 9/29/2020]

**1.10.15.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 1-2-1 and 1-12-72, NMSA 1978 of the Election Code. [1.10.15.3 NMAC - N, 9/29/2020]

**1.10.15.4 DURATION:** Permanent. [1.10.15.4 NMAC - N, 9/29/2020]

**1.10.15.5 EFFECTIVE DATE:** September 29, 2020, unless a later date is cited at the end of a section. [1.10.15.5 NMAC - N, 9/29/2020]

**1.10.15.6 OBJECTIVE:** The purpose of this rule is to provide a uniform system of conducting a general election based on legislative changes in the Election Code. [1.10.15.6 NMAC - N, 9/29/2020]

**1.10.15.7 DEFINITIONS:** [RESERVED] [1.10.15.7 NMAC - N, 9/29/2020]

**1.10.15.8 COUNTY CLERK MAILED BALLOT REJECTION OF QUALIFICATION:**

**A.** Upon receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the official mailing envelope and to confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration.

**B.** If either the voter's signature is missing or the last four digits of the voter's social security number are not provided or do not match, the county clerk shall reject the mailed ballot and make the appropriate notation in the absentee

ballot register and shall transfer the ballot to the special deputy for mailed ballots for delivery to the absent voter election board. Mailed ballots that are rejected must be secured and kept separate from the accepted mailed ballots.

**C.** If the mailed ballot is rejected, the county clerk shall within one working day send the voter a notice of rejection, in the voter's preferred language, along with information regarding how the voter may cure the reason for the rejection.

**D.** If the last four digits of the voter's social security number are either missing or does not match, the county clerk shall send a notice via electronic mail, or regular mail if no email address is on file, to the voter instructing them on how to cure the discrepancy.

**E.** If the signature is missing, the county clerk shall send notice via electronic mail instructing them to sign an affidavit and return it via email to the county clerk's office. This affidavit of cured mailed ballot should contain a space for the voter to provide the voter's signature and attest that this constitutes the required voter identification to cure the rejected mailed ballot. If the voter does not have an email address, the county clerk shall send a notice containing a signature form and a prepaid envelope for the voter to return and must indicate that the voter may also appear in person at the county clerk's office to cure the rejected mailed ballot.

**F.** The county clerk has a duty to attempt to contact any voter twice whose mailed ballot is rejected by either telephone, electronic mail, or mailed notice within one working day of rejection. If attempting to call by telephone the county clerk shall leave a message if there is an ability to do so.

**G.** If the voter cures the violation either electronically, by mail or in person the county clerk shall mark "accepted" in the absentee ballot register and shall transfer the ballot and any document that evidences the cured mailed ballot to the special deputy for mailed ballots

for delivery to the absent voter election board.

**H.** The determination of the county clerk to accept or reject a mailed ballot is subject to a later challenge before the absent voter election board.  
[1.10.15.8 NMAC - N, 9/29/2020]

**1.10.15.9 INTERPOSING ELECTION CHALLENGES:**

**A.** A properly appointed challenger or member of the election board may interpose challenges only for the specific reasons outlined in Sections 1-12-20 and Subsection C of Section 1-6-14 NMSA 1978.

**B.** For the purposes of interposing challenges, a challenger's permitted activities are those listed in Section 1-2-23, NMSA 1978. No other written information will be provided to challengers by election board members. A challenger will not be allowed to view a voter's full date of birth or any portion of the voter social security number except as provided on the official mailing envelope pursuant to Subsection C of Section 1-6-14 NMSA 1978.

**C.** The election board must allow a challenger to view the application to vote form, signature roster, precinct voter list, and the voting machine. A challenger may view a voting machine only before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins.

**D.** Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

**E.** Challenges may not be made indiscriminately or without good cause. Doing so constitutes disrupting a polling place.

**F.** Challengers do not have the authority to approach voters or talk to voters inside the polling location.

**G.** Challengers do not have the right to use video cameras or recording devices inside a polling location.

**H.** If two challengers are representing a political party, candidate or election related organization in a polling location, only one of the challengers may hold the authority to challenge at any given time. The challengers may alternate the authority to challenge at their discretion. The challengers must advise the precinct board each time the authority is alternated. This provision does not apply to challengers' conduct pursuant to Paragraph (6) of Subsection A of Section 1-2-25 NMSA 1978.

**I.** County clerks must ensure that they include training on the rules and statutes relating to interposing election challenges at their school of instruction for all election board members.  
[1.10.15.9 NMAC - N, 9/29/2020]

**1.10.15.10 ABSENT VOTER ELECTION BOARD; CHALLENGES; DISPOSITION:**

**A.** Challenges are handled in accordance with Section 1-12-22 NMSA 1978.

**B.** If a challenge is made in front of the absent voter election board, a designated election board member may notate the challenge but the absent voter election board does not have to rule on the challenge at that time, and may do so when it is otherwise convenient.

**C.** If the challenge is unanimously affirmed by the absentee voter election board, an election board member shall mark "affirmed" on the ballot envelope and indicate this in the absent voter record. A unanimously affirmed challenged ballot shall not be opened but placed in a container provided for challenged ballots.

**D.** Any unanimously affirmed challenged mailed ballots shall be given to the special deputy for mailed ballots for delivery to the county clerk. Once received, the county clerk must comply with Subsections C – G of 1.10.15.8



NMAC, to attempt to have the voter cure the reason the challenge was affirmed.

**E.** If the reason for the challenge is satisfied by the voter before the conclusion of the, the official mailing envelope shall be opened and the vote counted by the county canvass board. If the ballot is hand tallied it shall be recorded in the absentee by-mail hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the absentee by-mail machine counting group.

**F.** If the voter cures the reason for the challenge, the voter’s record on the absentee ballot register shall be changed to “accepted”, and the notation “challenged-affirmed” on the mailed ballot envelope shall be crossed out, signed and dated by either the presiding judge of the absentee precinct board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the not affirmed challenge. [1.10.15.10 NMAC - N, 9/29/2020]

**History of 1.10.15 NMAC:**  
[RESERVED]

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 10 HEALTH INSURANCE  
PART 3 MINIMUM STANDARDS FOR SHORT-TERM PLANS**

**13.10.3.1 ISSUING AGENCY:** Office of Superintendent of Insurance. [13.10.3.1 NMAC - N, 10/01/2020]

**13.10.3.2 SCOPE:** This rule applies to every health insurer who offers or issues a short-term plan to a resident of New Mexico. [13.10.3.2 NMAC - N, 10/01/2020]

**13.10.3.3 STATUTORY AUTHORITY:** Section 59A-23G-1

et seq. NMSA 1978. [13.10.3.3 NMAC - N, 10/01/2020]

**13.10.3.4 DURATION:** Permanent. [13.10.3.4 NMAC - N, 10/01/2020]

**13.10.3.5 OBJECTIVE:** Establish regulatory requirements for short-term health benefit plans. The rule will standardize and simplify the terms and coverages, facilitate public understanding and comparison of coverage, and prohibit provisions that may be misleading or confusing in connection with such plans. [13.10.3.5 NMAC - N, 10/01/2020]

**13.10.3.6 EFFECTIVE DATE:** October 1, 2020, unless a later date is cited at the end of a section. [13.10.3.6 NMAC - N, 10/01/2020]

**13.10.3.7 DEFINITIONS:**  
**A.** The definitions in Section 59A-23G-2 NMSA 1978 apply to this rule.  
**B.** Unless inconsistent with a term defined in this rule, or the usage of a term in this rule, the definitions in 13.10.29 NMAC apply. [13.10.3.7 NMAC - N, 10/01/2020]

**13.10.3.8 GENERAL REQUIREMENTS:**  
**A. Duration and non-renewability.** The term of a short-term plan shall not exceed three months and shall not be extendable or renewable. Continuation and conversion rights of short-term plan dependents extend only to the original termination date of the policy.  
**B. When issuance prohibited.** A short-term plan shall not be issued to an individual, if that person was enrolled in any short-term plan that provided the same or similar coverage during the preceding 12 months.  
**C. Guaranteed issue.** A short-term plan shall be guaranteed issue to eligible applicants without regard to health status or any preexisting condition(s).  
**D. Cancellation and rescission.** A short-term plan shall

not be cancelled or rescinded except as provided herein:

- (1) A short-term plan shall not be rescinded except in the case of intentional misrepresentation, concealment or fraud by the insured or covered person.
- (2) A short-term plan shall not be canceled except:
  - (a) as the result of change to or implementation of federal or state laws that no longer permit the continued offering of the coverage; or
  - (b) due to the covered person’s:
    - (i) nonpayment of premium;
    - (ii) violation of published policies of the carrier approved by the superintendent;
    - (iii) fraudulent acts or material misrepresentation; or
    - (iv) material breach of the terms of the plan.
  - (c) Nothing in this section shall be construed to provide a covered person with any benefits they would not otherwise be entitled to under a short-term plan.
- (3) Notice required.
  - (a) When a short-term plan is cancelled for nonpayment of premium, the insurer shall notify the covered person in writing ten days prior to the cancellation date that the plan will be canceled, unless payment is made prior to the cancellation date.
  - (b) When cancellation or rescission is for any other authorized reason, the insurer shall notify the covered person in writing 20 days prior to the cancellation or rescission date, or the expiration date of the short-term plan, whichever occurs first. An insurer may provide less than 20 days notice only if the remaining duration of the plan is less than 20 days. In such case, notice shall be provided no later

than 10 days prior to the cancellation or rescission date or the expiration date of the plan, whichever occurs first. The notice shall specifically state the reason(s) for the cancellation or rescission.

**(c)**

A written notice required by this subsection shall be printed in 12 point or larger font, and phrased in simple language.

**E. Prohibition against pre-existing condition exclusion.**

A carrier shall not exclude coverage of a benefit covered under a short-term plan due to any preexisting condition(s) or other conditions disclosed on the application of coverage.

**F. Waiting periods.**

A carrier shall not impose a waiting period for a benefit covered under a short-term plan.

[13.10.3.8 NMAC - N, 10/01/2020]

**13.10.3.9 MANDATORY DISCLOSURES**

**A. Disclosure**

**Required.** A short-term plan shall not be offered or issued without providing the prospective insured applicant a disclosure in the form and with the content specified in this section.

**B. Disclosure format.**

The standard disclosure shall be displayed prominently in the plan and in the plan application, and shall also be delivered as a separate document to the applicant upon delivery of the application.

**C. Delivery of disclosure.**

The applicant must sign an acknowledgement of receipt of the form.

**(1)** The carrier shall retain each acknowledged disclosure form for five years. Signed forms shall be available for review by the superintendent upon request.

**(2)** The standard disclosure form shall not be used until it has been filed with and approved in writing by the superintendent.

**(3)** The standard disclosure form shall include the following information and shall be presented on the first page of any

application for coverage in 12-point or larger font:

THIS IS SHORT-TERM, LIMITED DURATION HEALTH INSURANCE COVERAGE. THIS PLAN ONLY LASTS FOR [Insert Duration] AND IS NONRENEWABLE. THIS COVERAGE IS UNAVAILABLE TO ANY INDIVIDUAL WHO HAS BEEN INSURED BY A SHORT-TERM PLAN WITHIN THE PREVIOUS TWELVE-MONTH PERIOD.

THIS PLAN MAY HAVE DOLLAR LIMITATIONS ON BENEFITS.

THIS COVERAGE DOES NOT COMPLY WITH ALL AFFORDABLE CARE ACT REQUIREMENTS. TO SEE IF YOU QUALIFY FOR FINANCIAL ASSISTANCE AND ENROLL IN AFFORDABLE CARE ACT COVERAGE VISIT WWW.BEWELLM.COM. YOU MAY QUALIFY FOR A SPECIAL ENROLLMENT PERIOD IF YOU HAVE RECENTLY LOST COVERAGE.

[13.10.3.9 NMAC - N, 10/01/2020]

**13.10.3.10 COMPLIANCE FILING REQUIREMENTS:**

**A. Qualified health plan standard requirements.** A short-term plan is subject to the same rate, form, and compliance filings as qualified health plans.

**B. Network access plan.** An insurer who offers a short-term plan shall file a network access plan(s) in SERFF for review and approval by the superintendent annually on October 1.

[13.10.3.11 NMAC - N, 10/01/2020]

**13.10.3.11 PENALTIES:** In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the Insurance Code, the superintendent may impose a penalty for any violation of this rule in accordance with Sections 59A-1-18 and 59A-46-25 NMSA 1978.

[13.10.3.10 NMAC - N, 10/01/2020]

**13.10.3.12 SEVERABILITY:**

If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected.

[13.10.3.11 NMAC - N, 10/01/2020]

**History of 13.10.3 NMAC:**  
[RESERVED]

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 10 HEALTH INSURANCE  
PART 34 STANDARDS FOR ACCIDENT ONLY, SPECIFIED DISEASE OR ILLNESS, HOSPITAL INDEMNITY, AND RELATED EXCEPTED BENEFITS**

**13.10.34.1 ISSUING**

**AGENCY:** New Mexico Office of Superintendent of Insurance (“OSI”).  
[13.10.34.1 NMAC - N, 10/01/2020]

**13.10.34.2 SCOPE:**

**A.** This rule applies to the following individual and group excepted benefits insurance plans.

- (1)** coverage-only for accident insurance;
- (2)** coverage-only for a specified disease or illness;
- (3)** hospital indemnity or other fixed indemnity insurance;
- (4)** Champus/

TRICARE supplement plans that provide one or more of the coverages specified in Sections 1 through 3 of this rule.

**B.** This rule applies to every such contract of insurance issued in this state, and to any such contract issued to a group located outside of this state, if any covered person resides in this state.

[13.10.34.2 NMAC - N, 10/01/2020]

**13.10.34.3 STATUTORY AUTHORITY:** Section 59A-23G-3 NMSA 1978.  
[13.10.34.3 NMAC - N, 10/01/2020]

**13.10.34.4 DURATION:** Permanent.  
[13.10.34.4 NMAC - N, 10/01/2020]

**13.10.34.5 OBJECTIVE:** The purpose of this rule is to establish regulatory requirements for the subject excepted benefit plans. The rule will standardize and simplify the terms and coverages; facilitate public understanding and comparison of coverage; eliminate provisions that may be misleading or confusing in connection with the purchase and renewal of the coverages or with the settlement of claims; and require disclosures in the marketing and sale of excepted benefit plans.  
[13.10.34.5 NMAC - N, 10/01/2020]

**13.10.34.6 EFFECTIVE DATE:** October 1, 2020, unless a later date is cited at the end of a section. If the superintendent previously approved a subject excepted benefits plan for sale in this state, that plan shall be amended to comply with this rule no later than October 1, 2021, if issued on or after that date.  
[13.10.34.6 NMAC - N, 10/01/2020].

**13.10.34.7 DEFINITIONS:** For definitions of terms contained in this rule, refer to 13.10.29 NMAC, unless otherwise noted below.

**A. "Accident only"** means a plan that provides benefits for death, dismemberment, disability, hospital, or medical care or injuries arising from an accident.

**B. "Certificate"** means a statement of the coverage and provisions of a group plan delivered to an individual insured.

**C. "Direct response insurer"** means a carrier who does not sell its insurance products through producers.

**D. "Domestic co-insured"** means a spouse or domestic partner insured under the same plan or certificate.  
[13.10.34.7 NMAC - N, 10/01/2020]

**13.10.34.8 PROHIBITED PLAN PROVISIONS:**

**A. Probationary periods.** Except as otherwise expressly allowed by these rules, a plan shall not include a probationary or waiting period during which no coverage is provided for a covered benefit under the plan. A probationary period does not include an eligibility-waiting period during which no premium is paid.

**B. Riders and other supplements.** A plan that includes a rider, amendment, endorsement or other supplement shall explicitly state which benefits the carrier has amended or supplemented from the original plan.

**C. Preexisting conditions.** An individual plan or plan sold through an association or group described in Paragraph (2) or (4) of Subsection A of Section 59A-23-3 NMSA 1978 shall not exclude coverage for a loss due to a preexisting condition unless the application or enrollment form requires disclosure of prior illness, disease or physical conditions, or of prior medical care and treatment. A disclosure form shall not request family member health information unless the family member is also seeking coverage under the plan.

**D. Return of premium.** An excepted benefits plan may include a return of premium or cash value benefit if authorized by the superintendent following an evaluation of the potential impact on the carrier's reserves and ability to service policy obligations. Nothing in this rule requires a carrier to seek authorization from the superintendent to return premiums unearned through termination or suspension of coverage, retroactive waiver of premium paid during medical condition, payment of dividends on participating policies, or experience rating refunds.

**E. Type of illness, accident or medical condition.** A plan shall not limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

- (1) preexisting conditions or diseases;
- (2) pregnancy and childbirth;
- (3) illness, treatment or medical condition arising out of:
  - (a) war or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxiliary to it;
  - (b) suicide (sane or insane), attempted suicide or intentionally self-inflicted injury within two years of the effective date of coverage;
  - (c) aviation, other than travel on a commercial carrier; and
  - (d) incarceration;
- (4) cosmetic surgery, other than reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;
- (5) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet;
- (6) services for which benefits are provided under Medicare or other governmental program (except Medicaid), a state or federal workers' compensation program, employers liability or occupational disease law, or motor vehicle no-fault law;; services performed by a member of the covered person's immediate family; and services for which no charge is normally made in the absence of insurance;
- (7) dental care or treatment with the exception of craniomandibular and temporomandibular joint disorders;
- (8) eye glasses, hearing aids and examination for the prescription or fitting of them;
- (9) illegal activities;

(10) injuries incurred as a result of intoxication;

(11) rest cures, custodial care, transportation and routine physical examinations;

(12) intoxication via drug, alcohol or ingestion or inhalation of unlawful chemicals;

(13) specifically named high -risk physical activities; and

(14) international territorial limitations.

**F. Contracted providers.** No excepted benefits plan shall contract with medical providers to provide benefits or services to its covered persons. Any reference in a plan document, advertisement or insurance card, to a provider network, a “multi-plan” or “PPO” arrangement is prohibited.

