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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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Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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New Mexico Register

Volume XXXII, Issue 23

December 14, 2021

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

**NOTICE OF PUBLIC HEARING
AND RULEMAKING**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of the following proposed rulemaking. EMNRD proposes to adopt 3.3.35 NMAC, 2021 Sustainable Building Tax Credit and 3.4.22 NMAC, 2021 Sustainable Building Tax Credit.

Purpose of Rules. In 2021, the Legislature passed the 2021 Sustainable Building Tax Credit, which established in the Income Tax Act and the Corporate and Franchise Tax Act. The statutes require EMNRD to promulgate rules to certify whether a taxpayer is eligible for the tax credit.

3.3.35 NMAC, 2021 Sustainable Building Tax Credit. EMNRD proposes to place the residential and commercial building rules into one rule, and provide the requirements and application process to obtain certificates of eligibility for the sustainable building tax credit from EMNRD for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico, or the permanent installation of manufactured housing that is a sustainable building or the installation of energy-conserving production to existing buildings in New Mexico.

3.4.22 NMAC, 2021 Sustainable Building Tax Credit. EMNRD proposes to place the residential and commercial building rules into one rule, and provide the requirements and application process to obtain for certificates of eligibility for the sustainable building tax credit from EMNRD for the construction in New

Mexico of a sustainable building, the renovation of an existing building in New Mexico, or the permanent installation of manufactured housing that is a sustainable building or the installation of energy-conserving production to existing buildings in New Mexico.

Legal Authority. EMNRD proposes the rules under the authority of the Income Tax Act, NMSA 1978, Section 7-2-18.32 and the Corporate and Franchise Tax Act, NMSA 1978, Section 7-2A-28.1 and NMSA 1978, Section 9-1-5(E).

The full text of the proposed rules are available from the EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at <https://www.emnrd.nm.gov/ecmd/ecmd-public-notices/> or by contacting Harold Trujillo at harold.trujillo@state.nm.us; telephone (505) 490-7912.

Public Hearing and Comment. EMNRD will hold a virtual public hearing on the proposed rules at 9:30 am on January 14, 2022. The public may join the hearing virtually through WebEx using one of the following:

Sustainable Building Tax Credit 2021 Rules Hearing Event Link:
<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m6f55a8bf59ad6ed706f7f2324f7c9458>
Event number: 2495 693 5397
Event password: SBTC2021 (72822021 from phones)
Or join by phone:
1-844-992-4726 United States Toll Free
+1-408-418-9388 United States Toll
Access code: 249 569 35397

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing or may submit written comments by January 14, 2022, by 5:00 p.m. by mail or e-mail. Please mail written comments to Harold Trujillo, EMNRD, Energy

Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to harold.trujillo@state.nm.us.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Harold Trujillo at (505) 490-7912 or the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Harold Trujillo at (505) 490-7912, if a summary or other type of accessible format is needed.

Technical Information. Technical information used in the development of the proposed rules can be viewed at <https://www.emnrd.nm.gov/ecmd/ecmd-public-notices/> or by contacting Harold Trujillo at (505) 490-7912. The Technical information include; ENERGY STAR® Program Requirements for Residential Windows, Doors, and Skylights, and 2019 California Residential Compliance Manual.

**REGULATION AND
LICENSING DEPARTMENT
CHIROPRACTIC BOARD**

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

The New Mexico Chiropractic Board will hold a rule hearing on Tuesday, January 21, 2022, at 10:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held virtually via Cisco Webex Meetings.

Event address for attendees: <https://nmrld.webex.com/mw3300/mywebex/default.do?siteurl=nmrld&service=6>

Event number: 2483 797 3849
Event password: KCfeumB44V5

To join the meeting by phone, please call:

United States Toll
+1-415-655-0002
Access code: 2483 797 3849

The purpose of the rule hearing is to consider proposed amendments to the following rules:

- 16.4.8 NMAC – Disciplinary Proceedings
- 16.4.13 NMAC – Reinstatement of Chiropractic Licensure
- 16.4.15 NMAC – Chiropractic Advanced Practice Certification Registry
- 16.4.22 NMAC – Fees
- 16.4.23 NMAC – Licensure for Military Service Members, Spouses and Veterans

The amendments to 16.4.8 NMAC are intended to incorporate the legislative changes to the Uniform Licensing Act (“ULA”), NMSA 1978, Section 61-1-36, which requires each board, among other things, to “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction.”

The amendments to 16.4.23 NMAC is to incorporate the 2021 legislative changes to the ULA, Section 61-1-34, as mandated by HB 120 which relates to expedited licensure for military service members, their spouses, their dependent children and for veterans.

The amendments to 16.4.13 NMAC, 16.4.15 NMAC and 16.4.22 NMAC are intended to comply with the provisions of the Chiropractic Physician Practice Act, NMSA 1978, Sections 61-4-1 through -17, and to clarify and reorganize existing provisions.

To obtain and review copies of the proposed changes you may go to the

Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/chiropractic-board/cb-laws-rules-and-policies/>, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Nicolas Alderete, Board Administrator, via electronic mail at Chiropractic.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, January 20, 2022. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/chiropractic-board/cb-laws-rules-and-policies/>, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Nicolas Alderete, Board Administrator at (505) 476-4622.

Statutory Authority: The Chiropractic Physician Practice Act, Section 61-4-3(F), among other provisions, specifically authorizes the Board to “promulgate and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules and regulations necessary for the implementation and enforcement of the Chiropractic Physician Practice Act, including educational requirements for a chiropractic assistant.”

Summary of Proposed Changes: In addition to making minor clarification changes, the proposed rules are summarized as detailed below.

16.4.8 NMAC – Disciplinary Proceedings

The amendments to this part add a new section to the rule so that it is in compliance with the 2021 legislative changes made under SB2. The proposed amendments to this rule establish which criminal felony convictions directly relate to the employment or profession of chiropractic that may disqualify an applicant or licensee from holding a license. The proposed amendment also defines how the conviction may and/or may not be used when reviewing an application for licensure or for violation of the Board’s statute or rules by a current licensee.