**G. Pharmacy benefit plans.** No carrier shall sell a plan or fixed indemnity benefit package that cover only prescription drug benefits. A plan design or fixed indemnity benefit package that covers prescription drugs plus a minimal number of additional benefits shall be considered a prohibited pharmacy benefit plan.

**H. Marketing of blanket or group coverages.** A carrier shall not sell any blanket coverage to a group that is not described in Section 59A-23-2 NMSA 1978 or group coverage that is not identified or described in Section 59A-23-3 NMSA 1978.

**I. Arbitration provisions.** A carrier shall not sell a plan that requires a covered person to submit a dispute to mediation or arbitration.

**J. Plan governance.** A covered person’s rights under any plan shall be governed by the terms of the plan approved by the superintendent, and by applicable state and federal law.

**K. Telemedicine services.** A plan shall pay a benefit to a covered person for eligible telemedicine or otherwise covered services, but shall not offer a benefit for a telemedicine service provided through a contracted provider.

**L. Conversion privileges.** No plan shall offer a conversion plan that is not approved by the superintendent.

**M. Discrimination.** No plan shall discriminate in eligibility for coverage or benefits on the basis of sex, sexual orientation, gender, gender identity, race, religion, or national origin. A plan may differentiate on the basis of age in rating and age limits on coverage.

**N. Insurance cards.** No plan or advisement language shall direct a covered person to submit their insurance card to a healthcare provider.

[13.10.34.8 NMAC - N, 10/01/2020]

**13.10.34.9 GENERAL STANDARDS FOR PLANS AND BENEFITS:**

**A. Individual noncancellable and guaranteed renewable policies.** A “noncancellable,” “guaranteed renewable,” or “noncancellable and guaranteed renewable” individual plan shall not provide for termination of coverage of the domestic co-insured solely because of the occurrence of an event specified for termination of coverage of the covered person, other than nonpayment of premium. In addition, the plan shall provide that in the event of the covered person’s death, the domestic co-insured of the covered person, if covered under the plan, shall become a covered person.

**B. Consumer rights.** A plan shall protect consumer rights as follows:

(1) The terms “noncancellable” or “noncancellable and guaranteed renewable” may only be used in an individual excepted benefit plan if the covered person has the right to continue the coverage by timely paying premiums, until the age of 65 or until eligibility for Medicare, during which time the carrier has no unilateral right to change any provision of the plan.

(2) The term “guaranteed renewable” may only be used in a plan where the covered person has the right to continue in force, by timely paying premiums,

until the age of 65 or until eligibility for Medicare, during which period the carrier has no unilateral right to change any provision of the plan, other than changes in premium rates by classes.

**C. Domestic co-insured policies.** In an individual excepted benefits plan covering domestic co-insureds, the age of the younger of the two shall be used as the basis for meeting the age and durational requirements of the definitions of “non-cancellable” or “guaranteed renewable.” However, this requirement shall not prevent termination of coverage of the older of the two upon attainment of the stated age, so long as the plan may be continued in force as to the younger of the two to the age or for the durational period as specified in the plan.

**D. Death and dismemberment.** When accidental death and dismemberment coverage is part of an individual plan, the covered person shall have the option to include all covered persons under the coverage and not just the principal covered person. Hospital indemnity or specified disease or illness policies or certificates shall not include accidental death and dismemberment coverage.

**E. Military service exclusion or suspension.** If a plan contains a military service exclusion or a provision that suspends coverage during military service, the plan shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

**F. Pregnancy.** A plan that provides pregnancy benefits shall extend those benefits for a pregnancy that begins while the plan is in force and for which benefits would have been payable if the plan had remained in force if the carrier cancels or refuses to renew coverage. A plan that provides pregnancy benefits shall provide for an extension of those benefits.

**G. Convalescent or extended care.** A plan that provides convalescent or extended care benefits

following hospitalization shall provide such benefits if the admission to the convalescent or extended care facility is within 14 days after discharge from the hospital.

**H. Dependent child.**

An individual excepted benefit plan’s coverage for a child who is incapable of self-sustaining employment on the date the child would otherwise age out of coverage, shall continue if the child depends on the covered person for support and maintenance. The plan may require that within 31 days of the date the company receives proof of the child’s incapacity, the covered person may elect to continue the plan in force with respect to the child, or insure the child under a conversion plan.

**I. Payment of**

**benefits.** Accidental death and dismemberment benefits shall be payable if the loss occurs within 90 days from the date of the accident, except where the plan has terminated during this 90-day period due to non-payment of premium.

**J. Continuous loss.**

The termination of a plan, except for termination of the plan due to non-payment of premium, shall not terminate benefits for a continuous loss that commences while the plan or certificate was in force unless expressly limited by the duration of the benefit period, if any, or any maximum benefit limitation.

**K. Wellness benefits.**

Any plan offering wellness benefits shall exclude preventive care coverages mandated by the Affordable Care Act. Wellness benefits shall be rated separately in rate filings. Wellness benefits shall not be offered as a stand-alone fixed-indemnity benefit.

**L. Waivers.**

Where a waiver is required as a condition of issuance, renewal or reinstatement, signed acceptance by the covered person is required. A waiver shall be limited to a specifically named or described disease, physical condition or activity.

**M. Fractures or**

**dislocations.** A plan that provides coverage for fractures or dislocations

shall provide benefits for “full and partial” fractures or dislocations.

**N. Review authority.**

These rules do not limit the superintendent’s authority to approve or disapprove a plan or plan provision as authorized by any other state or federal law.

**O. Termination of coverage.**

A carrier shall not terminate an excepted benefits plan except for “good cause,” which, for purposes of this subparagraph means:

- (1) failure of the covered person or subscriber to pay the premiums and other applicable charges for coverage;
- (2) material failure to abide by the rules, or policies and procedures of the plan;
- (3) fraud or misrepresentation affecting coverage;
- (4) policyholder request for cancellation;
- (5) policy term ends; and
- (6) a reason for termination or failure to renew that the superintendent determines is not objectionable.

**P. Notice required upon termination of coverage for individual plans.**

Except in the case of termination for “good cause” as described in Subsection O of Section 9 of this rule, a carrier shall not terminate an excepted benefits plan unless it provides written notice to a covered person 60 days prior to the intended termination date. Notice of termination shall:

- (1) be in writing and dated;
- (2) state the reason(s) for termination, with specific references to the clauses of the excepted benefits plan giving rise to the termination;
- (3) state that a covered person’s plan cannot be terminated because of health status, need for services, race, religion, national origin, gender, gender identity, age (except where allowed by law or rule), or sexual orientation of covered persons under the contract;
- (4) state that a covered person who alleges that an

enrollment has been terminated or not renewed because of the covered person’s health status, need for health care services, race, religion, national origin, gender, gender identity, age or sexual orientation may file a complaint with the superintendent of insurance at [www.osi.state.nm.us](http://www.osi.state.nm.us) or 1-855-427-5674;

(5) state that

in the event of termination by either the covered person or the plan, except in the case of fraud or deception, the plan shall, within 30 calendar days, return to the covered person or subscriber the pro rata portion of the money paid to the plan that corresponds to any unexpired period for which payment had been received together with amounts due on claims, if any, less any amounts due to the plan.

**Q. Notice required upon termination of coverage for group plans.**

Except in the case of termination for “good cause” as described in Subsection O of Section 9 of this rule, a carrier shall not terminate an excepted benefits plan unless it provides written notice to a group plan subscriber 60 days prior to the subscriber’s intended termination date. Notice of termination shall:

- (1) be in writing and dated;
- (2) state the reason(s) for termination, with specific references to the clauses of the excepted benefits plan giving rise to the termination;
- (3) identify the individuals currently covered under the master plan; and
- (4) state that in the event of termination by either the group policyholder or the plan, except in the case of fraud or deception, the plan shall, within 30 calendar days, return to the group policyholder the pro rata portion of the money paid to the plan that corresponds to any unexpired period for which payment had been received together with amounts due on claims, if any, less any amounts due to the plan, provided, however, that the superintendent may approve other reasonable compensation practices.

**R. Proof of loss.**  
 If a carrier requires submission of a claims form as a condition of payment, the carrier, upon receipt of notice of a claim, shall furnish to the covered person a claim form to be delivered in the manner offered by the carrier that is preferred by the covered person. If claim forms are not furnished within 15 days after notice of a claim, the claimant shall be deemed to have complied with the requirement to provide proof of loss if the notice of claim contains written proof describing the claim, including the character and extent of the loss for which the claim is made. Adequate proof of loss must be in the possession of the insurance company at the time funds are disbursed in payment of claims. If a benefit requires proof of permanent loss, a carrier may institute a waiting period to ensure the loss is permanent.

**S. Inducements.**  
 Inducements shall be defined and prohibited in the following manner:

(1) no excepted benefit plan shall use monetary or other valuable consideration, engage in misleading or deceptive practices, or make untrue, misleading, or deceptive representations to applicants in order to induce enrollment;

(2) a statement shall be deemed untrue if it does not conform to fact in any respect and would be considered significant to a person contemplating enrollment with an excepted benefits plan;

(3) inducements do not include incentives specified or provided for in the excepted benefits plan contract given to covered persons and to promote the delivery of preventive care or other health improvement activities.

**T. Grace Periods.** A carrier shall grant a grace period of at least 10 days for monthly premium plans and at least 31 days for all plans billed less frequently for the payment of each premium due after the first premium.

[13.10.34.9 NMAC - N, 10/01/2020]

**13.10.34.10 ACCIDENT**

**ONLY COVERAGE:**

**A. General rule.** No plan providing benefits conditioned on the occurrence of an accident shall be sold or offered for sale except as an accident only plan.

**B. Definitions.** An accident only plan:

(1) shall not establish an accidental means test or use words such as “external, violent, visible wounds” or similar words of description or characterization;

(2) shall define “injury” to mean accidental bodily injury sustained by the covered person, independent of any other cause, that occurs while the coverage is in effect.

(a) The definition may provide that a covered disability must occur within a specified period of time (no greater than 30 days) of the accident, otherwise the condition shall be considered a sickness.

(b) The definition may provide that “injury” shall not include an injury for which benefits are provided under workers’ compensation, employers’ liability or similar law; or under a motor vehicle no-fault plan, unless prohibited by law; or injuries occurring while the covered person is engaged in any activity pertaining to a trade, business, employment or occupation for wage or profit.

**C. Coverage requirements.** An accidental death benefit in an accident-only plan shall be no less than \$10,000 with a minimum of \$5,000 for any dependent coverage. The death benefit amount may vary for each life insured under the policy or certificate. A dismemberment benefit shall be at least \$5,000, for a limb. The benefit amounts for partial dismemberment and loss of a non-limb body part shall be no less than \$250 for each covered loss. The benefit amount provided for each type of dismemberment benefit covered by the plan must be specified in the product filing and approved by the OSI.

**D. Basis of compensation.** An accident only plan shall only compensate for losses on a fixed-indemnity basis.

**E. Specified accident.** Specified accident insurance coverage shall only be sold as blanket coverage pursuant to Section 59A-23-2 NMSA 1978, or as nonrenewable individual coverage with a term not to exceed 14 days.

**F. Occupational accident.** An occupational accident plan shall not be sold through an association or employer-sponsored group. An occupational accident plan shall only be sold as blanket coverage pursuant to Section 59A-23-2 NMSA 1978 or on an individual basis to cover on-the-job injuries to persons who are not legally required to be covered by workers’ compensation insurance.

(1) Upon the sale of any occupational accident plan, the carrier or its designated agent shall file a disclosure form with the New Mexico Workers’ Compensation Administration.

(a) The carrier shall submit the form to the Workers’ Compensation Administration, Employer Compliance Bureau, 2410 Centre Ave SE, Albuquerque, NM 87106;

(b) The form shall contain the following information:

(i) Name of covered person;

(ii) Covered person’s occupation;

(iii) Name, address, and telephone number of any company for whom the covered person performs contracted work; and

(iv) Effective dates of the plan.

(2) An application for occupational accident coverage shall contain the following notice:

YOUR PURCHASE OF THIS PLAN DOES NOT RELEASE YOUR EMPLOYER FROM ANY LEGAL DUTY TO PROVIDE

WORKERS' COMPENSATION COVERAGE. TO LEARN MORE ABOUT YOUR RIGHTS TO WORKERS' COMPENSATION COVERAGE PLEASE CONTACT: STATE OF NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION 2410 CENTRE AVE SE ALBUQUERQUE, NM 87106 505-841-6000 www.workerscomp.nm.gov

(3) An occupational accident plan shall not exclude activities and accidents inherent to the occupation of the individual seeking coverage.

(4) An occupational accident plan shall not require a covered person to waive his or her rights to workers' compensation coverage or benefits.

G. An accident only plan shall not contain a probationary or waiting period.

H. An accident only plan shall not offer sickness benefits unless such benefits are limited to covering an illness resulting from an accident. Sickness benefits shall be limited to illness that arises within 90 days of the accident. Sickness benefits may include coverage for mental health care or nervous disorders that result from an accident.

I. An accident only plan shall not include disability benefits unless offered as an optional rider.

J. An accident only plan that provides benefits that vary depending on the accidental cause shall prominently set forth in the outline of coverage the circumstances under which benefits are payable that are less than the maximum amount payable under the plan.

K. A carrier shall not suggest or imply that an accident only plan applies to injury that results from an excluded activity. [13.10.34.10 NMAC - N, 10/01/2020]

**13.10.34.11 HOSPITAL INDEMNITY:**

A. **General rule.** No plan providing indemnity benefits conditioned on the occurrence of a

hospital confinement or hospital-based treatment shall be sold or offered for sale except as a hospital indemnity plan.

B. **Application.** This section applies to every hospital indemnity plan that provides benefits on a fixed indemnity basis.

C. **Benefit minimums for hospital confinement benefits.** The following benefit minimums shall apply to the confinement benefit in a hospital indemnity plan:

(1) a hospital indemnity plan shall provide for a lump sum payment upon confinement of no less than \$2,500; or

(2) a hospital indemnity plan shall provide benefits for hospital confinement on an indemnity basis in an amount not less than \$100 per day after an initial payment of not less than \$500 upon the first confinement in a 30 day-period, and for no less than five days during each period of confinement for each covered person under the plan.

D. **Continuous hospital confinement.** A hospital indemnity plan shall treat consecutive days of in-hospital service received as an inpatient, and successive inpatient confinement for treatment of the same condition within 30 days of prior discharge, as a single period of confinement. A carrier shall not combine confinement for an accident with another confinement for an illness in determining continuous hospital confinement.

E. **Basis of compensation.** A hospital indemnity plan shall provide benefits only on a fixed indemnity basis.

F. **Hospital indemnity benefit limitations.** The benefits under hospital indemnity coverage shall be limited to hospitalizations and hospital-treatment related ambulatory surgical center services, outpatient services, facility fees, anesthesia, surgery, emergency care, imaging and diagnostic testing, lodging, caretaker and pet care, lost wages or travel coverages. These benefits shall not be offered as a separate rider.

G. **Hospital indemnity outpatient visits.** A hospital

indemnity plan shall cover no more than five outpatient or physician office visits per incidence of hospitalization or visit to the emergency room. Outpatient or physician office visits shall be limited to:

- (1) preoperative examinations and preparatory services;
- (2) follow-up care directly related to the hospitalization; and
- (3) must be delivered during a period no longer than six months from the hospitalization.

H. **Confinement defined.** A hospital indemnity plan shall define "confinement" as any consecutive 24 hour period during which medical observation or services are provided on a continuous basis in a licensed medical facility, each immediately successive such period, and any period of time less than 24 hours on the date of discharge from any such confinement. [13.10.34.11 NMAC - N, 10/01/2020]

**13.10.34.12 OTHER FIXED INDEMNITY:**

A. **Prohibitions.** A carrier may offer or provide other fixed-indemnity coverages as a benefit rider to a specified disease or hospital indemnity plan, but not to accident-only coverages.

B. **Benefits.** A carrier who offers or provides other fixed indemnity coverage shall provide benefits on an indemnity basis in an amount not less than \$50 per diagnostic or imaging test or visit to an outpatient health care provider or physician office. No plan shall include more than five fixed indemnity benefits unless the carrier satisfies the superintendent that the plan that includes the additional fixed indemnity benefits will not be ambiguous, deceptive, or misleading, and is otherwise fair to a prospective insured.

C. **Basis of compensation.** Other fixed indemnity coverage shall only provide benefits on a fixed indemnity basis.

**D. Other fixed indemnity benefit limitations.** The other fixed indemnity benefits shall be limited to outpatient services, physician office visits not related to a hospitalization, ambulance and other transportation services, behavioral health services, laboratory and imaging services, in-home care, durable medical equipment, therapy services, and treatment-related lost wages and pet and daycare services. Fixed indemnity benefits shall not cover hospitalizations or services covered by the hospital indemnity plan for which the other fixed indemnity plan is a rider. Fixed indemnity plans may pay benefits arising from a prescription drug or wellness claim only if the benefits are not coordinated with other coverage, are supplemental, and do not pay directly for medical claims.  
[13.10.34.12 NMAC - N, 10/01/2020]

**13.10.34.13 SPECIFIED DISEASE OR CRITICAL ILLNESS COVERAGE:**

**A. Application.** This rule applies to any plan that provides benefits for the diagnosis and treatment of a specifically named disease or diseases that are life threatening in nature and could cause a person to incur substantial financial out of pocket expenses. All critical illness plans are subject to specified disease regulations.

**B. General rules for coverage.**

- (1) Plans covering a single specified disease or combination of specified diseases shall not be sold or offered for sale other than as specified disease coverage.
- (2) A specified disease plan that conditions payment upon a pathological diagnosis shall also provide that if the pathological diagnosis is not medically appropriate, a clinical diagnosis will be accepted.
- (3) A specified disease plan that does not pay a lump sum upon diagnosis shall provide benefits for the specified disease, and for any other disease or condition

directly caused or aggravated by the specified disease. Coverage shall also apply to all forms of the disease.