16.4.13 NMAC – Reinstatement of Chiropractic Licensure

The amendments to this part add a subparagraph F which clarifies that reinstatement of automatically terminated advance practice certification registrations must meet requirements established under Subsection G of 16.4.15.8 NMAC.

16.4.15 NMAC – Chiropractic Advanced Practice Certification Registry

The amendments to this part are intended to provide clarification regarding when an advance practice certification registration automatically terminates, the requirements that must be met to have an automatically terminated registration reinstated and when an advance practice certification cannot be reinstated. Additional amendments to this part include adopting the consistent use of the term “advance practice certification” and correcting any typographical or grammatical errors.

16.4.22 NMAC – Fees

The amendments to this section clarifies the amount of fees that paid by those entities or organizations who submit more than ten (10) continuing education seminars for approval to the Board. The amendments

also reorganize and create new subheadings which provide fluidity and clarity for administrative/ licensing fees.

16.4.23 NMAC – Licensure for Military Service Members, Spouses and Veterans

The amendments to this part includes new language so that the rule is in compliance with the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed amendments changes the time for approving an application for license from sixty days to thirty days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

NOTICE OF RESCHEDULED PUBLIC HEARING

The Construction Industries Commission will convene a public hearing on the following proposed changes to the administrative code to include amendments to its rules 14.8.2 NMAC – 2015 NEW MEXICO PLUMBING CODE and 14.9.2 NMAC – 2015 NEW MEXICO MECHANICAL CODE. The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing and to examine witnesses testifying at the hearing. The original public notice hearing scheduled for November 30, 2021, was cancelled and is reset through this notice to January 18, 2022.

The purpose of this public rule hearing is to receive public comments regarding the amendments and changes to the 2015 New Mexico Plumbing and Mechanical codes reflecting updating of the codes

to reflect the publishing and consideration in New Mexico of the 2021 Uniform Plumbing Code and the 2021 Uniform Mechanical Code.

The statutory authority for this rulemaking is found in the Construction Industries Licensing Act, NMSA 1978 60-13-1 through 60-13-59, specifically Sections 60-13-9, 60-13-44, 60-13-45, 60-13-46 and 60-13-47.

The hearing is scheduled as follows:

The hearing shall begin at 9:30 a.m., January 18, 2022, will remain open until 10:00 a.m. or until participants have an opportunity to make public comment, whichever is longer. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone.

Interested persons may secure copies of the proposed changes by accessing the Construction Industries Division website (<https://www.rld.nm.gov/construction-industries>) to download the proposed rules or by written request to the Santa Fe CID Office – Toney Anaya Building, 2550 Cerrillos Rd. Santa Fe, NM 87505, attention: Mary James.

In order to ensure that the rules hearing is open to the public in a manner allowing members of the public to participate while social distancing due to COVID-19, the division shall implement the following procedures: You may send written comments to: Construction Industries Division, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. Written comments may also be faxed to (505) 476-4685/ (505) 476-4702 or submitted to Mary James at her email address: mary.james2@state.nm.us. All written comments must be received no later than 5:00p.m., on Friday, January 14, 2022. You may also review submitted comments by contacting Mary James at her email address above. All public comment

received shall be admitted into the record during the public hearing.

Written comments may also be received on the day of the hearing as a division representative shall be stationed at the each of the division offices: Toney Anaya Building, Santa Fe; 5500 San Antonio NE- Suite F Albuquerque and 505 S. Main St – Suite 103 Las Cruces between 8:30 a.m. and 9:30 a.m. to receive written comments and to provide for the comments to be admitted into the record during the public hearing. Those desiring to participate in the public video/telephonic hearing process may do so by remote participation through livestreaming the meeting or becoming a participant by following these instructions:

Join via Video:
<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e0e6d52f4d2e669ff4306c65c5264cad3>. Once you join through the above link you will be provided instructions for accessing the meeting. Event password not required.

Join via telephone:
 +1-415-655-0002
 Access Code: 2488 099 9706
 No password required.

You may also access the division’s website at <https://www.rld.nm.gov/construction-industries/> the day of the hearing to locate instructions for participating in the hearing. All persons desiring to make public comment during the hearing shall do so through the WebEx process notifying the host who shall then ensure the ability for recorded comment. If you have any issues you may contact Kimberly Salazar at (575) 621-8351

All public comments and documentation will be entered into the record during the public rules hearing. If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs as soon as possible to ensure adequate accommodations. Telephone: (505)

476-4616. Email: mary.james2@state.nm.us; Fax No. (505) 476-4702.

Summary of the Proposed Changes to the Administrative Codes:

14.8.2 NMAC, currently titled the 2015 New Mexico Plumbing Code is being amended to update the Plumbing Code to acknowledge the most current 2021 Uniform Plumbing Code which is adopted by reference by New Mexico. These changes reflect alternatives for establishing efficiency and cost savings in the construction of mechanical systems while also considering the uniqueness of our state as to the geography and ownership of property by citizens in our state referencing other enacted codes where appropriate, allowing for natural ventilation and exhaust when available, deleting repetitive sections and providing an approved emergency shutoff valve for a property owner.

14.9.2 NMAC, currently titled the 2015 New Mexico Mechanical Code is being amended to update the Mechanical Code to acknowledge the most current 2021 Uniform Mechanical Code which is adopted by reference by New Mexico. These changes reflect alternatives for establishing efficiency and cost savings in the construction of mechanical systems while also considering the uniqueness of our state as to the geography and ownership of property by citizens in our state referencing other enacted codes where appropriate, allowing for natural ventilation and exhaust when available, deleting repetitive sections and providing an approved emergency shutoff valve for a property owner.

**REGULATION AND LICENSING DEPARTMENT
INTERIOR DESIGN BOARD**

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

The New Mexico Interior Design Board noticed a rule hearing for proposed rulemaking, which was

published in the New Mexico Register on November 9, 2021.

This notice replaces the previous notice to reschedule the rule hearing due to a lack of quorum. The New Mexico Interior Design (“Board”) has rescheduled the rule hearing for January 13, 2022 at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and subsequent Board meeting will be held via Cisco Webex Meetings for those wishing to attend virtually.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e2288fe3352c8891ac41ead562a065c3>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2499 522 5871

The purpose of the rule hearing is to consider proposed amendments to the following rules:

- 16.42.4 NMAC – Complaints and Disciplinary Actions; and
- 16.42.7 NMAC – Licensure for Military Service Members, Spouses, Dependent Children and Veterans

The amendments to Parts 4 and 7 of the Board’s rules are primarily intended to address the legislative changes to the Uniform Licensing Act (“ULA”), NMSA, 1978, Sections 61-1-1 through -36, (1951, as amended through 2021), which occurred this past Legislative Session. *See* H.B. 120, 55th Leg., Reg. Sess. (N.M. 2021), available at: <https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf> and S.B. 2, 55th Leg., Special Sess. (N.M. 2021), available at: <https://www.nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf>. The amendments Part 4 are intended to incorporate the legislative changes required by SB 2 which include the adoption by the Board of a list of disqualifying criminal convictions which could disqualify an applicant for a prior

felony conviction. Additionally, the amendments to Part 7 of the Board’s rules, are intended to incorporate the legislative changes required by House Bill 120.

To obtain and review copies of the proposed changes you may go to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/interior-design/interior-design-rules-and-laws> or contact the New Mexico Interior Design Board at (505)476-4622 or by email at interior.design@state.nm.us.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Roxann Ortiz, Board Administrator, via electronic mail at interior.design@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, January 13, 2022 Rule Hearing. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/interior-design/interior-design-rules-and-laws>, no more than three business days following receipt to allow for public viewing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Roxann Ortiz, Board Administrator at (505) 476-4622.

Statutory Authority: The Interior Designers Act, Sections 61-24B-7 NMSA 1978, among other provisions, specifically authorizes the Board to “adopt regulations necessary to carry out the purposes and policies of the Interior Designers Act, including regulations relating to professional conduct, standards of performance and professional examination and licensure, reasonable license, application, renewal and late fees and

the establishment of ethical standards of practice for a licenses interior designer in New Mexico.”

Summary of Proposed Changes:

In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.42.4 NMAC—Complaints and Disciplinary Actions

The amendments to this part add a new section to the rule so that it is in compliance with the 2021 legislative changes made under SB2. The proposed amendments to this rule establish which criminal felony convictions directly relate to the employment or profession of signed language interpreting that may disqualify an applicant or licensee from holding a license. The proposed amendment also defines how the conviction may and/or may not be used when reviewing an application for licensure or for violation of the Board’s statute or rules by a current licensee.

16.28.7.10 – Licensure for Military Service Members, Spouses, Dependent Children and Veterans

The amendments to this part includes new language so that the rule is in compliance with the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed amendments changes the time for approving an application for license from sixty days to thirty days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

**REGULATION AND LICENSING DEPARTMENT
MESSAGE THERAPY BOARD**

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Massage Therapy Board will hold a rule hearing on Tuesday, February 1, 2022, at 9:30 a.m. Following the rule hearing, the Board will convene a board meeting

to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room for those desiring to attend in person.

Facemasks are required to be worn in the Toney Anaya Building for all in-person attendees.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

Event address for attendees: <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e7dc02243556ab8a5620e3695c638f911>

Event number: 2494 816 5975
Event password: 5MPxMRY7P2q

United States Toll
+1-415-655-0002
Access code: 2494 816 5975

The purpose of the rule hearing is to consider proposed amendments to the following rules:

- 16.7.4 NMAC - Requirements for Licensure
- 16.7.8 NMAC - Licensure for Military Service Members

The purposes of the amendments to 16.7.4 NMAC is to comply with the 2021 legislative change which requires that each board, among other things, “promulgate and post on the board’s website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction.” 61-1-36 NMSA 1978. Further, there is a proposed amendment to Subsection B of 16.7.4.10 NMAC which will allow high school students to begin massage therapy training before graduating from high school.

There is a proposed amendment to Subsection F of 16.7.4.10 NMAC which removes the requirement that a specific organization be utilized

with respect to obtaining first and CPR certification. Finally, there is a proposed amendment to Paragraph (4) of Subsection B of 16.7.4.16to remove a provision that inadvertently renders a temporary license invalid upon the successful passage of a national certification examination.

The purpose of the amendment to 16.7.8 NMAC is to alter the language of the rule so that it aligns with the 2021 legislative changes mandated by HB 120 which relates to expedited licensure for military service members, their spouses, their dependent children and for veterans pursuant to Section 61-1-34 NMSA 1978.

To obtain and review copies of the proposed changes you may go to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/massage-therapy/mt-laws-rules-and-policies/>, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Nicolas Alderete, Board Administrator, via electronic mail at massage.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Monday, January 31, 2022. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/massage-therapy/mt-laws-rules-and-policies/>, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Nicolas Alderete, Board Administrator at (505) 476-4622.

Statutory Authority: The Massage Therapy Practice Act, Sections 61-12C-1 to -28, NMSA 1978 (1991, as amended through 2019), among other provisions, specifically authorizes the Board to “adopt and file, in accordance with the provisions of the Uniform Licensing Act.” Subsection A of Section 61-12C-8 NMSA 1978.

Summary of Proposed Changes: In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.7.4 NMAC - Requirements for Licensure

The proposed amendments to 16.7.4 NMAC include the addition of list of specific criminal convictions which could disqualify an applicant from receiving or renewing a license based on a previous felony conviction. Additionally, there is a proposed amendment which will allow high school students to begin massage therapy training before graduating from high school. There is a proposed amendment which removes the requirement that first aid and CPR training be completed through specific organizations. Finally there is a proposed amendment that removes a provision that rendered a temporary license invalid upon the successful passage of a national certification examination.