- (4) An individual specified disease plan shall be guaranteed renewable.
- (5) A specified disease plan shall not contain a waiting or probationary period longer than 30 days.
- (6) A specified disease plan shall not be sold to a person covered by any Title XIX program (Medicaid, Centennial Care or any similar name). An individual specified disease plan shall contain a statement above the signature line of an individual applicant or enrollee attesting that the person seeking to be covered for a specified disease is not covered by Medicaid. The statement may not be combined with any other statement for which the carrier may require the applicant or enrollee's signature. For group plans, the carrier shall provide a notice in any enrollment materials of the above prohibition of sale of specified disease products to persons covered by Title XIX programs.
- (7) Payments under a specified disease plan may be conditioned upon a covered person receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment. A carrier shall not condition payments on prior approval of benefits or use of specified providers. For purposes of this regulation only, medically necessary care shall be defined as health care services as determined by a provider to be appropriate or necessary according to any applicable generally accepted principles and practices of good medical care.
- (8) After the effective date of the coverage (or applicable waiting period, if any) benefits that are paid on a per event basis shall begin with the first day of care or confinement if the care or confinement is for a covered disease or illness even though the diagnosis is made at some later date.
- (9) With respect to payment of benefits, a

specified disease plan shall not use the terms "actual amount" or "usual and customary rate."

(10) Specified disease benefits shall only be paid on a fixed indemnity basis.

**C. Minimum benefits.**

The following minimum benefits standards apply to all specified disease coverages:

(1) Benefits must be provided only on a fixed indemnity basis, at no less than an aggregate amount of \$5,000 per triggering diagnosis. The OSI may approve product filings that allow a lower aggregate amount for certain types of diseases that require minimally invasive treatment or are non-life-threatening. OSI may also approve riders that allow plan designs for more extensive coverage for dependents.

(2) Dollar benefit limits shall be offered for sale only in even increments of \$1,000 unless for dependent extended coverage riders, in which case this extended coverage may be offered for sale only in even increments of \$500.

(3) Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, the same dollar amounts shall be payable regardless of the particular subtype of the disease.

**D. Exclusions.** The definition of disease or sickness may be modified to exclude sickness or disease for which benefits are provided under a workers' compensation or employers' liability or other similar law.

**E. Reductions in benefits.** A specified disease plan shall not eliminate or reduce benefits based on the occurrence of specified events or attaining a certain age.

**F. Overinsurance.** No carrier shall sell a covered person more than four individual specified disease plans, and no two plans shall provide benefits for the same disease.  
[13.10.34.13 NMAC - N, 10/01/2020]

**13.10.34.14 HOSPICE CARE COVERAGE.**

**A. Application.** This



rule applies to any accident only or hospital indemnity plan that provides, alone or in conjunction with other coverage, a hospice benefit that applies to care received in a facility or through an in-home program, licensed, certified or registered in accordance with state law that provides a formal program of care that is:

- (1) for terminally ill patients whose life expectancy is less than six months;
- (2) provided on an inpatient or outpatient basis; and
- (3) directed by a physician.

**B. Benefits trigger.** Hospice benefits shall be payable when the attending physician of the covered person provides a written statement that the covered person has a life expectancy of six months or less.

**C. Hospice benefit.** A hospice care benefit shall pay a minimum of \$100 per day or a lump sum of no less than \$1,000.

[13.10.34.14 NMAC - N, 10/01/2020]

**13.10.34.15 FORM AND RATE FILING AND APPROVAL REQUIRED:**

**A. Prior approval of forms required.** A carrier shall not issue, deliver or use a form associated with an applicable excepted benefit plan, unless and until such form has been filed with and approved by the superintendent.

**B. Prior approval of rates required.** A carrier shall not use rates or modified rates for an excepted benefit plan unless and until such rates are filed with and approved by the superintendent with the exception of rates for an excepted benefit plan issued to an out-of-state group policyholder. A carrier shall not issue an out-of-state, group excepted benefits plan to New Mexico residents unless it complies with Subsections D and G of this section.

**C. Rate filing requirements.** The superintendent shall post on its website requirements for filing actuarial memorandums and rates for rate filing requests.

**D. Minimum loss ratios for group excepted benefits plans.** A group product subject to this rules shall be subject to the following actual minimum loss ratios, adjusted for low or high average premium forms:

(1) **Definitions of renewal clause.** The following definitions shall be applied to the table:

Type of Coverage:	OR	CR	GR	NC
Medical Expense	65%	60%	60%	55%
Loss of Income and Other	65%	60%	55%	50%

(a) **OR- Optionally Renewable:** renewal is at the option of the insurance company;

(b) **CR- Conditionally Renewable:** renewal can be declined by class;

by geographic area or for stated reasons other than deterioration of health;

(c) **GR- Guaranteed Renewable:** renewal cannot be declined by the insurance

company for any reason, but the insurance company can revise rates on a class basis;

(d) **NC- Non-Cancelable:** renewal cannot be declined nor can rates be revised by the

insurance company.

(2) **Low average premium forms.** For a plan form, including riders and endorsements, under which the actual average annual premium per certificate is low (as defined below), the appropriate ratio from the table above should be adjusted downward by the following formula:

$$RN = R \times \frac{(I \times 500) + X}{(I \times 750)}$$

where: R is the table ratio

RN is the resulting guideline ratio I is the consumer price index factor

X is the average annual premium, up to a maximum of I x .250.

The factor I is determined as follows:

$$I = \frac{CPI-U, \text{ Year } (N-1)}{(1982)} = \frac{CPI-U, \text{ Year } (N-1)}{97.9} CPI-U,$$

where:

(a) (N-1) is the calendar year immediately preceding the calendar year (N) in which the rate filing is submitted in the state;

(b) CPI-U is the consumer price index for all urban consumers, for all items, and for all regions of the U.S. combined, as determined by the U.S. Department of Labor, Bureau of Labor Statistics based on the 1982=100 basis;

(c) the CPI-U for any year (N-1) is taken as the value of September. For 1982, this value was 97.9;

- (d) hence, for rate filings submitted during calendar year 1983, the value of I is 1.00.
- (e) Low Average Annual Premium is defined as average annual premium less than or equal to I x .250.
- (f) High Average Annual Premium is defined as average annual premium more than or equal to I x 1500.

(3) **High average premium forms.** For a plan form, including riders and endorsements, under which the actual average annual premium per certificate is high (as defined above), the appropriate ratio from the table above should be adjusted upward by the following formula:

$$RN = R \times \frac{(I \times 4000) + X}{(I \times 5500)}$$

- where: R is the table ratio
- RN is the resulting guideline ratio
- I is the consumer price index factor (as defined in Paragraph (2) above)
- X is the average annual premium, not less than I x 1500.
- In no event, however, shall RN exceed the lesser of:
  - (a) R + 5 percentage points, or
  - (b) 68%.

(4) **Determination of average premium.** A carrier shall determine the average annual premium per form based on distribution of business by all significant criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all certificates (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

**E. Individual plan minimum loss ratio.** An individual plan subject to these rules shall be subject to the following actual minimum loss ratios, adjusted for low or high average premium forms:

Type of Coverage:	OR	CR	GR	NC
Medical Expense	60%	55%	55%	50%
Loss of Income and Other	60%	55%	50%	45%

- (1) Definitions of renewal clause. The following definitions shall be applied to the table:
  - (a) **OR- Optionally Renewable:** renewal is at the option of the insurance company;
  - (b) **CR- Conditionally Renewable:** renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health;
  - (c) **GR- Guaranteed Renewable:** renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis;
  - (d) **NC- Non-Cancelable:** renewal cannot be declined nor can rates be revised by the insurance company.

(2) **Low average premium forms.** For a plan form, including riders and endorsements, under which the actual average annual premium per certificate is low (as defined below), the appropriate ratio for the table above should be adjusted downward by the following formula:

$$RN = R \times \frac{(I \times 500) + X}{(I \times 750)}$$

- where: R is the table ratio
- RN is the resulting guideline ratio
- I is the consumer price index factor
- X is the average annual premium, up to a maximum of I x .250.

The factor I is determined as follows:

$$I = \frac{\text{CPI-U, Year (N-1)}}{(1982)} = \frac{\text{CPI-U, Year (N-1)}}{97.9} \text{ CPI-U,}$$

where:

- (a) (N-1) is the calendar year immediately preceding the calendar year (N) in which the rate filing is submitted in the state;
- (b) CPI-U is the consumer price index for all urban consumers, for all items, and for all regions of the U.S. combined, as determined by the U.S. Department of Labor, Bureau of Labor Statistics, based on the 1982=100 basis;
- (c) the CPI-U for any year (N-1) is taken as the value of September. For 1982, this value was 97.9;
- (d) hence, for rate filings submitted during calendar year 1983, the value of I is 1.00.

(3) **High average premium forms.** For a plan form, including riders and endorsements, under which the actual average annual premium per certificate is high (as defined above), the appropriate ratio from the table above should be adjusted upward by the following formula:

$$RN = R \times (I \times 4000) + X (I \times 5500)$$

where: R is the table ratio

RN is the resulting guideline ratio

I is the consumer price index factor (as defined in Paragraph (2) above)

X is the average annual premium, not less than I x 1500.

In no event, however, shall RN exceed the lesser of:

- (α) R + 5 percentage points, or
- (β) 63%.

(4) **Determination of average premium.** A carrier shall determine the annual premium per form based on an anticipated distribution of business by all significant criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all certificates (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation). The value of X should be determined on the basis of rates being filed. Thus, where this adjustment is applicable to a rate revision under Paragraph G, rather than to a new form, X should be determined on the basis of anticipated average size premium immediately after the revised rates have fully taken effect.

**F. Rate revisions.** The following requirements shall apply to rate revision requests:

(1) With respect to filing rate revisions for a previously approved form, or a group of previously approved forms combined for experience, benefits shall be deemed reasonable in relation to premiums provided the revised rates meet the most current

standards applicable to rate filings, and

(2) Carriers are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid non-compliance with this rule.

**G. Annual Rate Certification Filing Procedures.**

Carriers not filing new or updated premium rates in any given plan year shall file an actuarial memorandum demonstrating that minimum loss ratios have been met for all products.

(1) **General requirement.** Carriers shall meet the minimum loss ratio established, and in the manner calculated, under this Section of the rule.

(2) **Aggregation.** Loss ratios shall be calculated on a consolidated level across policies with the same product type and benefit design.

(3) **Measurement period.** Compliance with the minimum loss ratio shall be measured over all years of issue combined and for each calendar year of experience utilized in the rate determination process (but never less than the last three years). A filing for a new pool will not be required until three years of experience has been

accumulated for the pool. Separate filings shall be made for separate rating pools.

(4) **Frequency.** Loss ratios shall be calculated annually by carriers that issue excepted benefits products specified in this rule, beginning in 2021.

(5) **Timeline.** The evidence of compliance with the minimum loss ratio requirements shall be filed with the superintendent on the anniversary date when the product or the product's most recent /rate filing was approved.

(6) **Methodology.** Actual loss ratios shall be calculated using company claim data including an estimate for claims incurred but not reported. The claims will be reported for all years of issue combined and for each calendar year of experience utilized in the rate determination process (but never less than the last three years after the third year of experience is available). The actual accumulated loss ratio over the measurement period (A) will be compared to original pricing accumulated loss ratios over the measurement period (E) as a method of justifying the minimum loss ratio is being met or showing the need for remedial action if (A)/(E) is below the

threshold specified in Paragraph (8) of this subsection.

**(7) Waiver.**

For noncredible blocks of business on a nationwide basis, the company may request a waiver of the requirement. The request shall be made annually and must be accompanied by a letter indicating the nature of the filing, the type of product, and the reason for the request.

**(8)**

**Compliance with minimum loss ratios.** Each carrier shall submit to the superintendent an exhibit showing the calculation of the applicable loss ratios and:

**(a)**

a statement signed by a qualified actuary that the minimum loss ratio requirements have been met, or

**(b)**

a rate filing to justify the rates, revise rates, modify benefits through a benefit endorsement or to return excess premium, if the actual accumulated loss ratio divided by the expected accumulated loss ratio (A/E) over the measurement period is below eighty-five percent.

**(9)** The

superintendent may require a plan to return excess premiums or increase benefits proportionately if the ratio of the actual accumulated experience to the expected accumulated experience (A/E) is below eighty percent;

**(10)** A carrier

shall not return excess premiums per the above guidelines, until the carrier files a refund plan and calculation with, and obtains approval of the plan by, the superintendent.

**H. Disapproval of forms and rates.**

The superintendent shall disapprove a form:

**(1)** if

the benefit provided therein is unreasonable in relation to the premium charged;

**(2)**

that misrepresents the benefits, advantages, conditions or terms of any plan or that unfairly characterizes the plan as more favorable to the covered person than the actual

terms of the plan, such as naming coverage for specific diseases whose primary forms of treatment are then listed as exclusions;

**(3)** that uses any false or misleading statements;

**(4)** that uses any name or title of any plan or class of plans misrepresenting the true nature thereof, including misrepresenting the plan as major medical coverage; or

**(5)** that is contrary to law, discriminatory, deceptive, unfair, impractical, unnecessary or unreasonable. [13.10.34.15 NMAC - N, 10/01/2020]

**13.10.34.16 REQUIRED DISCLOSURES AND NOTICES:**

**A. General notice requirement.**

An application for an individual plan or plan sold through an association or group described in Paragraphs (2) or (4) of Subsection A of 59A-23-3 NMSA 1978 shall contain in bold, 14-point type, directly above the applicant signature line the following notice:

NOTICE TO BUYER: PLEASE REVIEW THIS PLAN CAREFULLY. IT ONLY PROVIDES LIMITED BENEFITS, AND IT DOES NOT ON ITS OWN OR IN COMBINATION WITH OTHER LIMITED BENEFITS POLICIES CONSTITUTE MAJOR MEDICAL INSURANCE COVERAGE. BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES.

TO LEARN IF YOU ARE ELIGIBLE FOR A MAJOR MEDICAL PLAN, PLEASE VISIT [WWW.BEWELLM.COM] OR CALL [1-833-862-3935]. PREMIUM DISCOUNTS, FINANCIAL ASSISTANCE, OR OTHER MAJOR MEDICAL COVERAGE OPTIONS MAY BE AVAILABLE.

**B. Renewal provision.**

A plan shall include a renewal, continuation or nonrenewal provision.

The language or specification of the provision shall be consistent with the type of plan to be issued. The provision shall be appropriately captioned, shall appear on the first page of the plan, and shall clearly state the duration of coverage and renewal terms.

**C. Riders.** A rider, endorsement, or supplement added to a plan after its effective date that reduces or eliminates benefits or coverage shall not be effective unless signed by the covered person. Signature may include electronic signature or voice signature, however this signature must be recorded by the carrier and time stamped. This signature requirement does not apply to group health insurance certificates. A signature shall not be required if the rider, endorsement or supplement reflects a change to the plan that is required by law.

**D. Additional premium for riders, endorsements or supplement.** If an additional premium is charged for benefits specified in a rider, endorsement or supplement, the plan or certificate shall specify the premium.

**E. Preexisting conditions.** If a plan includes any preexisting condition exclusion or limitation, the plan or certificate shall include a separate section labeled "Preexisting Conditions, Exclusions and Limitations."

**F. Right of return.** A plan shall include a prominent notice, printed on or attached to the first page of the plan, stating that the covered person has the right to return the plan, and cancel any associated group membership, within 30 days of its delivery, and to have the premium and membership fees refunded in full if the covered person is not satisfied for any reason.

**G. Age factors.** If age is a factor that reduces aggregate benefits, that factor shall be prominently set forth in the outline of coverage.

**H. Conversion privilege.** If a plan includes a conversion privilege, the provision shall be captioned, "Conversion

Privilege.” The provision shall specify who is eligible for conversion and the circumstances that govern conversion, or may state that the conversion coverage will be as provided in an approved plan form used by the carrier for that purpose.

**I. Medicare supplement notice.**

(1) The outline of coverage delivered with a plan subject to this rule shall contain the following notice in bold 14-point type:

THIS IS NOT A  
MEDICARE SUPPLEMENT PLAN.  
IF YOU ARE ELIGIBLE  
FOR MEDICARE, ASK FOR  
INFORMATION ABOUT  
MEDICARE SUPPLEMENT  
POLICIES.

(2) A carrier shall deliver to persons eligible for Medicare any notice required under 13.10.25 NMAC.

**J. Outline of coverage requirements.** Each subject plan and certificate shall include the outline of coverage that provides a basic overview of the plan’s purpose, benefits, coverage minimums and maximums.

(1) The outline of coverage shall include the following notice, printed in bold 14-point type:

READ YOUR  
PLAN CAREFULLY – THIS  
OUTLINE OF COVERAGE  
PROVIDES A VERY BRIEF  
DESCRIPTION OF THE  
IMPORTANT FEATURES OF  
YOUR COVERAGE. THIS IS NOT  
THE INSURANCE CONTRACT  
AND ONLY THE ACTUAL PLAN  
PROVISIONS WILL DETERMINE  
THE TERMS OF COVERAGE.  
THE PLAN ITSELF SETS FORTH  
IN DETAIL THE RIGHTS AND  
OBLIGATIONS OF BOTH YOU  
AND YOUR INSURANCE  
COMPANY. IT IS, THEREFORE,  
IMPORTANT THAT YOU READ  
YOUR PLAN CAREFULLY!

(2) The outline

of coverage shall provide contact information for the OSI consumer assistance bureau.

**K. Insurance cards.**

(1) **Insurance card requirements.** If a carrier provides an insurance card at the time of a plan’s issuance, the card shall include the phone number and website of the insurance company. The carrier shall receive and process questions concerning benefits or claims at the number specified on the card. The card shall also include contact information for the OSI consumer assistance bureau.