16.7.8 NMAC - Licensure for Military Service Members

The proposed amendments to this part includes a repeal and replace due to the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from 60 days to 30 days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

**REGULATION AND LICENSING DEPARTMENT
NURSING HOME ADMINISTRATORS**

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Nursing Home Administrators noticed a rule hearing for proposed rulemaking, which was published in the New Mexico Register on October 26, 2021. This notice replaces the previous notice to reschedule the rule hearing due to a discrepancy in the notice of the meeting to the Albuquerque Journal. The New Mexico Board of Nursing Home Administrators has rescheduled the rule hearing for Friday, January 14, 2022, at 9:00 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held virtually, via Cisco Webex Meetings.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ecfdd52393e5d33aae149a14f7fda00f2>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2498 447 3917

The purpose of the rule hearing is to consider proposed amendments to the following rules:

- 16.13.1 NMAC – General Provisions
- 16.13.2 NMAC – Fees
- 16.13.3 NMAC – Application for Licensure by Examination
- 16.13.4 NMAC – Examination of Approved Applicants
- 16.13.5 NMAC – Application for Licensure by Reciprocity
- 16.13.6 NMAC – Licensure for Military Service Members, Spouses, Dependent Children and Veterans
- 16.13.8 NMAC – License Renewal
- 16.13.18 NMAC – Grounds for Disciplinary Action

To obtain and review copies of the proposed changes and public

comments, you may go to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/nursing-home-administrators/nha-board-information/nha-board-meetings/> or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Roxann Ortiz, Board Administrator, via electronic mail at: Nursinghomeadminbd@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, January 14, 2022. Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/nursing-home-administrators/nha-laws-rules-and-policies/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/nursing-home-administrators/nha-board-information/nha-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Roxann Ortiz, Board Administrator at (505) 476-4622.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Roxann Ortiz, Board Administrator at (505) 476-4622.

Statutory Authority: Legal authority for this rulemaking can be found in the Nursing Home Administrators Act, Sections 16-13-1 to 17 NMSA 1978, which, among other provisions, specifically authorizes the Board to “formulate, adopt and regularly

revise such rules and regulations not inconsistent with law as may be necessary to adopt and enforce standards for licensing nursing home administrators and to carry into effect the provisions of the Nursing Home Administrators Act.” Subsection A of Section 61-13-6 NMSA 1978. Additional legal authority for this rulemaking can be found in the Uniform Licensing Act, Sections 61-1-1 to 36 NMSA 1978.

Purpose and Summary of the Proposed Rules Changes:

16.13.1 NMAC – General Provisions

The amendments to this part include citation edits and revisions of some definitions in order to align with the current usage. Further, a new proposed section (16.13.1.9 NMAC) has been added which permits an applicant or licensee to request a waiver by the board of any requirement in Title 16, Chapter 13 NMAC.

16.13.2 NMAC - Fees

The amendments to this part include citation edits, removal of extraneous language with respect to the examination and computer based testing fees due to the fact that those fees are paid directly to NAB, as well as removal of hyperlinks to the board’s website as the website location is subject to change.

16.13.3 NMAC – Application for Licensure by Examination

The amendments to this part include the revisions of some definitions in order to align with current usage, as well as the addition of the condition that a NAB certified preceptor be utilized for the prerequisite requirement that an individual complete a board approved administrator in training program or board approved internship program. Further, proposed changes have been made to the method by which proof of completion of the required administrator in training program or internship program must be provided. Additional amendments to this part

include the removal of exam related information that does not reflect the current examination process.

16.13.4 NMAC – Examination of Approved Applicants

This part is being repealed in its entirety due to the fact that the information does not reflect the current examination process.

16.13.5 NMAC – Application for Licensure by Reciprocity

The amendments to this part include the removal of the reference to the PES and NAB examination, as well as the addition of a requirement that an applicant for licensure by reciprocity either complete an approved administrator in training program or demonstrate proof that the applicant has worked full-time for twelve consecutive months as an administrator. Additional amendments to this part include the removal of the notary requirement for signature as well as minor grammatical revisions to Paragraph (4) of Subsection A of 16.13.5.12 NMAC.

16.13.6 NMAC - Licensure for Military Service Members, Spouses, Dependent Children and Veterans

The amendments to this part includes a repeal and replace of the part due to the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from 60 days to 30 days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

16.13.8 NMAC – Licensure Renewal

The amendment to this part includes the removal of 16.13.8.10 NMAC due to the fact that licensing and renewal processes are being transitioned to an online format and mail notifications will no longer be sent to physical addresses.

16.13.18 NMAC – Grounds for Disciplinary Actions

The amendments to this part include the addition of new language to the rule to comply with the 2021 legislative change regarding SB2. The proposed rule sets out what criminal felony convictions directly relate to the particular profession of nursing home administration that may disqualify the applicant or licensee from holding a license. Amendments to this part also include the removal of the definition of “conviction”, as the term “disqualifying criminal conviction” is now defined in Subsection E of Section 61-1-36 NMSA 1978.

REGULATION AND LICENSING DEPARTMENT OPTOMETRY BOARD

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Optometry will hold a rule hearing on Thursday January 13, 2022, at 8:15 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room for those desiring to attend in person.

Face masks are required to be worn in the Toney Anaya Building for all in-person attendees.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually. <https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ec22a72719dbad879a2b11cf7c3712c03>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2490 658 3741

The purpose of the rule hearing is to consider proposed amendments to the

following rules:

- 16.16.3 NMAC – Requirements for Licensure by Examination
- 16.16.4 NMAC – Requirements for Licensure by Endorsement
- 16.16.10 NMAC – Renewal of New Mexico Optometry License
- 16.16.21 NMAC – Unprofessional Conduct
- 16.16.25 NMAC – Licensure for Military Service Members, Spouses and Veterans

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/optometry/optometry-board-information/optometry-board-meetings/> or contact the Boards and Commissions Division at (505) 476-4626.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Jennie James, Board Administrator, via electronic mail at: Optometry.Bd@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Thursday, January 13, 2022 by the end of the rule hearing. Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/optometry/optometry-rules-and-laws/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/optometry/optometry-board-information/optometry-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Jennie James, Board Administrator at (505) 476-4626.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Jennie James, Board Administrator (505) 476-4626.

Statutory Authority: The Optometry Act, Sections 61-2-1 to 18 NMSA 1978. Paragraph (2) of Subsection E of Section 61-2-6 NMSA 1978 specifically provides that the board shall “adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules for the implementation and enforcement of the provisions of the Optometry Act.” Additional legal authority for this rulemaking can be found in the Uniform Licensing Act, Sections 61-1-1 to 36 NMSA 1978.