(2) **Notice requirements.** An insurance card issued for an excepted benefits plan shall state in bold 12-point type, “This is a limited benefit plan. This is not major medical health insurance coverage.”

(3) **Provider network prohibition.** No insurance card for an excepted benefits plan shall refer to a provider network.

**L. Delivery of plan documents.** A producer or carrier shall not bind coverage for any subject excepted benefits plan without delivering all plan documents to a prospective insured and allowing the prospective insured 10 calendar days to review those materials. Nothing in this subsection precludes a carrier from making coverage retroactive to the date that the plan documents were delivered to the prospective insured. The carrier shall maintain for five years proof of compliance with this requirement for each product sale. [13.10.34.16 NMAC - N, 10/01/2020]

**13.10.34.17 REQUIREMENTS FOR REPLACEMENT OF INDIVIDUAL EXCEPTED BENEFITS PLAN COVERAGE**

**A. Required questions.** An application for an individual plan or a plan sold through an association or group described in Paragraphs (2) or (4) of Subsection A of 59A-23-3 NMSA 1978 shall ask whether the insurance requested will replace any other excepted benefits plan subject to this rule.

**B. Notice**

**requirement.** Upon determining that a sale will involve replacement of an excepted benefits plan, a carrier, other than a direct response carrier, or its agent, shall furnish the applicant, prior to issuance or delivery of the plan, the notice described in Paragraph C below. A direct response carrier shall deliver to the applicant, upon issuance of the plan, the notice described in Paragraph D below. No notice is required for the solicitation of accident only or single premium nonrenewal policies. The carrier shall retain proof of notice.

**C. Non-direct response carrier notice:**

NOTICE TO APPLICANT  
REGARDING REPLACEMENT  
OF LIMITED BENEFIT HEALTH  
INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing insurance and replace it with a plan to be issued by [insert company name] Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new plan.

(1) Health conditions that you may presently have, (preexisting conditions) may not be immediately or fully covered under the new plan. This could result in denial or delay of a claim for benefits under the new plan, whereas a similar claim might have been payable under your present plan.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present plan. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) If, after due consideration, you still wish to terminate your present plan and replace it with new coverage, be certain to truthfully and completely

answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your plan had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

**D. Direct response carrier notice:**

NOTICE TO APPLICANT  
REGARDING REPLACEMENT  
OF LIMITED BENEFIT HEALTH  
INSURANCE

According to [your application] [information you have furnished] you intend to lapse or otherwise terminate existing insurance and replace it with the plan delivered herewith and issued by [insert company name] Insurance Company. Your new plan provides 30 days within which you may decide without cost whether you desire to keep the plan. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new plan.

(1) Health conditions that you may presently have, (preexisting conditions) may not be immediately or fully covered under the new plan. This could result in denial or delay of a claim for benefits under the new plan, whereas a similar claim might have been payable under your present plan.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present plan. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) [To be included only if the application is attached to the plan]. If, after due consideration, you still wish to terminate your present plan and replace it with new coverage, read the copy of the application attached to your new plan and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [insert company name and address] within ten (10) days if any information is not correct and complete, or if any past medical history has been left out of the application.

[COMPANY NAME]  
[13.10.34.17 NMAC - N, 10/01/2020]

**13.10.34.18 COORDINATION OF BENEFITS, BUNDLING AND VARIABILITY:**

**A. Noncoordination of benefits.** Accident only, specified disease and critical illness, hospital indemnity and other fixed indemnity coverages shall not be coordinated with other benefits. These coverages shall:

(1) be provided under a separate plan, certificate, or contract of insurance;

(2) have no coordination between the benefits offered by the plan and exclusions under a health plan offered by the same plan sponsor; and

(3) pay benefits regardless of any benefits provided under another health plan, excepting Champus/TRICARE supplement coverage.

**B. No bundling.** No carrier or affiliated producer shall market or sell a bundled combination

of accident only, specified disease or, hospital indemnity plans. No one plan sold shall contain coverage for hospital indemnity, specified disease, and accident only benefits or any combination thereof. Fixed indemnity benefits shall have the limitations stated in Section 12 of this rule.

Additional memberships or discount services that purport to provide other health care benefits shall not be sold or offered in combination with plans governed by this rule. The provisions of the subsection shall not apply to a plan sold through a group identified in Paragraphs (1) or (3) of Subsection A of 59A-23-3 NMSA 1978.

**C. Major medical coverage requirement.** Accident only, hospital indemnity and specified disease coverage, excluding blanket coverage compliant with Section 59A-23-2 NMSA 1978, shall only be issued to persons who acknowledge that such coverages are not major medical or comprehensive health insurance as defined in Paragraph (1) of Subsection M of 13.10.29.7 NMAC. For purposes of this requirement, short-term, limited duration insurance shall not be considered major medical coverage.

(1) An application for an excepted benefits plan subject to this rule shall include an attestation by the applicant affirming that the applicant understands that the individual is not purchasing major medical insurance at the time of application. The attestation shall be a written attestation that must be signed by the applicant before coverage becomes effective. The carrier may retroactively apply coverage to the date of application.

(2) A sale of an excepted benefits plan subject to this rule is unauthorized if an applicant fails to sign or deliver the attestation described in this rule.

(3) A carrier shall retain a copy of the attestation for at least five years.

(4) If a carrier or the carrier through its agent learns that a covered person's major medical coverage has lapsed or was cancelled, the carrier shall send the person the

following notice:

YOUR MAJOR MEDICAL COVERAGE MAY HAVE RECENTLY LAPSED. YOUR POLICY WITH [IDENTIFY COMPANY] IS NOT MAJOR MEDICAL HEALTH INSURANCE. THE BENEFITS PROVIDED BY [IDENTIFY COMPANY] DO NOT COVER ALL MEDICAL EXPENSES.

TO LEARN IF YOU ARE ELIGIBLE FOR A MAJOR MEDICAL PLAN, PLEASE VISIT WWW.BEWELLM.COM. OR CALL 1-833-862-3935. PREMIUM DISCOUNTS, FINANCIAL ASSISTANCE, MEDICAID OR OTHER MAJOR MEDICAL COVERAGE OPTIONS MAY BE AVAILABLE.

**D. VARIABILITY.**

An excepted benefits plan subject to this rule shall not include variable options for plan scope or benefit levels unless each possible combination of benefits under the plan form meets the MLR requirements specified in this rule. The superintendent reserves the right to reject a plan that has no meaningful difference from another plan offered by the same carrier.

**E. MATRIX FORMS.**

The coverages governed by this rule are subject to the prohibitions on matrix forms set out in 13.6.2 NMAC. [13.10.34.18 NMAC - N, 10/01/2020]

**13.10.34.19 PENALTIES:**

The sale of any plan that does not comply with this rule is unlawful. In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the Insurance Code, a penalty for any material violation of this rule may be imposed against a health care insurance carrier by the superintendent in accordance with Sections 59A-1-18 and 59A-46-25 NMSA 1978. The actions of any producer or third party administrator relating to the sale of a plan subject

to this rule, or a claim under any such plan, shall be deemed the actions of the plan issuer.

[13.10.34.19 NMAC - N, 10/01/2020]

**13.10.34.20 SEVERABILITY:**

If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected.

[13.10.34.20 NMAC - N, 10/01/2020]

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**This is an amendment to 13.2.2 NMAC, Sections 1, 2, 6, 7, 9 through 13, 15 through 18, & 20 through 23 effective 10/1/2020.**

**13.2.2.1 ISSUING**

**AGENCY:** New Mexico Office of Superintendent of Insurance [~~P.O. Box 1689, Santa Fe, NM 87504-1689~~] (“OSI”).

[13.18.3.1 NMAC – Rp, 13.18.3.1 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.2 SCOPE:**

This rule applies to all insurers and affiliates subject to the [~~Insurance Holding Company Law,~~] Chapter 59A, Article 37, NMSA 1978 (“the Insurance Holding Company Law”).

[13.2.2.2 NMAC – Rp, 13.2.2.2 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.6 OBJECTIVE:**

The purpose of this rule is to specify the contents of the statements required to be filed with the superintendent pursuant to [~~Chapter 59A, Article 37–NMSA 1978 (“the Insurance Holding Company Law”)] the Insurance Holding Company Law.~~

[13.2.2.6 NMAC – Rp, 13.2.2.6 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.7 DEFINITIONS:**

The following terms have the meaning given, unless the context otherwise requires. Other terms used in this rule have the meanings given

in the Insurance Holding Company Law or in Chapter 59A, NMSA 1978 (“the Insurance Code.”).

**A. “Executive officer”**

means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by such officers under whatever title.

**B. “Group-wide**

**supervisor”** means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the superintendent under Section 13.2.2.23 NMAC to have sufficient significant contacts with the internationally active insurance group.

**C. “Internationally**

**active insurance group”** means an insurance holding company system that 1) includes an insurer registered under Section 59A-37-11 NMSA 1978; and 2) meets the following criteria:

(1) premiums written in at least three countries;

(2) the percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system’s total gross written premiums; and

(3) based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50,000,000,000 or the total gross written premiums of the insurance holding company system are at least \$10,000,000,000.

**[B] D. “NAIC”** means the national association of insurance commissioners;

**[E] E. “OSI”** means the office of superintendent of insurance;

**[D] E. “SEC”** means the United States securities and exchange commission.

**[E] G. “Superintendent”**

means the superintendent of insurance, the office of superintendent of insurance or employees of the office of superintendent of insurance acting within the scope

of the superintendent's official duties and with the superintendent's authorization; and

~~[F:]~~ **H. "ultimate controlling person"** means a person that is not controlled by any other person.

[13.2.2.7 NMAC – Rp, 13.2.2.7 NMAC, 7/24/2018; A, 10/01/2020]

### 13.2.2.9 ADEQUACY OF

**SURPLUS:** ~~[The factors set forth in Section 59A-37-21 NMSA 1978 are not intended to be an exhaustive list.]~~ In determining the adequacy and reasonableness of an insurer's surplus, no single factor is necessarily controlling. The superintendent ~~[instead]~~ will consider the net effect of all ~~[of these]~~ factors ~~[plus]~~ set forth in Section 59A-37-21 NMSA 1978 and other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the superintendent will consider the extent to which each of these factors varies from company to company. In determining the quality and liquidity of investments in subsidiaries, the superintendent will consider the individual subsidiary and may discount or disallow its valuation to the extent that individual investments so warrant.

[13.2.2.9 NMAC – Rp, 13.2.2.9 NMAC, 7/24/2018; A, 10/01/2020]

### 13.2.2.10 GENERAL REQUIREMENTS FOR PREPARING STATEMENTS:

**A. Format:** Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by the Insurance Holding Company Law. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the item numbers and captions of all items required, but the text of the items may be omitted, provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if

any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

#### **B. Number of copies:**

**(1)** The applicant ~~[must]~~ shall file two complete copies of each form, including exhibits and all other papers and documents filed as a part of the statement.

**(2)** A copy of Form C, included at 13.2.2.14 NMAC, shall be filed in each state in which an insurer is authorized to do business, if the insurance commissioner of that state has notified the insurer of its request in writing, in which case the insurer has 20 days from receipt of the notice to file such form.

#### **C. Filing methods:**

Forms shall be filed with the examinations bureau at OSI by personal delivery, ~~[US]~~ mail, ~~[Federal Express or UPS]~~ commercial courier, or as instructed on the OSI website.

#### **D. Signatures:**

At least one of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

#### **E. Electronic**

**preparation:** Forms shall be prepared ~~[electronically]~~ electronically.

#### **F. Readability:**

Forms shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

#### **G. Language and**

**currency:** Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.

#### **H. Extension of time**

**to file:** If it is impractical to furnish any required information, document or report at the time it is required to be filed, a separate document may be filed with the superintendent:

**(1)** identifying the information, document or report in question;

**(2)** stating why filing it at the time required is impractical; and

**(3)** requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the superintendent enters an order denying the request within 60 days after receiving it.

#### **I. Additional**

**information:** In addition to the information expressly required to be included in each statement, the superintendent may request such further material information ~~[if any]~~ as may be necessary to make the information contained in the statement not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be marked so as to indicate clearly the subject matters to which they refer.

#### **J. Changes to**

**statements:** Changes to statements shall include on the top of the cover page the phrase: "Change No. [insert number] to Form [insert letter]" and shall indicate the date of the change and not the date of the original filing.

#### **K. Hearing on a**

**Consolidated Basis:** If an applicant requests a hearing on a consolidated basis under Subsection D of Section 59A-37-6 NMSA 1978, in addition to filing the Form A with the superintendent, the applicant shall file a copy of Form A with the NAIC in electronic form.

[13.2.2.10 NMAC – Rp, 13.2.2.10 NMAC, 7/24/2018; A, 10/01/2020]

### 13.2.2.11 OPTIONS PERMITTED IN FORMS:

**A. Incorporation by reference:**



(1) Information required by any item of Form A, Form B, Form D, Form E, or Form F may be incorporated by reference in answer or partial answer to any other item.

(2) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F, provided the document is filed as an exhibit to the statement.

(3) Excerpts of documents may be filed as exhibits if the documents are extensive.

(4) Documents currently on file with the superintendent which were filed within the past three years need not be attached as exhibits.

(5) References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item.

(6) Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

**B. Summaries:**

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the superintendent which was filed within three years and may be qualified in its entirety by such reference.

**C. Omissions:**

In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties, the dates of execution, or other details, a copy of only one of the documents need be filed, together with a schedule

identifying the omitted documents and setting forth the material details in which the omitted documents differ from the filed documents.  
[13.2.2.11 NMAC – Rp, 13.2.2.11 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.12 FORM A:**

**A. When required:**

A person required by Section 59A-37-4 NMSA 1978 to file a statement shall furnish the required information on Form A in accordance with the requirements of this rule. Such a person shall also furnish the required information on Form E, hereby made a part of this rule and described in 13.2.2.16 NMAC.

**B. Amendments:**

The applicant shall promptly advise the superintendent of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the superintendent’s disposition of the application.

**C. Information to be furnished in Form A:**

**(1) Caption:**

Place the following caption at the top of the cover page:

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER FILED WITH THE NEW MEXICO SUPERINTENDENT OF INSURANCE

**(2) Domestic**

**insurers:** Provide the name and state of domicile of the domestic insurer being acquired.

**(a)**

if the person being acquired is deemed to be a “domestic insurer” solely because of the provisions of Subsection A of Section 59A-37-4 NMSA 1978, the name of the domestic insurer should be indicated as follows: “ABC Insurance Company, a subsidiary of XYZ Holding Company.”

**(b)**

where a Subsection A of Section 59A-37-4 NMSA 1978 insurer is being acquired, references to “the insurer” in this section shall refer to both the domestic subsidiary insurer and the person being acquired.

**(3) Applicant:**

State the name of the acquiring person.

**(4) Date:**

Provide the filing date of the statement.

**(5)**

**Designation of agent:** State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

**(6) Method**

**of acquisition:** Provide the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

**(7) Identity**

**and background of the applicant:**

**(a)**

State the name and address of the applicant seeking to acquire control over the insurer.

**(b)**

If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the person and any of its predecessors shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant’s subsidiaries.

**(c)**

Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set

forth the title of the court, the nature of the proceedings and the date when commenced.

**(8) Identity and background of individuals associated with the applicant:** On the biographical [affidavit] affidavit, include a third party background check and state the following with respect to 1) the applicant if an individual or 2) all persons who are directors, executive officers or owners of ten percent or more of the voting securities of the applicant, if the applicant is not an individual:

**(a)** name and business address;  
**(b)** present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;

**(c)** material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith; and

**(d)** whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

**(9) Nature, source and amount of consideration:**

**(a)** Describe the nature, source

and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties to it, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating to the transaction.

**(b)** Explain the criteria used in determining the nature and amount of such consideration.

**(c)** If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant [must] shall specifically request that the lender's identity be kept confidential.

**(10) Future plans of insurer:** Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

**(11) Voting securities to be acquired:** State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

**(12) Ownership of voting securities:** State the amount of each class of any voting security of the insurer that is beneficially owned or concerning which there is a right to acquire

beneficial ownership by the applicant, its affiliates of any persons listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC.

**(13) Contracts, arrangements, or understandings with respect to voting securities of the insurer:** Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

**(14) Recent purchases of voting securities:** Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any shares so purchased are hypothecated.

**(15) Recent recommendations to purchase:** Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Paragraph (8) of Subsection C of 13.2.2.12 NMAC during the 12 calendar months preceding the filing of this statement.

**(16) Agreements with broker-dealers:** Describe the terms of any agreement, contract or understanding made with

any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard to such solicitation.

**(17) Financial statements and exhibits:**

**(a)**  
List the financial statements, exhibits and three-year financial projections of the insurer or insurers that are attached to this statement as appendices.

**(b)**  
The financial statements shall include the annual financial statements of the persons identified in Subparagraph (c) of Paragraph (7) of Subsection C of 13.2.2.12 NMAC for the preceding five fiscal years (or for such lesser period as the applicant and its affiliates and any of their predecessors shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if the information is available. The statements may be prepared on either an individual basis, or, unless the superintendent otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business. The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the annual statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

**(c)**  
File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or 13.2.2.10 NMAC.

**(18) Agreement requirements for enterprise risk management:**

Applicant agrees to provide to the best of its knowledge and belief, the information required by Form F within 15 days after the end of the month in which the [acquisitor] acquisition of control occurs.

**(19) Signature and certification:** The following signature and certification are required at the end of Statement A.

Pursuant to the requirements of Section 59A-37-4 NMSA 1978, [insert name of applicant] has caused this application to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)  
\_\_\_\_\_  
(Name of Applicant)

BY: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

Attest: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)  
The undersigned deposes and says that they have duly executed the attached application dated [insert date], for and on behalf of [insert name of applicant]; that they are the [insert title of deponent] of such company; and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its

contents, and that the facts set forth in the instrument are true to the best of their knowledge, information and belief.