Purpose and Summary of the Proposed Rules Changes:

16.16.3 NMAC – Requirements for Licensure by Examination

The amendments to this part include removal of the requirement for applicants to submit a copy of their birth certificate as well as the removal of the notary requirement because licensure is going to be completed using an online system moving forward. Other amendments include a stylistic change with respect to numbering as well as the addition of a requirement to provide proof of any disqualifying criminal conviction which is further described in a proposed amendment to 16.16.21 NMAC.

16.16.4 NMAC – Requirements for Licensure by Endorsement

The amendments to this part include removal of the requirement for applicants to submit a copy of their birth certificate as well as the removal of the notary requirement because licensure is going to be completed using an online system moving forward. Other amendments include the addition of a requirement to provide proof of any disqualifying criminal conviction which is further described in a proposed amendment to 16.16.21 NMAC.

16.16.10 NMAC – Renewal of New Mexico Optometry License

The amendments to this part include the revision of citations to legal authority in 16.16.10.3 NMAC as well as the addition of a requirement to provide proof of any disqualifying criminal conviction which is further described in a proposed amendment to 16.16.21 NMAC.

16.16.21 NMAC – Unprofessional Conduct

The amendment to this part adds a new section to the rule to comply with the 2021 legislative change regarding SB2. The proposed amendment sets out what criminal felony convictions directly relate to the particular employment, trade, business or profession of Optometry that may disqualify the applicant or licensee from holding a license. Additional amendments include a reference to the definition of “disqualifying criminal conviction” as defined in Subsection E of Section 16-1-36 NMSA 1978.

16.16.25 NMAC – Licensure for Military Service Members, Spouses and Veterans

The amendments to this part includes changes due to the 2021 legislative change regarding HB120 Military Spouses Expedited Licensure. The proposed rule changes the time for approving an application for license from 60 days to 30 days and removes “recent” from the definition of veteran. The rule also sets out application and renewal requirements.

End of Notices of Rulemaking and Proposed Rules

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.

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.15.2 NMAC, Sections 6, 7, 9, 10, 11, 12, 13, 14, 15, 17 and 21, effective 1/1/2022.

8.15.2.6 OBJECTIVE:

A. To establish standards and procedures for the provision of child care assistance benefits to eligible clients and to establish the rights and responsibilities of child care providers who receive payment for providing child care services to clients receiving benefits. To establish minimum requirements for eligibility for program participation and for the provision of child care services to children whose families are receiving benefits and to allow children receiving these benefits access to quality child care settings that promote their physical, mental, emotional, and social development in a safe environment. To establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

B. To establish child care assistance rates in accordance with the requirements of the Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF), which is the primary federal funding source of child care assistance to enable parents to work or pursue education and training so that they may better support their families while at the same time promoting the learning and development of their children. The CCDBG requires every state to

submit an updated CCDF plan every three years. A key requirement of the CCDBG Act is that lead agencies establish subsidy payment rates that ensure equal access to child care for children receiving child care assistance. States have two options to establish subsidy payment rates that ensure equal access: lead agencies must collect and analyze data through either a statistically valid and reliable market rate survey, or through an ACF pre-approved alternative methodology, such as a cost estimation model. New Mexico's rates, as set forth herein, and effective July 1, 2021 were informed by a cost estimation model and with extensive statewide stakeholder engagement. This new cost estimation model was developed in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico's children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

[B:] C. Permissive language such as “may or may be” when referring to actions taken by the department, address situations where it is not always prudent or practical to apply these actions. It is not meant to reduce the weight of these actions nor should the intent of the policies be circumvented due to this wording. This language is intended to be construed in a fiscally responsible and equitable manner, keeping in mind that consistency in application is the ultimate goal.

[8.15.2.6 NMAC - Rp, 8.15.2.6 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.15.2.7 DEFINITIONS:
A. Terms beginning with the letter “A”:

[A:] (1)

“Attending a job training or educational program” means actively participating in an in-person or online job training or educational program.

[B:] (2) “At-risk

child care” means a program for families at-risk as determined by the department.

B. Terms beginning with the letter “B”: **[RESERVED]**

C. Terms beginning with the letter “C”:

[C:] (1) “CACFP”

means the child and adult care food program, administered by the children, youth and families department.

[D:] (2) “Child with a disability or special needs”

means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

[E:] (3) “Client”

means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

[F:] (4) “Closure”

means the client's child care case is closed with the department.

[G:] (5) “Co-

payment” means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care

provider. The department's payment to the provider is reduced by the co-payment amount.

[H:] D. Terms beginning with the letter "D":

(1) "Demonstration of incapacity" means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician's/ medical professional's/treatment provider's letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

[H:] (2) "Department" means the New Mexico children, youth and families department (CYFD).

[J:] E. Terms beginning with the letter "E":

(1) "Earned income" means income received as gross wages from employment or as profit from self-employment.

[K:] (2) "Essential worker" means those who conduct a range of operations and services in industries that are essential to ensure the continuity of critical functions in the economy of our nation and state. During this period of economic recovery and subject to budgetary considerations, the presumption is that all workers are essential to the well being of the state's economy.

F. Terms beginning with the letter "F": **"Fluctuation of earnings"** means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:

(1) average family earnings over a period of time (e.g., 12 months); or

(2) choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

G. Terms beginning with the letter "G": [RESERVED]

[L:] H. Terms beginning with the letter "H":

(1) "Homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

[H+] (a) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

[H+] (b) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

[H+] (c) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

[H+] (d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in [Paragraphs (1) through (3)] Subparagraphs (a) through (c) of this [subsection] Paragraph.

[M:] (2) "Household" means the household as defined below in Paragraph (1) of Subsection C of 8.15.2.11 NMAC.

[N:] (3) "Household income" means household income as defined below in Paragraph (3) of

Subsection C of 8.15.2.11 NMAC.

[O:] I. Terms beginning with the letter "I":

(1) "Incidental money" means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

[P:] (2) "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

[H+] (a) infant: zero - 23 months;

[H+] (b) toddler: 24 -35 months;

[H+] (c) preschool: three to five year olds; and

[H+] (d) school age: six year olds and older.

[Q:] J. Terms beginning with the letter "J": **"Job training and educational program"** means participation in a short or long term educational or training program, including online programs that provide specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions. Educational programs include graduate and post graduate programs or classes.