\_\_\_\_\_  
(Signature of deponent)

\_\_\_\_\_  
(Typed name and title of deponent)  
[13.2.2.12 NMAC – Rp, 13.2.2.12 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.13 FORM B:**

**A. When required:**

An insurer required by Section 59A-37-11 NMSA 1978 to file an annual registration statement shall file Form B in accordance with the requirements of this rule.

**B. Filings on behalf of affiliates:** Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers that are required to register under Section 59A-37-11 NMSA 1978.

**C. Additional information permitted:** A registration statement may include information not required by this rule regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state.

**D. When copy of domiciliary registration permitted:** In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report that it is required to file in its state of domicile, provided:

**(1)**  
the statement or report contains substantially similar information required to be furnished on Form B; and

**(2)** the filing insurer is the principal insurance company in the insurance holding company system. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will

substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

**E. Filings by unauthorized insurers:** With the prior approval of the superintendent, an unauthorized insurer may follow any of the procedures that could be done by an authorized insurer under Subsections B, C and D of 13.2.2.13 NMAC.

**F. Consolidated filings and alternative registration:** Any insurer may take advantage of the provisions of Sections 59A-37-16 and 17 NMSA 1978 without obtaining the prior approval of the superintendent. The superintendent, however, reserves the right to require individual filings if the superintendent deems such filings necessary in the interest of clarity, ease of administration or the public good.

**G. Information to be furnished in Form B:**

**(1) Caption:**

Place the following caption at the top of the cover page:

FORM B  
INSURANCE HOLDING  
COMPANY ANNUAL  
REGISTRATION STATEMENT  
FILED WITH THE NEW MEXICO  
OFFICE OF SUPERINTENDENT  
OF INSURANCE

**(2)**

**Registrant:** State the name of the registrant filing the statement.

**(3) Other**

**registrants:** State the name and address of each insurance company on whose behalf the statement is being filed.

**(4) Date:**

Provide the filing date of the statement.

**(5)**

**Designation of agent:** State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

**(6) Identity**

**and control of registrant:** Furnish the exact name of each insurer registering or being registered, the

home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

**(7)**

**Organizational chart:** Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate that is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

**(8) The**

**ultimate controlling person:** Provide the following information about the ultimate controlling person in the insurance holding company system:

**(a)**

name;

**(b)**

home office address;

**(c)**

principal executive office address;

**(d)**

the organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;

**(e)**

the principal business of the person;

**(f)**

the name and address of any person who holds or owns ten percent or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

**(g)**

if court proceedings involving a reorganization or liquidation are pending, indicate the title and

location of the court, the nature of the proceedings and the date when commenced.

**(9)**

**Biographical information:** Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, [his- or-her] the individual's principal occupation and all offices and positions held during the past five years, and any conviction for crimes other than minor traffic violations.

**(10)**

**Transactions and agreements:** Briefly describe the following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the registrant and its affiliates in such a manner as to permit the proper evaluation of the transaction by the superintendent. Include at least the following information with respect to each: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and the relationship of the affiliated parties to the registrant. No information need be disclosed if such information is not material for purposes of Section 59A-37-11 NMSA 1978. Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent or less of the registrant's admitted assets as of the 31st day of December next preceding shall be deemed not material.

**(a)**

loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;

**(b)**

purchases, sales or exchanges of assets;

**(c)**

transactions not in the ordinary course of business;

**(d)**

guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the

registrant’s assets to liability, other than insurance contracts entered into in the ordinary course of the registrant’s business;

(e)

all management agreements, service contracts and all cost-sharing arrangements;

(f)

reinsurance agreements;

(g)

dividends and other distributions to shareholders;

(h)

consolidated tax allocation agreements; and

(i)

any pledge of the registrant’s stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

**(11) Litigation**

**or administrative proceedings:**

Provide a brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(a)

criminal prosecutions or administrative proceedings by any government agency or authority that may be relevant to the trustworthiness of any party to the proceedings; and

(b)

proceedings that may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganization.

**(12)**

**Statement regarding plan or series of transactions:** The insurer shall furnish a statement that transactions entered into since the filing of the prior year’s annual registration statement are not part of a plan

or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

**(13) Financial statements and exhibits:**

(a)

List under this item the financial statements and exhibits to be attached to this statement as appendices.

(b)

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person’s latest fiscal year. If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the superintendent otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

(c)

Other than with respect to the foregoing, such financial statements shall be filed in a standard form and format adopted by the NAIC, unless an alternative form is accepted by the superintendent. Documentation and financial statements filed with the SEC or audited GAAP financial statements shall be deemed to be an appropriate form and format.

(d)

Unless the superintendent otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or

other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of the insurer filed with the insurance department of the insurer’s domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

(e)

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with the standards for review of personal financial statements published in the *Personal Financial Statements Guide* by the American ~~Institute~~ Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant’s Standard Review Report stating that the accountant is not ~~aware~~ aware of any material modifications that should be made to the financial statements in order for the statements to be in ~~conformity~~ conformity with generally accepted accounting practices.

(f)

Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or 13.2.2.10 NMAC.

**(14) Signature**

**and certification:** The following signature and certification are required at the end of Form B.

Pursuant to the requirements of Section 59A-37-12 NMSA 1978, registrant has caused this annual registration statement to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)

BY: \_\_\_\_\_

(Title)

(Name of Applicant)

Attest:

(Signature of Officer)

(Title)

The undersigned deposes and says that they have duly executed the attached annual registration statement dated [insert date], for and on behalf of [insert name of registrant]; that they are the [insert title of deponent] of such company and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its contents, and that the facts set forth in the instrument are true to the best of their knowledge, information and belief.

(Signature of deponent)

(Typed name and title of deponent)

[13.2.2.13 NMAC – Rp, 13.2.2.13 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.15 FORM D:**

**A. When required:**

An insurer required to give notice of a proposed transaction pursuant to Section 59A-37-20 NMSA 1978 shall file Form D in accordance with the requirements of this rule.

**B. Information to be furnished in Form D:**

**(1) Caption:**

Place the following caption at the top of the cover page:

FORM D  
PRIOR NOTICE OF A  
TRANSACTION FILED WITH  
THE NEW MEXICO OFFICE  
OF SUPERINTENDENT OF  
INSURANCE

**(2)**

**Registrant:** State the name of the registrant filing the statement.

**(3) Other**

**registrants:** State the name and address of each insurance company on whose behalf the statement is being filed.

**(4) Date:**

Provide the filing date of the statement.

**(5)**

**Designation of agent:** State the name, title, address and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

**(6) Identity of**

**parties to transaction:** Furnish the following information for each of the parties to the transaction:

**(a)**

name;

**(b)**

home office address;

**(c)**

principal executive office address;

**(d)**

the organizational structure, i.e. corporation, partnership, individual, trust, etc.;

**(e)**

a description of the nature of the parties' business operations;

**(f)**

relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties; and

**(g)**

where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

**(7)**

**Description of the transaction:**

Furnish the following information for each transaction for which notice is being given:

**(a)**

a statement as to whether notice is being given under Paragraphs (1) through (5) of Subsection B of Section 59A-37-20 NMSA 1978;

**(b)**

a statement of the nature of the transaction; and

**(c)**

the proposed effective date of the transaction.

**(8) Sales,**

**purchases, exchanges, loans, extensions of credit, guarantees or investments:**

**(a)**

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

**(b)**

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

**(c)**

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

**(d)**

No notice need be given if the maximum amount that can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than:

**(i)**

in the case of non-life insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; or

(ii) in the case of life insurers, three percent of the insurer’s admitted assets, each as of the 31st day of December next preceding.

**(9) Loans or extensions of credit to a non-affiliate:**

(a) If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer’s surplus.

(b) No notice need be given if the loan or extension of credit is less than:

(i) in the case of non-life insurers, the lesser of three percent of the insurer’s admitted assets or twenty-five percent of surplus as regards policyholders; or

(ii) in the case of life insurers, three percent of the insurer’s admitted assets, each as of the 31st day of December next preceding.

**(10)**

**Reinsurance:**

(a) If the transaction is a reinsurance agreement or modification of a reinsurance agreement as described by Paragraph (3) of Subsection B of Section 59A-37-20 NMSA 1978, or a reinsurance pooling agreement

or modification thereto as described by Paragraph (3) of Subsection B of Section 59A-37-20 NMSA 1978, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer’s affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer’s surplus.

(b) No notice need be given for reinsurance agreements or modifications if the reinsurance premium or a change in the insurer’s liabilities or the projected reinsurance premium or change in the insurer’s liabilities in any of the next three years in connection with the reinsurance agreement or modification is less than five percent of the insurer’s surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

**(11) Management, service agreements, and cost-sharing arrangements:**

(a) For management and service agreements, furnish:

(i) a brief description of the managerial responsibilities or services to be performed; and

(ii) a brief description of the agreement, including a statement of its duration, together with the brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

(b) For cost-sharing arrangements, furnish:

(i) a brief description of the purpose of the agreement;

(ii) a description of the period of time during which the agreement is to be in effect;

(iii) a brief description of each party’s expenses or costs covered by the agreement;

(iv) a brief description of the accounting basis to be used in calculating each party’s costs under the agreement;

(v) a brief statement as to the effect of the transaction upon the insurer’s policyholder surplus;

(vi) a statement regarding the cost allocation methods that [specifies] specifies whether proposed charges are based on “cost or market;” and if market based, the rationale for using market instead of cost, including justification for the company’s determination that amounts are fair and reasonable; and

(vii) a statement regarding compliance with the *NAIC Accounting Practices and Procedural Manual* regarding expense allocation.

**(12) Signature**

**and certification:** The following signature and certification are required at the end of Form D:

Pursuant to the requirements of Section 59A-37-20 NMSA 1978 [insert name of applicant] has caused this application to be duly signed on its behalf in the city of [insert name of city] and state of New Mexico on [insert date].

(SEAL)

\_\_\_\_\_  
(Name of applicant)

BY: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Attest: \_\_\_\_\_

\_\_\_\_\_  
(Signature of officer)

\_\_\_\_\_  
(Title)

The undersigned deposes and says that they have duly executed

the attached application dated [insert date], for and on behalf of [insert name of applicant]; that they are the [insert title of deponent] of such company; and that they are authorized to execute and file this instrument. Deponent further says that they are familiar with the instrument and its contents, and that the facts set forth in the instrument are true to the best of their knowledge, information and belief.

(Signature of deponent)

(Typed name and title of deponent)  
[13.2.2.15 NMAC – Rp, 13.2.2.15 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.16 FORM E:**

**A. When required:**

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Subsection A of Section 59A-37-4 NMSA 1978, that person shall file a pre-acquisition notification using Form E, which was developed pursuant to Paragraph (1) of Subsection C Section 59A-37-29 NMSA 1978.

Additionally, if a non-domiciliary insurer licensed to do business in New Mexico is proposing a merger or acquisition pursuant to Section 59A-37-4 NMSA 1978, that person shall file a pre-acquisition notification using Form E. No pre-[acquitson] acquisition notification form need be filed if the [acquitson] acquisition is beyond the scope of Section 59A-37-4 NMSA 1978 as set forth in Subsection B of Section 59A-37-29 NMSA 1978,

In addition to the information required by Form E, the superintendent may require an expert opinion as to the competitive impact of the proposed acquisition.

**B. Information to be furnished in Form E:**

**(1) Caption:**

Place the following caption at the top of the cover page:

FORM E  
PRE-ACQUISITION  
NOTIFICATION REGARDING  
THE POTENTIAL COMPETITIVE

**IMPACT OF A PROPOSED MERGER OR ACQUISITION BY A NON-DOMICILIARY INSURER DOING BUSINESS IN NEW MEXICO OR BY A DOMESTIC INSURER**

**(2) Applicant:**

State the name of the acquiring or merging person.

**(3) Other person involved in merger or [acquitson] acquisition:** State the name of the other person involved in the merger or [acquitson] acquisition.

**(4) Date:** Provide the filing date of the statement.

**(5) Designation of agent:** State the name, title, address and telephone number of the individual to whom notices and correspondences concerning this statement should be addressed.

**(6) Identity of persons involved:** State the names and addresses of the persons who hereby provide notice of their involvement in a pending [acquitson] acquisition or change in corporate control.

**(7) Identity of persons affiliated with persons involved:** State the names and addresses of the persons affiliated with those listed in Item (6). Describe their affiliations.

**(8) Nature and purpose of proposed merger or acquisition:** State the nature and purpose of the proposed merger or acquisition.

**(9) Nature of business:** State the nature of the business performed by each of the persons identified in Paragraphs (6) and (7) of Subsection B of 13.2.2.16 NMAC.

**(10) Market and market share:**

**(a)** For purposes of this question, “market” means direct written insurance premium in New Mexico for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

**(b)**

For each person identified in Paragraphs (6) and (7) of Subsection B of 13.2.2.16 NMAC, state specifically what market and market share in each relevant insurance market the persons currently enjoy in New Mexico and provide historical market and market share data for the past five years including the source of such data.

**(c)**

Provide a determination as to whether the proposed [acquitson] acquisition or merger, if [consumated] consummated, would violate the [competitive] competitive standards of New Mexico as stated in Section 59A-37-29 NMSA 1978. If the proposed acquisition or merger would violate competitive standards, provide justification [of] that the [acquitson] acquisition or merger would not substantially lessen competition or create a monopoly in New Mexico. [13.2.2.16 NMAC – Rp, 13.2.2.16 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.17 FORM F:**

**A. When required:**

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 59A-37-30 shall furnish the required information on Form F.

**B. Information to be furnished on Form F:**

**(1) Caption:**

Place to following caption at the top of the cover page:

FORM F  
ENTERPRISE RISK REPORT  
**(2)**

**Registrant/applicant:** State the name of the registrant or applicant filing the statement.

**(3) Other registrants/applicants:** State the name and address of each insurance company on whose behalf, or related to which, the statement is being filed.

**(4) Date:** Provide the filing date of the statement.

**(5) Designation of agent:** State the name, title, address and telephone number of the individual to whom notices



and correspondences concerning this statement should be addressed.

**(6) Enterprise**

**risk:** The registrant/applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in Subsection D of Section 59A-37-2 NMSA 1978, provided such information is not disclosed in the *Insurance Holding Company System Annual Registration Statement* filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- (a) any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
- (b) acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
- (c) any changes of shareholders of the insurance holding company system exceeding ten percent or more of voting securities;
- (d) developments in various investigations, regulatory activities or litigation that may have significant bearing or impact on the insurance holding company system;
- (e) business plan of the insurance holding company system and summarized strategies for the next 12 months;
- (f) identification of material concerns of the insurance holding company system raised by a supervisory college, if any, in the last year;
- (g) identification of insurance holding company system capital resources and material distribution patterns;
- (h) identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and

individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

**(i)**

information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

**(j)**

identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The registrant/applicant may attach the ~~[appropriate]~~ appropriate form most recently filed with the SEC, provided the registrant/applicant includes specific references to those areas listed in Paragraph (6) of Subsection B of 13.2.2.17 NMAC for which the form provided responsive information. If the registrant/applicant is not domiciled in the United States, it may attach its most recent audited financial statement filed in its country of ~~[domiciles]~~ domicile, provided the registrant/~~[applicant]~~ applicant includes specific reference to those areas in Paragraph (6) for which the financial statement provides responsive information.

**(7)**

~~[Obligation]~~ **Obligation to report:**

If the registrant/applicant has not disclosed any information pursuant to Paragraph (6) of Subsection B of 13.2.2.17 NMAC, the registrant/applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to ~~[Paragraph]~~ Paragraph (6).

[13.2.2.17 NMAC – Rp, 13.2.2.17 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.18 FORM G:**

**A. When required:**

Subject to Section 59A-37-22 NMSA 1978 ~~[each]~~ a registered insurer shall file Form G to report to the superintendent all dividends and other distributions to shareholders

within 15 business days following the declaration of such dividends or distributions.

**B. Information to be furnished in Form G:**

**(1) Caption:**

Place the following caption at the top of the cover page:

FORM G  
NOTICE OF DECLARATION  
OF DIVIDENDS OR OTHER  
DISTRIBUTIONS TO  
SHAREHOLDERS

**(2) Applicant:**

Provide the name and address of the insurer filing the report.

**(3)**

**Calculations:** Provide a copy of the calculations determining the proposed dividends. The work paper shall include the following information:

**(a)**

the amounts, dates and form of payment of all dividends or distributions (including regular dividends, but excluding distributions of the insurer’s own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

**(b)**

surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

**(c)**

if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

**(d)**

if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

**(e)**

if the insurer is not a life insurer, the dividends paid to stockholders, excluding distributions of the insurer’s own securities in the preceding two calendar years.

[13.2.2.18 NMAC – Rp, 13.2.2.18 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.20 FORM I:**  
**A. When required:**  
 [Each] A domestic insurer required by Section 59A-37-22 NMSA 1978 to give prior notice to the superintendent of the declaration of any extraordinary dividend or any other extraordinary distribution to its shareholders shall file Form I in accordance with the requirements of this rule.

**B. Information to be furnished in Form I:**

**(1) Caption:**  
 Place the following caption at the top of the cover page:

FORM I  
 REQUEST FOR APPROVAL  
 OF EXTRAORDINARY  
 DIVIDENDS OR ANY  
 OTHER EXTRAORDINARY  
 DISTRIBUTION TO  
 SHAREHOLDERS

**(2) Applicant:**  
 Provide the name and address of the insurer filing the request.

**(3) Amount:**  
 State the amount of the proposed dividend.

**(4) Payment date:** Indicate the date established for payment of the dividend.

**(5) Mode of payment:** State whether the dividend is to be paid in cash or other property and, if in property, describe the property, its cost, and its fair market value, and explain the basis for valuation.

**(6) Calculations:** Provide a copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

**(a)**  
 the amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer’s own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

**(b)**  
 Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

**(c)**  
 if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

**(d)** if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

**(e)**  
 if the insurer is not a life insurer, the dividends paid to stockholders, excluding distributions of the insurer’s own securities in the preceding two calendar years.