K. Terms beginning with the letter "K": [RESERVED]

L. Terms beginning with the letter "L": [RESERVED]

M. Terms beginning with the letter "M": [RESERVED]

[R:] N. Terms beginning with the letter "N":

(1) "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to

evaluate and approve accrediting bodies.

~~(f)~~ (a) The following are the only national accrediting bodies that are approved by CYFD:

- ~~(a)~~ (i) the association of Christian schools international (ACSI);
- ~~(b)~~ (ii) the council on accreditation (COA) for early childhood education and after school programs;
- ~~(c)~~ (iii) the international Christian accrediting association (ICAA);
- ~~(d)~~ (iv) the national accreditation commission for early care and education programs (NAC);
- ~~(e)~~ (v) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
- ~~(f)~~ (vi) the national association of family child care (NAFCC); or
- ~~(g)~~ (vii) the national early childhood program accreditation (NECPA).

~~(2)~~ (b) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

~~(S)~~ (2) “Non-temporary change in activity” means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in ~~[Section HH below]~~ Paragraph (3) of Subsection T of 8.15.2.9 NMAC.

~~(F)~~ (3) “Non-traditional hours of care” means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

~~(U)~~ O. Terms beginning with the letter “O”:

(1) “Open case” means a case that has not been closed as a result of a failure to

recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

~~(V)~~ (2) “Overpayment” means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

~~(W)~~ P. Terms beginning with the letter “P”: “Provider types” means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) “In-home” care means care provided in the child’s own home.

(2) “Registered home” means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) “Licensed family child care home” means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) “Licensed group child care home” means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) “Licensed center” means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) “Out-of-school time care” means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

(7) ~~“Friend,~~ family, or neighbor (FFN)” “Family, friend, or neighbor

~~(FFN)~~” means care [to be] provided temporarily in a home [to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months. In] and only in the case of a public health emergency. ~~[the department may extend the temporary status.]~~

~~(O)~~ Terms beginning with the letter “O”: ~~[RESERVED]~~

~~(X)~~ R. Terms beginning with the letter “R”:

(1) “Recertification” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

~~(Y)~~ (2) “Registration/educational fee” means a fee charged to private pay and families receiving child care assistance for materials and supplies.

~~(Z)~~ S. Terms beginning with the letter “S”:

(1) “Sanctions” means a measure imposed by the department for a violation or violations of applicable regulations.

~~(AA)~~ (2) “SNAP” means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

~~(BB)~~ (3) “Special supervision” means the special supervision for child(ren) as defined below in Subsection G of 8.15.2.11 NMAC.

~~(CC)~~ (4) “Star level” means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

~~(DD)~~ (5) “Suspension” means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

~~(EE)~~ T. Terms beginning with the letter “T”:

(1) “TANF” means the temporary assistance to

needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

[FF:] (2) “Teen parent” means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

[GG.] “Termination” means the client’s child care case will be closed due to cause:]

[HH:] (3) “Temporary change of activity” means one of the following events [that does not exceed three months]:

(+)(a) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;

(+)(b) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(+)(c) student holiday or break for a parent or legal guardian participating in training or education;

(+)(d) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and

(+)(e) cessation of work or attendance at a training or education program less than three months.

(4) “Termination” means the client’s child care case will be closed due to cause.

[H:] U. Terms beginning with the letter “U”:

(1) “Underpayment” means a payment made by the department for services provided which did not fully reimburse the client or provider.

[J:] (2) “Unearned income” means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, grants and other income which does not meet the definition of earned income.

V. Terms beginning with the letter “V”: **[RESERVED]**

[K:] W. Terms beginning with the letter “W”:

“Working” means employment of any type, including self-employment and teleworking. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

X. Terms beginning with the letter “X”: **[RESERVED]**

Y. Terms beginning with the letter “Y”: **[RESERVED]**

Z. Terms beginning with the letter “Z”: **[RESERVED]**
 [8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020; A, 3/1/2021, A/E, 7/1/2021; A, 1/1/2022]

8.15.2.9 PRIORITIES FOR ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority one: Clients receiving temporary assistance to needy families (TANF) benefits to include TANF diversionary payment, are considered priority one clients.

(1) Participation exemption: The human services department (HSD) grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant’s inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a) the unavailability of appropriate child care within a reasonable distance from the individual’s home or work site;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any or all of the above reasons is referred to the children, youth and families department child care resource and referral. The child care resource and referral assists the client with location of child care. The final validation/verification of a client’s inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with HSD. HSD is responsible for providing notice of the approval or denial of a participation exemption.

B. Priority one A: **[RESERVED]**

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

D. Priority two: Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of

eligibility for priority two child care.

E. Priority three: **[RESERVED]**

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

G. Priority four plus: During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below three hundred fifty percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below four hundred percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents. Co-payments for families in priority four plus are not waived. Co-payments for families will be capped at three hundred percent of the federal poverty level.

~~G.~~ H. Priority five: In addition to these priorities, the department pays for at-risk child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority.

[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A; 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021; A, 1/1/2022]

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility:

- (1) a completed signed application form;
- (2) documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.15.2.11 NMAC;
- (3) documentation of the applicant’s TANF eligibility or participation, if applicable, and can include applicant’s social security number or assigned TANF identification number;
- (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- (6) verification of birth for all applicant’s household children;
- (7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;
- (8) verification of custody of children, if applicable;
- (9) verification of dependency of a child or adult household member, if applicable;
- (10) documentation of New Mexico residency; ~~and~~
- ~~(9)~~ (11) identification for parent/guardian; and
- (12) department approved provider.

B. The following are acceptable documents to use to verify eligibility. Other documents may be considered and taken to the supervisor to be reviewed for eligibility.

Verification Type	Acceptable documentation or information (examples)
Verification of Birth	-Birth certificate -Hospital or public health records -Certificate of Indian blood -Birth center records
Countable Earned Income	-Paystubs -Employer statement/verification of work form (for new employment) -Client statement, if earning wages from various odd jobs/day labor -Employer contract/work agreement -Payroll/gross wage history For self-employed individuals: -Income tax return with transcripts -Profit and loss (must be verified by a bookkeeper or accountant) -Common reporting standard (CRS) statements from New Mexico taxation and revenue department

<p><u>Countable Unearned Income</u></p>	<ul style="list-style-type: none"> -Benefit award letter (i.e. – social security, veteran administration (VA)) -Letter or document from agency making payment -Court records or other legal documents -Statement from tribal agency -Bank or other financial statement -Divorce or separation decree -Trust documents -Workers’ compensation documents -Rental income information
<p><u>Qualifying Activity</u></p>	<ul style="list-style-type: none"> -Proof of TANF participation (example: work participation agreement (WPA)) -School schedule -Statement from educational institution -Work schedule -Paystubs -Employer statement -Client statement -Contract/work agreement -Proof of new business registration with state
<p><u>Documentation of Incapacity</u></p>	<ul style="list-style-type: none"> -Statement or letter from medical professional on letterhead/stationary -Statement/record/letter from a federal government agency that issues or provides disability benefits -Statement/records/letters from a state vocational rehabilitation agency counselor -Records/letters from a treatment facility/counselor -Certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits
<p><u>Custody</u></p>	<ul style="list-style-type: none"> -Court order, or other legal records -Adoption records -Statement signed under penalty of perjury -Attorney records
<p><u>Dependency</u></p>	<ul style="list-style-type: none"> -Court order -Notarized statement -Divorce papers -Durable power attorney -Guardianship documentation -Federal tax documents verifying person is claimed as a dependent -Written statement with supervisor’s approval
<p><u>New Mexico Residency</u></p>	<ul style="list-style-type: none"> -Lease/rental agreement -Utility bill -Mortgage receipt -Written statement from person you are residing with -Current New Mexico driver’s license -Statement from landlord -Other records that provide a name and address
<p><u>Identification for Parent/Guardian</u></p>	<ul style="list-style-type: none"> -Current or expired government issued photo identification/passport -School photo identification -Government issued immigration document with photo -Employer identification with photo

<p>Citizenship/Immigration Verification</p>	<p>-United States birth certificate -Military identification -Passport -Naturalization certificate -Permanent resident card -ASPEN/HSD verification (client must be listed as “eligible child”) (example: refugees/other qualified aliens may receive services through HSD but also may have United States department of state form) -Numident (from social security office) -Refugee/asylee letter from United States secretary of state or from homeland security -Any document from the immigration and naturalization services (INS), department of homeland security (DHS), or other authoritative document showing a child’s immigration status that qualifies the child for assistance</p>
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C. The department may approve a client to submit their initial application by fax, email, electronic submission, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Upon approval from the child care regional manager, clients may be given longer than 14 calendar days, but no more than 30 calendar days, to submit required documentation.

~~C.~~ **D.** Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
 - (2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
 - (3) the provider is eligible to be paid.
- [8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A, 1/1/2022]

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

A. Child care staff will initiate communication at the initial determination of their

eligibility period to provide outreach and consumer education with a case management approach and coordination of services to support families.

B. Eligibility period: Based on the client meeting all eligibility requirements, a 12-month certification period will be granted.

(1) Eligibility may be granted for less than 12 months at the parent or legal guardian’s request. The parent or legal guardian will, however, remain eligible for the approved 12-month eligibility period.

(2) At-risk child care may be granted for less than 12 months as determined by the department.

(3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

(4) The client will remain eligible if a temporary change of activity occurs.

(5) If a client experiences a non-temporary change in activity, the child care placement agreement may close; however, the client will [no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.] remain eligible for the approved 12-month eligibility period.

C. Income eligibility determination:

(1) The household: The household includes

biological parents, stepparents, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit. Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, medical or other treatment, or military service.

(2) Legal guardians who are not the parents of the child(ren) for whom child care assistance is sought, are required to qualify for child care assistance as per Paragraph (3) below and, upon qualification, have the required co-payment waived.

(3) Household income: The household’s gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility. Household income does not include any earned and unearned income

received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

(4) Family assets: A family’s assets may not exceed one million dollars.

(5) Countable earned and unearned income: The following sources of income are counted when computing a family’s eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; alimony payments; veterans administration (VA) payments except VA payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; workman’s compensation; railroad retirement benefits; pensions; royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; overtime shall be counted at CYFD’s discretion if CYFD determines that the applicant is paid overtime on a regular basis.

(6) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of household dependents; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military food and housing allowances; an increase in military salary or allowances due to “temporary national emergency status

beginning September 11, 2001”; third party payments; energy assistance benefits; foster care payments; adoption subsidies; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes including graduate and other educational stipends; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or AmeriCorps; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

(7) Verification of household countable earned and unearned income: Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current documentation of income for biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

(8) Calculating income:
(a) Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.15.2.11 NMAC

(b) Conversion factors: When income is received on a weekly, biweekly, or semimonthly basis, the income shall be converted to monthly amount as follows:

(i) Income received on a weekly basis is averaged and multiplied by four and three-tenths. Weekly income is defined as income received once per week.

(ii) Income received on a biweekly basis is averaged and multiplied by two and fifteen one-hundredths. Biweekly income is defined as income received once every two weeks. Income is received on the same day of the week each pay period, therefore receiving 26 payments per year.

(iii) Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

(iv) Income received on a monthly basis is averaged and multiplied by one. Monthly income is defined as income received once per month.

D. Residency requirement: An applicant of child care assistance and a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

E. Citizenship and eligible immigration status: Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified immigrant as defined by the United

States department of health and human services, administration for children and families, office of child care.

F. Age requirement: Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for at-risk child care.

G. Special supervision: Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

H. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico ~~pre-K~~ pre-k, school or other programs.

I. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.12

RECERTIFICATION: Clients must recertify for services at the end of their eligibility period by complying with all requirements

of initial certification. Clients who recertify will qualify at or below ~~[two hundred fifty]~~ two hundred and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC. Clients designated as essential workers who recertify must be at or below four hundred percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous child care placement agreement. At time of recertification, clients must provide documentation of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B of 8.15.2.11 NMAC.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021; A, 1/1/2022]

8.15.2.13 CLIENT

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

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for at-risk child care and qualified grandparents or legal guardians. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [~~https://cyfd.org/child-care-services~~] https://www.nmeccd.org/child-care-assistance/.