**(7) Balance sheet:** Provide a balance sheet and statement of income for the period intervening from the last annual statement filed with the superintendent and the end of the month preceding the month in which the request for dividend approval is submitted.

**(8) Effect on surplus:** Provide a brief statement as to the effect of the proposed dividend upon the insurer’s surplus and the reasonableness of surplus in relation to the insurer’s outstanding liabilities and the adequacy of surplus relative to the insurer’s financial needs. [13.2.2.20 NMAC – Rp, 13.2.2.20 NMAC, 7/24/2018; A, 10/01/2020]

**13.2.2.21 SUPERVISORY COLLEGES:**

**A. Participation by superintendent:** With respect to any insurer registered under Section 59A-37-11 NMSA 1978, and in accordance with Subsection C below, the superintendent may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with these rules. The superintendent may, with respect to supervisory colleges:

**(1)** Initiate the establishment of a supervisory college;

**(2)** Clarify the membership and participation of other supervisors in the supervisory college;

**(3)** Clarify the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

**(4)**  
 Coordinate the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing;

**(5)** Establish a crisis management plan; and

**(6)** Take other reasonable actions within the scope of the superintendent’s authority.

**B. Expenses:** A registered insurer subject to this section shall be liable for and shall pay the reasonable expense of the superintendent’s participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purpose of this section, a supervisory college may be covered as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the superintendent may establish regular assessment to the insurer for the payment of these expenses.

**C. Supervisory college:** In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 59A-37-23 NMSA 1978, the superintendent may participate in a supervisory college with other regulators charged with supervision of the insurer of its affiliates, including other state, federal and international regulatory agencies. The superintendent may enter into agreements in accordance with Section 59A-37-23 NMSA 1978 providing the basis for cooperation

between the superintendent and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the superintendent to regulate or supervise the insurer or its affiliates within the superintendent's jurisdiction.  
 [13.2.2.21 NMAC – N, 10/01/2020]

**13.2.2.22 GROUP-WIDE SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE GROUPS:**

**A.** The superintendent may act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the superintendent may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

- (1) Does not have substantial insurance operations in the United States;
- (2) Has substantial insurance operations in the United States, but not in this state; or
- (3) Has substantial insurance operations in the United States and this state, but the superintendent has determined pursuant to the factors set forth in Subsections B and F of this section that the other regulatory official is the appropriate group-wide supervisor. An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the superintendent make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

**B.** In cooperation with other state, federal and international regulatory agencies, the superintendent will identify a single group-wide supervisor for an internationally active insurance group. The superintendent may determine that the superintendent is the appropriate group-wide supervisor for an internationally active insurance group that conducts

substantial insurance operations concentrated in this state. However, the superintendent may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The superintendent shall consider the following factors when making a determination or acknowledgment under this subsection:

- (1) The place of domicile of the insurers within the internationally active insurance group that holds the largest share of the group's written premiums, assets or liabilities;
- (2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
- (3) The location of the executive offices or largest operational offices of the internationally active insurance group;
- (4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the superintendent determines to be:
  - (a) Substantially similar to the system of regulation provided under the laws of this state, or
  - (b) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the superintendent with reasonably reciprocal recognition and cooperation.

(6) However, a regulatory official identified in this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. Acknowledgement of the group-wide supervisor shall be made after consideration of the factors listed in Paragraph (1) through (5) above, and

shall be made in cooperation with and subject to the acknowledgement of other regulatory officials involved with supervision of a member of the internationally active insurance group, and in consultation with the internationally active insurance group.

**C.** Notwithstanding any other provisions of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the superintendent shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of material change in the internationally active insurance group that results in either:

(1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or

(2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, then the superintendent shall make a determination or acknowledgement as to the appropriate group-wide supervisor for such internationally active insurance group pursuant to Subsection B.

**D.** Pursuant to Section 59A-37-23 NMSA 1978, the superintendent is authorized to collect from any insurer registered pursuant to Section 59A-37-11 NMSA 1978, all information necessary to determine whether the superintendent may act as the group-wide supervisor of an internationally active insurance group or if the superintendent may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the superintendent, the superintendent will notify the insurer registered pursuant to Section 59A-37-11 NMSA 1978, and the ultimate controlling person within the internationally active insurance group. The internationally active insurance

group shall have not less than 30 days to provide the superintendent with additional information pertinent to the pending determination. The OSI will publish on its website the identity of internationally active insurance groups that the superintendent has determined are subject to group-wide supervision by the superintendent.

**E.** If the superintendent is the group-wide supervisor for an internationally active insurance group, the superintendent is authorized to engage in any of the following group-wide supervision activities:

**(1)** Assess the enterprise risk within the internationally active insurance group to ensure that:

**(a)** The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and

**(b)** Reasonable and effective mitigation measures are in place;

**(2)** Request from any member of an internationally active insurance group subject to the superintendent's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

**(a)** Governance, risk assessment and management,

**(b)** Capital adequacy, and

**(c)** Material intercompany transactions;

**(3)** Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active

insurance group that are engaged in the business of insurance;

**(4)** Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 59A-37-24 NMSA 1978, through supervisory colleges as provided in this rule or otherwise;

**(5)** Enter into agreements with or obtain documentation from any insurer registered under Section 59A-37-11 NMSA 1978, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the superintendent's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

**(6)** Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the superintendent.

**F.** If the superintendent acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the superintendent may reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

**(1)** The superintendent's cooperation is in compliance with the laws of this state; and

**(2)** The regulatory official acknowledged as the group-wide supervisor also

recognizes and cooperates with the superintendent's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the superintendent is authorized to refuse recognition and cooperation.

**G.** The superintendent may enter into agreements with or obtain documentation from any insurer registered under Section 59A-37-11 NMSA 1978, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

**H.** A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the superintendent's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

**I.** All information, data, reports and workpapers filed with and collected by the superintendent pursuant to this section will be obtained in accordance with Section 59A-4-5 NMSA 1978 and subject to the confidentiality provisions of Section 59A-4-11 and 59A-37-24, NMSA 1978, and the stricter of these provisions shall apply. [13.2.2.22 NMAC – N, 10/01/2020]

~~[13.2.2.21]~~ **13.2.2.23 SEVERABILITY CLAUSE:** If any provision of ~~[these rules]~~ this rule or the application thereof to any person or circumstance, is held ~~[invalid]~~ invalid, such determination shall not affect other provisions or applications of ~~[these rules]~~ this rule which can be given effect without the invalid provision or ~~[application]~~ application, and to that end, the provisions of ~~[these rules]~~ this rule are severable. [13.2.2.23 NMAC – Rn & A, 13.2.2.21 NMAC, 10/01/2020]

**SUPERINTENDENT OF INSURANCE, OFFICE OF**

**This is an amendment to 13.2.5 NMAC, Sections 1 through 3, 6 through 9, & 12 through 28 effective 10/1/2020.**

**13.2.5.1 ISSUING**

**AGENCY:** ~~[New Mexico Public Regulation Commission, Division of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269]~~ Office of Superintendent of Insurance (“OSI”). [7/1/97; 13.2.5.1 NMAC - Rn, 13 NMAC 2.5.1 & A, 1/1/2010; A, 10/01/2020]

**13.2.5.2 SCOPE:**

**A.** Every insurer shall be subject to this rule.

**B.** Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this rule for the year, unless the superintendent makes a specific finding that compliance is necessary for the superintendent to carry out statutory responsibilities.

**C.** Insurers having assumed premiums pursuant to contracts ~~and/or~~ or treaties of reinsurance of \$1,000,000 or more are not exempt.

**D.** Foreign or alien insurers filing the audited financial report in another state, pursuant to that state’s requirement for filing of audited financial reports, which has been found by the superintendent to be substantially similar to the requirements herein, are exempt from this rule if:

(1) a copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant’s letter of qualifications that are filed with the other state are filed with the superintendent in accordance with the filing dates specified in this rule respectively [~~Canadian insurers may submit accountants’ reports as filed~~

with the office of the superintendent of financial institutions, Canada)]; and

(2) a copy of any notification of adverse financial condition report filed with the other state is filed with the superintendent within the time specified in this rule.

**E.** Foreign or alien insurers required to file management’s report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

[1/1/94; 13.2.5.2 NMAC - Rn, 13 NMAC 2.5.2 & A, 1/1/2010; A, 10/01/2020]

**13.2.5.3 STATUTORY AUTHORITY:**

~~[Section]~~ Sections 59A-2-8, 59A-2-9, and Chapter 59A Article 37 NMSA 1978 (“the Insurance Holding Company Law”).

[1/1/94; 13.2.5.3 NMAC - Rn, 13 NMAC 2.5.3, 1/1/2010; A, 10/01/2020]

**13.2.5.6 OBJECTIVE:**

The purpose of this rule is to ~~improve~~ ensure robust ~~[the New Mexico division of insurance’s]~~ surveillance of the financial condition of insurers by requiring: (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants; (2) communication of internal control related matters noted in an audit; and (3) management’s report of internal control over financial reporting.

[1/1/94; 13.2.5.6 NMAC - Rn, 13 NMAC 2.5.6 & A, 1/1/2010; A, 10/01/2020]

**13.2.5.7 DEFINITIONS:**

~~[A. “Accountant” or “independent certified public accountant” means an independent-certified public accountant or accounting firm in good standing with the American institute of certified public accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British-~~

companies, it means a Canadian-chartered or British-chartered accountant.]

**[B] A.** An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

**[C] B.** “Audit committee” means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this rule at the election of the controlling person. If an audit committee in not designated by ~~[the]~~ an ~~[insurers]~~ insurer, the insurer’s entire board of directors shall constitute the audit committee.

**[D] C.** “Audited financial report” means and includes all items specified in 13.2.5.10, 13.2.5.11 and 13.2.5.12 NMAC.

**[E] D.** “Indemnification” means an agreement of ~~[indemnity]~~ indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

**[F] E.** “Independent ~~[board]~~ audit committee member” has the same meaning as described in Subsection D of 13.2.5.16 NMAC.

**F.** “Independent certified public accountant” (“ICPA”) means a certified public accountant or accounting firm in good standing with the American institute of certified public accountants (“AICPA”) and in all states in which

the ICPA is licensed to practice, who maintains compliance with the AICPA Independence Rule and its interpretations, including the Conceptual Framework for Independence. For Canadian and British companies, it means a Canadian- chartered or British- chartered accountant.

**G. “Insurer”** means an authorized insurer, an eligible surplus lines insurer, and a registered risk retention group, unless the context clearly indicates otherwise.

**H. “Group of insurers”** means those licensed insurers included in the reporting requirements of [NMSA 1978, Article 37,] the Insurance Holding Company Law or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

**I. “Internal audit function”** means a person or persons who provide independent, objective and reasonable assurance designed to add value and improve an organization’s operations and accomplish its objectives through a systemic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

**[H] J. “Internal control over financial reporting”** means a process effected by an entity’s board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in [Subsections A and B of] 13.2.5.22] 13.2.5.23 NMAC [of this rule] and includes those policies and procedures that:

(1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in Subsections A and B of 13.2.5.22 NMAC [of this rule] and that receipts

and expenditures are being made only in accordance with authorizations of management and directors; and

(3) provide reasonable assurance regarding prevention or timely detection of authorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in [Subsections A and B of 13.2.5.22] 13.2.5.23 NMAC [of this rule].

**K. “NAIC”** means the national association of insurance commissioners.

**[J] L. “SEC”** means the united states securities and exchange commission.

**[K] M. “Section 404”** means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC’s rules and regulations promulgated thereunder.

**[L] N. “Section 404 report”** means management’s report on “internal control over financial reporting” as defined by the SEC and the related attestation report of the independent certified public accountant.

**[M] O. “SOX [complaint] compliant entity”** means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(1) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934);

(2) the audit committee independence requirements of Section 301 (Section 10A (m)(3) of the Securities Exchange Act of 1934); and

(3) the internal control over financial reporting requirements of Section 404 (item 308 of SEC regulation S-K).

[1/1/94; 13.2.5.7 NMAC - Rn, 13 NMAC 2.5.7 & A, 1/1/2010; A, 10/01/2020]

### **13.2.5.8 CONFLICT WITH OTHER PROVISIONS:**

This rule shall not prohibit, preclude or in any way limit the superintendent from ordering, conducting or

performing examinations of insurers under the Insurance Code or other [insurance department] OSI rules. [1/1/94; 13.2.5.8 NMAC - Rn, 13 NMAC 2.5.8, 1/1/2010; A, 10/01/2020]

### **13.2.5.9 FILING DATES AND EXTENSIONS:**

A. [AH] An [insurers] insurerer shall have an annual audit by an independent certified public accountant and shall file an annual audited financial report and management’s report of internal control over financial reporting with the superintendent on or before June 1 for the year ended December 31 immediately preceding. The superintendent may require an insurer to file an audited financial report and management’s report of internal control over financial reporting earlier than June 1 with ninety days advance notice to the insurer.

B. The superintendent may grant extensions of the June 1 filing date for 30-day periods for good cause shown. The request for extension [must] shall be submitted in writing not less than 10 days prior to the filing date. The insurer and its independent certified public accountant [must] shall show the reasons for requesting such extension in sufficient detail to permit the superintendent to make an informed decision with respect to the requested extension.

~~[C. — If an extension of annual audited financial report is granted in accordance with the provisions in Subsection B of 13.2.5.9 NMAC, a similar extension of 30 days is granted to the filing of management’s report of internal control over financial reporting.]~~

~~[D] C. [Every] An insurer required to file an annual audited financial report pursuant to this rule shall designate a group of individuals as constituting its audit committee, as defined in [Subsection C of] 13.2.5.7 NMAC. The audit committee of an entity that controls an insurer may be deemed to be the insurer’s audit committee for purposes of this rule at the election of the controlling person~~

consistent with 13.2.5.16 NMAC. [1/1/94; 13.2.5.9 NMAC - Rn, 13 NMAC 2.5.9 & A, 1/1/2010; A, 10/01/2020]

**13.2.5.12 CONTENTS**

**OF REPORT:** The annual audited financial report shall include the following:

- A. report of independent certified public accountant;
- B. balance sheet reporting admitted assets, liabilities, capital and surplus;
- C. statement of operations;
- D. statement of cash flows;
- E. statement of changes in capital and surplus;
- F. notes to financial statements, including:
  - (1) those required by the appropriate NAIC annual statement instructions and the NAIC accounting practices and procedures manual;
  - (2) a reconciliation of differences, if any, between the annual audited financial report filed pursuant to this rule and the annual statement filed pursuant to Section 59A-5-29 NMSA 1978, with a written description of the nature of these differences;
  - (3) a summary of ownership and relationships of the insurer and all affiliated companies; and
  - (4) any other notes required by generally accepted accounting principles; and
- G. accountant's letter of qualifications, as described in [this rule] 13.2.5.13 NMAC.

[1/1/94; 13.2.5.12 NMAC - Rn, 13 NMAC 2.5.12 & A, 1/1/2010; A, 10/01/2020]

**13.2.5.13 REGISTRATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT:**

A. [Each] An insurer required by this rule to file an annual audited financial report must, within 60 days after becoming subject to such requirement, register with the

superintendent, in writing, the name and address of the [~~independent certified public accountant~~] ICPA or accounting firm retained to conduct the annual audit required by this rule. [~~Insurers not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained certified public accountant not less than six months before the date when the first audited financial report is to be filed.~~]

B. [The] An insurer shall obtain a letter from the [accountant] ICPA, and [fite] submit a copy [with the superintendent,] to OSI stating that the [accountant] ICPA is aware of the provisions of the insurance code and the rules of the insurance department of the insurer's state of domicile that relate to accounting and financial matters and affirming that [he] the ICPA will express [his] an opinion on the financial statement in terms of [their] conformity to the statutory accounting practices prescribed or otherwise permitted by that department, specifying such exceptions as [he] the ICPA may believe appropriate. [1/1/94; 13.2.5.13 NMAC - Rn, 13 NMAC 2.5.13, 1/1/2010; A, 10/01/2020]

**13.2.5.14 DISMISSAL OR RESIGNATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT:**

A. If an accountant who was the [accountant] ICPA for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall notify the superintendent in writing of this event within five business days.

B. The insurer shall also furnish the superintendent with a separate letter of disagreement within ten business days of the notice of dismissal or resignation, which shall contain the following:

- (1) the letter shall state whether, in the [twenty-four] 24 months preceding such event, there were any disagreements with the former [accountant] ICPA on any matter of accounting principles

or practices, financial statement disclosure, or auditing scope or procedure, which would have caused the accountant to make reference in [his] the ICPA opinion to the subject matter of the disagreement if the disagreement had not been resolved to the satisfaction of the former [accountant] ICPA; and

(2) the insurer must report in the letter all disagreements that occurred at the decision-making level (i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report), whether resolved to the former [accountant's] ICPA's satisfaction or not resolved to the former [accountant's] ICPA's satisfaction.

C. The insurer shall send a copy of the letter of disagreement to the former [accountant] ICPA and request in writing that the former [accountant] ICPA furnish a letter addressed to the insurer stating whether the [accountant] ICPA agrees with the statements contained in the insurer's letter of disagreement and, if not, stating the reasons for [his] disagreement. The insurer shall furnish a copy of the responsive letter from the former [accountant] ICPA to the superintendent.

[1/1/94; 13.2.5.14 NMAC - Rn, 13 NMAC 2.5.14, 1/1/2010; A, 10/01/2020]

**13.2.5.15 QUALIFICATIONS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT:**

A. The superintendent shall not recognize a person or firm as a qualified [~~independent certified public accountant~~] ICPA if the person or firm:

- (1) is not in good standing with the AICPA and in all states in which the [accountant] ICPA is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
- (2) has either directly or indirectly entered into an

agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

**B.** Except as otherwise provided in this rule, the superintendent shall recognize an ~~[independent certified public accountant]~~ ICPA as qualified as long as ~~[he or she]~~ the ICPA conforms to the standards of ~~[his or her]~~ the profession, as contained in the code of professional ethics of the AICPA and rules and regulations and code of ethics and rules of professional conduct of the New Mexico board of public accountancy, or similar code.

**C.** A qualified ~~[independent certified public accountant]~~ ICPA may ~~[enter]~~ enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under ~~[NMSA 1978,]~~ Chapter 59A, Article 41, NMSA 1978 the mediation or arbitration provisions shall operate at the option of the statutory successor.

**D.** The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the superintendent for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least 30 days before the end of the calendar year. The superintendent may consider the following factors in determining if the relief should be granted:

- (1) number of partners, expertise of the partners or the number of insurance claims in the currently registered firm;
- (2) premium volume of the insurer; or
- (3) number of jurisdictions in which the insurer transacts business.

**E.** ~~[The]~~ An insurer shall file, with its annual statement filing, the approval for relief from ~~[Subsection D of]~~ this section with the states ~~[that]~~ in which it is licensed ~~[in]~~ or doing business ~~[in]~~ and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

**F.** The superintendent shall neither recognize as a qualified ~~[independent certified public accountant]~~ ICPA, nor accept an annual audited financial report, prepared in whole or in part by, a natural person who:

- (1) has been convicted of fraud, bribery, a violation of the racketeer influenced and corrupt organizations act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;
- (2) has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or
- (3) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.

**G.** The superintendent may hold a hearing, as provided in ~~[NMSA 1978,]~~ Chapter 59A, Article 4, NMSA 1978 to determine whether an ~~[independent certified public accountant]~~ ICPA is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing ~~[his or her]~~ an opinion on the financial statements in the annual audited financial report made pursuant to this rule and require the insurer to replace the ~~[accountant]~~ ICPA with another whose relationship with the insurer is qualified within the meaning of this rule.

**H.** The superintendent shall not recognize as a qualified ~~[independent certified public accountant]~~ ICPA, nor accept an annual audited financial report, prepared in whole or in part by an

~~[accountant]~~ ICPA who provides to an insurer, ~~[contemporaneously]~~ contemporaneously with the audit, the following non-audit services:

- (1) bookkeeping or other services related to the accounting records or financial statements of the insurer;
- (2) financial information systems design and implementation;
- (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (4) actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The ~~[accountant]~~ ICPA may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to the audit procedures during an audit of the insurer's financial statements. An ~~[accountant's]~~ ICPA's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:
  - (a) neither the ~~[accountant]~~ ICPA nor the ~~[accountant's]~~ ICPA's actuary has performed any management functions or made any management decisions;
  - (b) the insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and
  - (c) the ~~[accountant's]~~ ICPA's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;
- (5) internal audit outsourcing services;
- (6) management functions or human resources;
- (7) broker or dealer, investment adviser, or investment banking services;



(8) legal services or expert services unrelated to the audit; or

(9) any other services that the superintendent determines, by rule, are impermissible.

I. In general, the principles of independence with respect to services provided by the qualified ~~[independent-certified-public-accountant]~~ ICPA are largely predicated on three basic principles, violations of which would impair the ~~[accountant's]~~ ICPA's independence. The principles are that the ~~[accountant]~~ ICPA cannot function in the role of management, cannot audit ~~[his or her]~~ its own work, and cannot serve in an advocacy role for the insurer.

J. ~~[Insurers]~~ An insurer having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from Subsection H of this section. The insurer shall file with the superintendent a written statement discussing the reasons why the insurer should be exempt from these provisions. If the superintendent finds, upon review of this statement, that compliance with this rule would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

K. A qualified ~~[independent-certified-public-accountant]~~ ICPA who performs the audit may engage in other non-audit services, including tax services, that are not described in Subsection H of this section or that do not conflict with Subsection I of this section, only if the activity is approved in advance by the audit committee, in accordance with Subsection L of this section.

L. All auditing services and non-audit services provided to an insurer by the qualified ~~[independent-certified-public-accountant]~~ ICPA of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX ~~[complaint]~~ compliant entity

or a direct or indirect wholly-owned subsidiary of a SOX ~~[complaint]~~ compliant entity or:

(1) the aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified ~~[independent-certified-public-accountant]~~ ICPA during the fiscal year in which the non-audit services are provided;

(2) the services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(3) the services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

M. The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by Subsection L of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

N. ~~[The superintendent shall not recognize a independent-certified-public-accountant as]~~ An ICPA is not qualified for a particular insurer [is] if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the [independent-certified-public-accountant] ICPA and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. [This section shall only apply to partners and senior managers involved in the audit.] An insurer may make application to the superintendent for relief from the above requirement on the basis

of unusual circumstances. This subsection shall only apply to partners and senior managers involved in the audit.

O. The insurer shall file, with its annual statement filing, the approval for relief from Subsection N of this section with the states ~~[that]~~ in which it is licensed ~~[in]~~ or doing business ~~[in]~~ and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC. [1/1/94; 13.2.5.15 NMAC - Rn, 13 NMAC 2.5.15 & A, 1/1/2010; A, 10/01/2020]

**13.2.5.16 REQUIREMENTS FOR AUDIT COMMITTEE:** This section ~~[as in 13.2.5.16 NMAC]~~ shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX ~~[complaint]~~ compliant entity or a direct or indirect wholly-owned subsidiary of a SOX ~~[complaint]~~ compliant entity.

A. The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this rule. Each accountant shall report directly to the audit committee.

B. The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities.

~~[B]~~ C. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to Subsection ~~[E]~~ F of this section and Subsection C of 13.2.5.7 NMAC.

~~[E]~~ D. In order to be considered independent for purposes

of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, the law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

~~[D] E.~~ If a member of the audit committee ceases to be independent for reasons outside the member’s reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

~~[E] F.~~ To exercise the election of the controlling person to designate the audit committee for purposes of this rule, the ultimate controlling person shall provide a written notice to the ~~[commissioners of the affected insurers.]~~ superintendent. Notification shall be made ~~[timely]~~ prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the superintendent by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until ~~[recinded]~~ rescinded.

~~[F] G.~~ The audit committee shall require the accountant that performs for an insurer any audit required by this rule to ~~[timely]~~ report to the audit committee in accordance with the requirements of SAS 61, communication with audit committees, or its replacement, including:

- (1) all significant accounting ~~[practices]~~ policies and material permitted practices;
- (2) all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
- (3) other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

~~[G] H.~~ If an insurer is a member of an insurance holding company system, the reports required by Subsection ~~[F] G~~ may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

~~[H] I.~~ The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements.	Majority (50% or more) of members shall be independent.	Supermajority of members (75% or more) shall be independent.

~~[H] J.~~ An insurer with direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than \$500,000,000 may make application to the superintendent for a waiver from the requirements of this section based upon hardship. ~~[The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.]~~

[13.2.5.16 NMAC - N, 1/1/2010; A, 10/01/2020]

**13.2.5.17 INTERNAL AUDIT FUNCTION REQUIREMENTS**

**A. Function.** An insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer’s governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

**B. Independence.** In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function shall have direct and unrestricted access to the

board of directors. Organizational independence does not preclude dual-reporting relationships.

**C. Reporting.** The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function’s independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

**D. Additional Requirements.** If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent

level, an intermediate holding company level or the individual legal entity level.

**E. Exemption.** An insurer may be exempt from the requirements of this section only if:

(1) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the federal corp insurance coporation and federal flood program, less than \$500,000,000); or,

(2) if the insurer is a member of a group of insurers that has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with federal crop insurance corporation and federal flood program, less than \$1,000,000,000.

[13.2.5.17 NMAC - N, 10/01/2020]

~~[13.2.5.17]~~ **13.2.5.18**  
**ROTATION OF ACCOUNTANTS REQUIRED:**

**A.** [After January 1, 2010] No partner or other person responsible for rendering a report may act in that capacity for more than five consecutive years. Following any such period of service the person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years.

**B.** An insurer may make application to the superintendent for relief from this rotation requirement on the basis of unusual circumstances. The superintendent may consider the following factors in determining if the relief should be granted:

(1) the number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(2) the premium volume of the insurer; and

(3) the number of jurisdictions in which the insurer transacts business.

[13.2.5.18 NMAC - Rn & A, 13.2.5.17 NMAC, 10/01/2020]

~~[13.2.5.18]~~ **13.2.5.19**

**CONSOLIDATED OR COMBINED AUDITS:** An insurer may make written application to the superintendent for approval to file consolidated or combined annual audited financial reports in lieu of separate annual audited financial reports if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidated or combined worksheet shall be filed with the report, as follows:

**A.** amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

**B.** amounts for each insurer subject to this section shall be stated separately;

**C.** noninsurance operations may be shown on the worksheet on a combined or individual basis;

**D.** explanations of consolidated and eliminated entries shall be included; and

**E.** a reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

[13.2.5.19 NMAC – Rn, 13.2.5.18 NMAC, 10/01/2020]

~~[13.2.5.19]~~ **13.2.5.20** **SCOPE OF EXAMINATION AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT:**

**A.** The superintendent ~~shall~~ will not accept any annual audited financial report prepared in whole or in part by any person or firm that is not recognized as a qualified ~~[independent certified public accountant]~~ ICPA.

**B.** The examination of the insurer's financial statements shall be conducted in accordance with

generally accepted auditing standards.

**C.** The ~~[independent certified public accountant]~~ ICPA shall use such other procedures illustrated in the ~~[national association of insurance commissioners<sup>2</sup>]~~ NAIC's financial condition examiner's handbook as ~~[he]~~ the ICPA may deem necessary.

[13.2.5.20 NMAC - Rn & A, 13.2.5.19 NMAC, 10/01/2020]

~~[13.2.5.20]~~ **13.2.5.21** **REPORT OF ADVERSE FINANCIAL CONDITION:**

**A.** An insurer shall require its ~~[independent certified public accountant]~~ ICPA to report, in writing, within five business days to the board of directors or its audit committee any determination by ~~[him]~~ the ICPA that the insurer has materially misstated its financial condition as reported to the superintendent as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of the New Mexico Insurance Code as of that date.

**B.** An insurer who has received a report of adverse financial condition shall forward a copy of the report to the superintendent within five business days of receiving it and shall furnish to the ~~[independent certified public accountant]~~ ICPA evidence that the report of adverse financial condition was forwarded to the superintendent.

**C.** If the ~~[independent certified public accountant]~~ ICPA fails to receive such evidence within the required five business day period, the independent certified public accountant shall furnish to the superintendent a copy of its report of adverse financial condition within the next five business days.

**D.** No ~~[independent certified public accountant]~~ ICPA shall be liable in any manner to any person for any statement made in connection with this section if such statement is made in good faith compliance with this section.

**E.** If the ~~[accountant]~~ ICPA, subsequent to the date of the

audited financial report filed pursuant to this rule, becomes aware of facts which might have affected [his] that report, then the ICPA has the obligation [of the accountant] to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the [American Institute of Certified Public Accountants] AICPA.

[13.2.5.21 NMAC - Rn & A,  
13.2.5.20 NMAC, 10/01/2020]

~~[13.2.5.21]~~ **13.2.5.22**  
**REPORT ON UNREMIEDIATED MATERIAL WEAKNESSES IN INTERNAL CONTROLS:**

A. Within [sixty] 60 days after the filing of the annual audited financial statements, [each] an insurer shall [furnish] submit to the superintendent [with] a written report prepared by the [accountant] ICPA describing any unremediated material weaknesses in the insurer's internal control structure noted by the [accountant] ICPA during the audit. SAS No. 112, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325A of the Professional Standards of the [American Institute of Certified Public Accountants] AICPA) requires an [accountant] ICPA to communicate unremediated material weaknesses (known as "reportable conditions") noted during a financial statement audit to the appropriate [parties] persons within an entity. If no unremediated weakness were noted, the [communication] communication should so state.

B. [The] An insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if such actions are not described in the [accountant's] ICPA's communication.

C. No report on unremediated material weaknesses in internal controls should be issued if the [accountant] ICPA does not identify unremediated material weaknesses.

[13.2.5.22 NMAC - Rn & A,  
13.2.5.21 NMAC, 10/01/2020]

~~[13.2.5.22]~~ **13.2.5.23**  
**MANAGEMENT'S REPORT OF INTERNAL CONTROL OVER FINANCIAL REPORTING:**

A. [Every] An insurer required to file an audited financial report pursuant to this rule that has annual direct written and assumed premiums, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of \$500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in this rule. The report shall be [filed with] submitted to the superintendent along with the communication of internal control related matters noted in an audit described in this rule. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

B. Notwithstanding the premium threshold in [Subsection A of 13.2.5.22 NMAC;] this section the superintendent may require an insurer to [file] submit management's report of internal control over financial reporting if the insurer is in any [RBC] risk based capital level event, or if the insurer meets [any] one or more of the standards of an insurer deemed to be in hazardous financial condition.

C. An insurer or a group of insurers that is: (1) directly subject to Section 404; (2) part of a holding company system whose parent is directly subject to Section 404; (3) not directly subject to Section 404, but is a SOX [complaint] compliant entity; or (4) a member of a holding company system whose parent is not directly subject to Section 404, but is a SOX [complaint] compliant entity; may file its or its parent's Section 404 report and an addendum in satisfaction of this requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements were included in the scope of the Section

404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file (i) a report required by [13.2.5.22 NMAC] this section, or (ii) the Section 404 report and a report required by [13.2.5.22 NMAC] this section for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 report.

D. Management's report of internal control over financial reporting shall include:

(1) a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(2) a statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(3) a statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(4) a statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(5) disclosure of any unremediated material weaknesses in the internal control

over financial reporting identified by management as of December 31 immediately preceding; management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(6) a statement regarding the inherent limitations of internal control systems; and

(7) signatures of the chief executive officer and the chief financial officer (or the equivalent position [f] or title).

E. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in [Subsection D of 13.2.5.22 NMAC] this section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

F. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

G. Management's report on internal control over financial reporting, required by [Subsection A of 13.2.5.22 NMAC] this section, and any documentation provided in support thereof during the course of a financial condition examination, [shall] will be kept confidential by the [state insurance department] OSI in accordance with state law.

[13.2.5.23 NMAC - Rn & A, 13.2.5.22 NMAC, 10/01/2020]

**[13.2.5.23] 13.2.5.24**  
**INDEPENDENT CERTIFIED**  
**PUBLIC ACCOUNTANT'S**  
**LETTER OF QUALIFICATIONS:**

The [accountant] ICPA shall furnish the insurer with a letter stating that:

A. that the [accountant] ICPA is independent with respect to the insurer and conforms to the standards of the profession as contained in the *code of professional ethics* of the [~~American institute of certified public accountants~~] AICPA and the code of ethics and rules of professional conduct of the New Mexico state board of public accountancy, or similar code;

B. the background and experience in general, and the experience in audits of insurers, of the staff assigned to the examination and whether each is an [~~independent certified public accountant~~] ICPA (however, nothing in this rule shall be construed as prohibiting the [accountant] ICPA from utilizing such staff as is deemed appropriate if such use is consistent with generally accepted auditing standards);

C. [that] the [accountant] ICPA understands that the annual audited financial report and [his] opinion [with] shall be [~~filed~~] submitted in compliance with this rule and that the superintendent will rely on this information in the monitoring of the financial condition of insurers;

D. [that] the [accountant] ICPA consents to the requirements of this rule regarding ICPA workpapers and agrees to make them available for review by the superintendent, [his] or the superintendent's designee or [his] appointed agent;

E. [that] the [accountant] ICPA is properly licensed by an appropriate state licensing authority and is a member in good standing of the [~~American institute of certified public accountants~~] AICPA; and

F. [that] the [accountant] ICPA is in compliance with the requirements of [13.2.5.15-NMAC and 13.2.5.17 NMAC] this rule.

[13.2.5.24 NMAC - Rn & A, 13.2.5.23 NMAC, 10/01/2020]

**[13.2.5.24] 13.2.5.25** **[CPA]**  
**INDEPENDENT CERTIFIED**  
**PUBLIC ACCOUNTANT'S**  
**WORKPAPERS:**

A. For purposes of this rule, workpapers are the records kept by the [~~independent certified public accountant~~] ICPA of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to [his] the ICPA's examination of the financial statements of an insurer. Workpapers [~~accordingly,~~] may include, without limitation, audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the [~~independent certified public accountant~~] ICPA in the course of [his] the ICPA's examination of the financial statements of an insurer and which support [his] the ICPA's opinion.

B. [Every] An insurer required by this rule to [~~file~~] submit an audited financial report; shall require the [accountant] ICPA to make available for review by [department] OSI examiners and examiners designated by the superintendent all workpapers prepared [~~in~~] during the [~~conduct~~] course of [his] the ICPA's examination and any communications related to the audit between the [accountant] ICPA and the insurer, at the offices of the insurer, at the [~~insurance department~~] OSI or at any other reasonable place designated by the superintendent. The insurer shall require that the [accountant] ICPA retain the audit workpapers and communications until the [~~insurance department~~] OSI has filed a final report [~~on~~] of examination covering the period of the audit but no longer than seven years from the date of the audit report.

C. Reviews by [~~insurance department~~] OSI examiners shall be considered investigations, and all [~~working papers~~] and communications obtained during the course of such investigations shall be afforded the same confidentiality as

examination workpapers generated by the [department] OSI. Photocopies of pertinent audit workpapers may be made and retained by the [department] OSI.

[13.2.5.25 NMAC - Rn & A, 13.2.5.24 NMAC, 10/01/2020]

~~[13.2.5.25]~~ **13.2.5.26**

**CONDUCT OF INSURER IN CONNECTION WITH THE PREPARATION OF REQUIRED REPORTS AND DOCUMENTS:**

A. No director or officer of an insurer shall, directly or indirectly:

(1) make or cause to be made a materially false or misleading statement to an [accountant] ICPA in connection with any audit, review or communication required under this [regulation] rule; or

(2) omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this [regulation] rule.

B. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this [regulation] rule if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

C. For purposes of Subsection B of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(1) to issue or reissue a report on an insurer's

financial statements that is not warranted in the [circumstances due] circumstances due to material violations of statutory accounting principles prescribed by the [commissioner] superintendent, generally accepted auditing standards, or other professional or regulatory standards);

(2) not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(3) not to withdraw an issued report; or

(4) not to communicate matters to an insurer's audit committee.

[13.2.5.26 NMAC - Rn & A, 13.2.5.25 NMAC, 10/01/2020]

~~[13.2.5.26]~~ **13.2.5.27**

**HARDSHIP EXEMPTIONS:**

A. Upon written application of any insurer, the superintendent may grant an exemption from compliance with any and all provisions of this rule if the superintendent finds, upon review of the application, that compliance with this rule would constitute a financial or organizational hardship upon the insurer.

B. An exemption may be granted at any time and from time to time for a specified period or periods.

C. Within 10 days from a denial of an insurer's written request for an exemption from this rule, such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with the New Mexico Insurance Code, Chapter 59A, Article 4, NMSA 1978.

[13.2.5.27 NMAC - Rn & A, 13.2.5.26 NMAC, 10/01/2020]

~~[13.2.5.27]~~ **EFFECTIVE DATES FOR REPORTING REQUIREMENTS:**

~~A. Domestic insurers retaining a certified public accountant on the effective date of this rule who qualifies as independent shall be required to file all reports required~~

by this rule for the year ending December 31, 2010 and each year thereafter, unless the superintendent permits otherwise:

~~B. Domestic insurers not retaining a certified public accountant on the effective date of this rule who qualifies as independent shall be required to file the following documents with the superintendent for the year ending December 31, 2009:~~

~~(1) report of independent certified public accountant;~~

~~(2) actual balance sheet~~

~~(3) notes to audited balance sheet.~~

~~C. For the year ending December 31, 2010 and each year thereafter, such insurers shall file with the superintendent all reports required by this rule:~~

~~D. Foreign insurers shall comply with this rule for the year ending December 31, 2010 and each year thereafter, unless the superintendent permits otherwise.] [1/1/94; 13.2.5.27 NMAC - Rn, 13 NMAC 2.5.25; 1/1/2010; 13.2.5.27 NMAC - Rn, 13.2.5.26 NMAC, 11/15/2012; Repealed 10/01/2020]~~

**13.2.5.28 CANADIAN AND BRITISH COMPANIES:**

A. ~~[In the case of]~~ As regards Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervisory authority, duly audited by an independent chartered accountant.

B. For such insurers, the letter of compliance required by 13.2.5.13 NMAC shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the superintendent pursuant to this rule and shall affirm that the opinion expressed is in conformity with such requirements.

C. For purposes of compliance with this rule, a Canadian insurer may submit to OSI accountants' reports as filed with the

Canadian office of superintendent of financial institutions.

[13.2.5.28 NMAC - Rn, 13.2.5.27 NMAC, 11/15/2012; A, 10/01/2020]

**HISTORY OF 13.2.5 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records, state records center and archives:

SCC 93-7-IN, Annual Audited Financial Reports, filed 12/1/1993.

**History of Repealed Material:**

13.2.5.27 NMAC - Effective Dates For Reporting Requirements, Renumbered 11/15/2012 was repealed effective 10/01/2020.

**Other History:**

SCC 93-7-IN, Annual Audited Financial Reports (filed 12/1/1993) was renumbered, reformatted, amended and replaced by 13 NMAC 2.5, Annual Audited Financial Reports, effective 7/1/1997.

13 NMAC 2.5, Annual Audited Financial Reports (filed 5/27/1997) was renumbered, reformatted, amended and replaced by 13.2.5 NMAC, Annual Audited Financial Reports, effective 1/1/2010.

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**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
CABINET SECRETARY  
KATHYLEEN M. KUNKEL**

**SEPTEMBER 3, 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, 2020,  
April 30, 2020, May 5, 2020, May  
15, 2020, May 27,  
2020, June 1, 2020, June 12, 2020,  
June 15, 2020, June 30, 2020, July  
13, 2020, July 30,  
2020, and August 28, 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 continues some loosened 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 must strictly adhere to social distancing protocols and wear face coverings 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; and

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.

3. The August 28, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, June 30, 2020, July 13, 2020, and July 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 September 18, 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 over 24,900 and confirmed cases in the United States have risen to more than 5.8 million, with significant recent spikes in cases in some of our neighboring states;

**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 and the consistent and proper use of face coverings in public spaces are the most effective



ways New Mexicans can minimize the spread of COVID-19 and mitigate 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 -19, 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;
- 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. 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;

- g. 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;

- h. 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;

- i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, grooming, daycare, or boarding services;

- j. Media services;

- k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

- l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

- m. Hardware stores;

- n. Laundromats and dry cleaner services;

- o. Funeral homes, crematoriums and cemeteries;

- p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

- q. Businesses providing mailing and shipping services;

r.

Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s.

Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. 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) "Close-contact business" includes barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, and personal training services.

(3) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, § 60-6A-26.1 (2019); "distillers" are those businesses licensed pursuant to NMSA 1978, § 60-6A-1 (2019); and "wineries" are those businesses licensed pursuant to NMSA 1978, § 60-A-11 (2019).

(3) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs

(4) "Close-contact recreational facilities" include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, bowling alleys, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart

courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a "bar" is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(5) "Outdoor recreational facilities" include outdoor golf courses, public swimming pools, outdoor tennis courts, summer youth programs, youth livestock shows, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(6) "Places of lodging" means all hotels, motels, RV parks, and short-term vacation rentals.

(7) "Retail space" means any business that sells goods or services directly to consumers or end-users and includes the following "essential businesses" identified in the categories above: l(d), (l)k, (l)m, and (l)n.

(8) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, organized amateur contact sport, or other grouping that brings together more than ten (10) individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence more than ten (10) 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.

(9) "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/>.

## 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. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) "Essential businesses" may open but must comply with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers" and any identified occupancy restrictions. "Essential businesses" identified as a "retail space" may 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. Further, an "essential business" identified as a "retail space" may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(3) "Close contact businesses" may operate at up to 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department.

(4) "Close-contact recreational facilities" must remain closed.

(5) "Food and drink establishments" may provide dine-in service, but they may not exceed more than 25% occupancy of the maximum occupancy in any enclosed space on the premises, as determined by the relevant fire marshal or fire department. "Food and drink establishments" choosing to provide indoor dining 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

our counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at table, and patrons may not consume food or beverage while standing. "Food and drink establishments" may also provide dine-in service in outdoor seating areas up to 75% occupancy, where applicable. Tables in outdoor seating areas must be spaced at least six feet apart. No more than six patrons may be seated at any single table. Patrons must be seated in order to be served food or drink unless ordering food for carryout. No bar or counter seating is permitted. "Food and drink establishments" may provide carryout service, or delivery service if otherwise permitted by law.

(6) "Houses of worship" may hold services and other functions, indoors or outdoors, or provide services through audiovisual means. "Houses of worship" may not exceed 40% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department.

(7) "Outdoor recreational facilities" may operate provided they comply with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses." Further, state parks shall only be open to New Mexico residents and may open for day use only. Camping areas, visitor centers, and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park, all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle; a New Mexico driver's license or ID card; a valid New Mexico vehicle registration; a federal document attesting to residency; or a military identification. In addition, public swimming pools are limited to lane-swimming and lessons only. Play and splash areas shall be closed. Horseracing tracks may not allow spectators.

(8) "Places of lodging" which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other "places of lodging" shall not operate at more than 50% of maximum occupancy. Healthcare providers who are engaged in the provision of care to New Mexico residents or individuals utilizing "places of lodging" for extended stays, as temporary housing, or for purposes of quarantine shall not be counted for purposes of determining maximum occupancy.

(9) Any business that is not identified as an "essential business", "close contact business", "food and drink establishment", "house of worship", "close-contact recreational facility", "outdoor recreational facility", or "place of lodging" 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.

(10) Any entity, including businesses and houses of worship, operating pursuant to this public health order must comply 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.

(11) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document "Reentry Guidance" published by New Mexico's Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25%

of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the "Reentry Guidance."

(12) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents shall not satisfy this requirement.

(13) The New Mexico Department of Health, 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.

(14) 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, § 12-10A-6 (2012).

**I FURTHER DIRECT** as follows:

(1) This Public Health Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Public Health 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 Public Health Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Public Health Order shall take effect on September 4, 2020 and remain in effect through October 2, 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.

**DONE AT THE EXECUTIVE OFFICE THIS 3RD DAY OF SEPTEMBER 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 KATHYLEEN M.  
KUNKEL**

**SEPTEMBER 18, 2020**

**Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending**

**Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities' Operations 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 continues some loosened 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 must strictly adhere to social distancing protocols and wear face coverings 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; and

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.

3. The September 3, 2020 Public Health Emergency Order Amending prior 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 September 18, 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 over 27,000 and confirmed cases in the United States have risen to more

than 6.65 million, with significant recent spikes in cases in some of our neighboring states;

**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 and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate 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 -19, 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, 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;

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. 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;

g. 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;

h. 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;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, grooming, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who

generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Funeral homes, crematoriums and cemeteries;

p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

t. 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) "Close-contact business" includes barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, and personal training services.

(3) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses

licensed pursuant to NMSA 1978, § 60-6A-26.1 (2019); "distillers" are those businesses licensed pursuant to NMSA 1978, § 60-6A-1 (2019); and "wineries" are those businesses licensed pursuant to NMSA 1978, § 60-A-11 (2019).

(3) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs

(4) "Close-contact recreational facilities" include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, bowling alleys, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a "bar" is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(5) "Outdoor recreational facilities" include outdoor golf courses, public swimming pools, outdoor tennis courts, summer youth programs, youth livestock shows, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(6) "Places of lodging" means all hotels, motels, RV parks, and short-term vacation rentals.

(7) "Retail space" means any business that sells goods or services directly to consumers or end-users and includes the following "essential businesses" identified in the categories above: l(d), (l)k, (l)m, and (l)n.

(8) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, organized amateur contact sport, or other grouping that brings together more than ten (10) individuals in

a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence more than ten (10) 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.

(9) "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/>.

**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. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) "Essential businesses" may open but must comply with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers" and any identified occupancy restrictions. "Essential businesses" identified as a "retail space" may 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. Further, an "essential business" identified as a "retail space" may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(3) “Close contact businesses” may operate at up to 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Bowling alleys may open for league play only and must adhere to occupancy restrictions and all applicable CSP’s including wearing masks. Ice skating rinks may operate for athletic training and practice by reservation only

(4) “Close-contact recreational facilities” must remain closed.

(5) “Food and drink establishments” may provide dine-in service, but they may not exceed more than 25% occupancy of the maximum occupancy in any enclosed space on the premises, as determined by the relevant fire marshal or fire department. “Food and drink establishments” choosing to provide indoor dining 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 table, and patrons may not consume food or beverage while standing. “Food and drink establishments” may also provide dine-in service in outdoor seating areas up to 75% occupancy, where applicable. Tables in outdoor seating areas must be spaced at least six feet apart. No more than six patrons may be seated at any single table. Patrons must be seated in order to be served food or drink unless ordering food for carryout. No bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

(6) “Houses of worship” may hold services and other functions, indoors or outdoors, or provide services through audiovisual means. “Houses of worship” may not exceed 40% of the maximum occupancy of any enclosed building, as determined

by the relevant fire marshal or fire department.

(7) “Outdoor recreational facilities” may operate provided they comply with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses.” Further, state parks shall only be open to New Mexico residents. Visitor centers, and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park, all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle; a New Mexico driver’s license or ID card; a valid New Mexico vehicle registration; a federal document attesting to residency; or a military identification. The State Parks Division is directed to extend the use of annual camping passes that were purchased after March 2019 for a period determined by the State Parks Division related to the original expiration date due to the closure of State Parks to camping. In addition, public swimming pools are limited to the concurrent use of not more than ten (10) persons. Play and splash areas shall be closed. Horseracing tracks may not allow spectators.

(8) “Places of lodging” which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other “places of lodging” shall not operate at more than 50% of maximum occupancy. Healthcare providers who are engaged in the provision of care to New Mexico residents or individuals utilizing “places of lodging” for extended stays, as temporary housing, or for purposes of quarantining shall not be counted for purposes of determining maximum occupancy.

(9) Any business that is not identified as an “essential business”, “close contact business”, “food and drink establishment”, “house of worship”, “close-contact recreational facility”, “outdoor

recreational facility”, or “place of lodging” 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.

(10) Any entity, including businesses and houses of worship, operating pursuant to this public health order must comply 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.

(11) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document “Reentry Guidance” published by New Mexico’s Public Education Department on June 20, 2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the “Reentry Guidance.”

(12) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents shall not satisfy this requirement.

(13) The New Mexico Department of Health, 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.

(14) 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, § 12-10A-6 (2012).

**I FURTHER DIRECT** as follows:

(1) This Public Health Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Public Health 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 Public Health Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Public Health Order shall take effect on September 18, 2020 and remain in effect through October 16, 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.

**DONE AT THE EXECUTIVE OFFICE THIS 18TH DAY OF SEPTEMBER 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**

**GOVERNOR,  
OFFICE OF THE**

**EXECUTIVE ORDER 2020-063**

**SECOND AMENDED ORDER DIRECTING INDIVIDUALS TRAVELING TO NEW MEXICO 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. 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 from out of state 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. 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 individuals designated by the New Mexico Department of Health, or individuals providing medical care or emergency response. 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.

2. I direct all persons who have arrived in New Mexico from a state with a positive test rate higher than 80 per 1,000,000 residents or a test positivity rate greater than or equal to 5%, over a seven-day rolling average, or from outside the United States must 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. Persons who can show documentation of a valid negative COVID-19 test taken within seventy-two (72) hours before or after entry into New Mexico are exempt from the 14 day quarantine requirement. Persons who have undergone a COVID-19 test shall self-isolate or self-quarantine while awaiting the results of their test. This exemption does not apply to persons entering New Mexico after traveling outside of the United States.

3. All persons entering New Mexico from a state with a positive test rate lower than 80 per 1,000,000 residents, and a test positivity rate lower than 5%, over a seven-day rolling average, are advised to self-isolate or quarantine. New Mexico residents are further advised that they should

be tested for COVID-19 within 5 to 7 days after their return to New Mexico from one of these states.

4. Any New Mexico state employee who vacations in another state and is required to quarantine upon reentering New Mexico will not be eligible for the paid leave provided by the Families First Coronavirus Response Act.

5. 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 and their dependents, federal employees, those employed by a federal agency or national defense contractor, emergency first responders, health care workers, New Mexico residents who have left the State to obtain medical care, New Mexico residents who have left the State for less than twenty-four hours for matters attendant to parenting responsibilities, elementary, middle school, or high school students who attend school in neighboring states or who commute into New Mexico to attend school, those arriving in the State pursuant to a Court order, and persons who are employed or contracted by an "essential business", as defined by the operative public health order addressing mass gathering restrictions and business closures, and who are traveling into New Mexico to conduct business activities.

6. 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.

7. The New Mexico Department of Health may issue additional protocols for circumstances involving "essential businesses" as defined by the Department of Health's Public Health Orders.

8. The New Mexico Department of Health shall, 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.

9. I further direct the New Mexico Department of Health to post all information necessary to implement the directives in this order on its website.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on September 4, 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 3RD DAY OF SEPTEMBER 2020**

**ATTEST:  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**MICHELLE LUJAN GRISHAM  
GOVERNOR**

**GOVERNOR,  
OFFICE OF THE**

**EXECUTIVE ORDER 2020-064**

**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. As of September 17, 2020 the Centers for Disease Control and Prevention (“CDC”) reported over 6.65 million people have been infected in the United States, with over 190,000 related deaths, and the New Mexico Department of Health has report over 26,000 positive COVID-19 cases and 830 related deaths 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. 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 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 COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission 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 laws of the State of New Mexico, hereby order and direct as follows:

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, 2020-030, 2020-036, 2020-053, 2020-55, and 2020-059 shall be renewed and extended through October 16, 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 2020-016; Executive Order 2020-020; Executive Order 2020-021; Executive Order 2020-025; Executive Order 2020-037; Executive Order 2020-039; Executive Order 2020-056 and Executive Order 2020-063.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on September 18, 2020 and shall remain in effect until October 16, 2020 unless renewed or until the Governor rescinds it.

**DONE AT THE EXECUTIVE  
OFFICE THIS 18TH DAY OF  
SEPTEMBER 2020**

**ATTEST:  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
NEW MEXICO**

**MICHELLE LUJAN GRISHAM  
GOVERNOR**

**End of Other Material  
Related to Administrative  
Law**

# 2020 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXI, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 6</b>	<b>January 14</b>
<b>Issue 2</b>	<b>January 16</b>	<b>January 28</b>
<b>Issue 3</b>	<b>January 30</b>	<b>February 11</b>
<b>Issue 4</b>	<b>February 13</b>	<b>February 25</b>
<b>Issue 5</b>	<b>February 27</b>	<b>March 10</b>
<b>Issue 6</b>	<b>March 12</b>	<b>March 24</b>
<b>Issue 7</b>	<b>March 26</b>	<b>April 7</b>
<b>Issue 8</b>	<b>April 9</b>	<b>April 21</b>
<b>Issue 9</b>	<b>April 23</b>	<b>May 5</b>
<b>Issue 10</b>	<b>May 7</b>	<b>May 19</b>
<b>Issue 11</b>	<b>May 28</b>	<b>June 9</b>
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<b>Issue 22</b>	<b>November 13</b>	<b>November 24</b>
<b>Issue 23</b>	<b>December 3</b>	<b>December 15</b>
<b>Issue 24</b>	<b>December 17</b>	<b>December 29</b>

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