In the case of an emergency, or under extenuating circumstances, the department secretary may waive

co-payments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required co-payments.

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

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

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

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

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

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

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

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

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

~~**E.** The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may~~

be reduced in the amount by which it exceeds the monthly provider reimbursement rate.]

[F:] E. In-home providers:

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

[G:] E. Notification of changes: Clients must provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

(1) A client must notify the department of any non-temporary change in activity or changes to household composition. Notifications must be provided within 14 calendar days of the change.

(2) A client must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income.

(3) A client must notify the department of any changes to their contact information.

(2) (4) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider

beginning on the start date at the new provider and until the final date of payment to the former provider.

(3) (5) If the client has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

(4) (6) Clients who do not comply with this requirement may be sanctioned. [8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended by the client if child care benefits are not being utilized for a period not to exceed three months with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

B. If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, [the client will be granted a three-month grace period in which the client will remain eligible. This three-month grace period is for the purpose of giving the client an opportunity to secure new employment or another approved activity. The three-month grace period will start on the date of required notification for the non-temporary change of activity pursuant to section 8.15.2.13-G NMAC.] the child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

C. A case will be closed if the following conditions apply:

(1) any non-temporary change in activity [~~and failure to obtain an activity after the three-month grace period~~];

(2) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred and fifty percent of the federal poverty level;

[~~(3) moving out of state;~~]

[~~(4) (3) failing to recertify at the end of approved eligibility period; or~~

[~~(5) at the option of the client;~~]

[~~(6) (4) being disqualified from participation in the program [;or].~~

[~~(7) failure to use authorized child care.]~~

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.15 PROVIDER REQUIREMENTS:

Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care placement agreement, are paid for by the client.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

B. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within

30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

C. Child care providers collect required co-payments from clients and provide child care according to the terms outlined in the child care placement agreement.

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

(1) If the above notification was met, the provider will be paid through the 14th calendar day following the first date of nonattendance.

(2) If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(3) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.15.2.21 NMAC.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care placement agreement. Failure to comply with this requirement may result in sanctions.

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under

8.15.2 NMAC. [~~The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.~~] The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

(2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

F. Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another CYFD approved provider.

G. Owners and licensees may not receive child care subsidy payments to provide care for their own children.

[~~G.~~] H. Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program.

I. Providers must promote the equal access of services for all children and families by developing and implementing policies and procedures that prohibit

discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

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

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

B. Payment for notification of changes:

(1) If a client fails to notify the department within 14 calendar days of their expected last day

of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.

(2) If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be

paid through the 14th calendar day following the last day of attendance.

(3) If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(4) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

C. ~~[The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.]~~ The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

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

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

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

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

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
[\$720.64] <u>880.00</u>	[\$589.55] <u>635.00</u>	[\$490.61] <u>575.00</u>	[\$436.27] <u>441.00</u>
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
[\$586.07] <u>855.00</u>	[\$487.11] <u>830.00</u>	[\$427.13] <u>680.00</u>	[\$422.74] <u>428.00</u>
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
[\$566.98] <u>875.00</u>	[\$463.50] <u>850.00</u>	[\$411.62] <u>700.00</u>	[\$406.83] <u>412.00</u>
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
[\$289.89] <u>350.00</u>	[\$274.56] <u>350.00</u>	[\$251.68] <u>350.00</u>	[\$251.68] <u>350.00</u>

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

I. Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and

maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

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

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

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

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

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

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

<u>Licensed Child Care Centers</u>			
<u>2+ Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$100.00</u>	<u>\$100.00</u>	<u>\$100.00</u>	<u>\$100.00</u>
<u>3 Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$100.00</u>	<u>\$100.00</u>	<u>\$100.00</u>	<u>\$100.00</u>
<u>4 Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$335.00</u>	<u>\$290.00</u>	<u>\$250.00</u>	<u>\$180.00</u>
<u>5 Star FOCUS or ECECD approved national accreditation</u>			

<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$640.00</u>	<u>\$550.00</u>	<u>\$350.00</u>	<u>\$250.00</u>

<u>Licensed Family and Group Homes</u>			
<u>2+ Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$130.00</u>	<u>\$130.00</u>	<u>\$130.00</u>	<u>\$100.00</u>
<u>3 Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$130.00</u>	<u>\$130.00</u>	<u>\$130.00</u>	<u>\$100.00</u>
<u>4 Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$195.00</u>	<u>\$195.00</u>	<u>\$195.00</u>	<u>\$180.00</u>
<u>5 Star FOCUS or ECECD approved national accreditation</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$260.00</u>	<u>\$260.00</u>	<u>\$260.00</u>	<u>\$250.00</u>

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

~~[L.]~~ Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.]

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

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

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

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

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

~~[P.]~~ **O.** Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.21 SANCTIONS: Sanctions may be imposed according to the severity of the infraction as determined by the department as detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency.

B. The department may initiate the recoupment process against any provider who fail to report in a

timely manner that a child has not been in attendance for 14 consecutive calendar days.

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

~~[D.]~~ Clients who fail to notify the department of any non-temporary change of activity may be placed on conditional eligibility status up to one year on the following eligibility period. Any further violations within the conditional eligibility period may result in termination.]

~~[E.]~~ D. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current.

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016; A, 3/1/2021; A, 1/1/2022]

**EARLY CHILDHOOD
EDUCATION AND CARE
DEPARTMENT**

This is an amendment to 8.16.2 NMAC, Sections 6, 7, 11, 12, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46 and 47, effective 1/1/2022.

8.16.2.6 OBJECTIVE:
The objective of 8.16.2 NMAC is to establish standards and procedures for the licensing of facilities and educators who provide child care to children within New Mexico. These standards and procedures are intended

to: establish minimum requirements for licensing facilities providing non-residential care to children in order to protect the health, safety, and development of the children; monitor facility compliance with these regulations through surveys to identify any areas that could be dangerous or harmful to the children or staff members; monitor and survey out of school time programs; and encourage the establishment and maintenance of child care centers, homes and facilities for children that provide a humane, safe, and developmentally appropriate environment. These regulations apply during all hours of operation for child care centers, homes and out of school time programs. The objective of 8.16.2 NMAC is also to establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

[8.16.2.6 NMAC - Rp, 8.16.2.6 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.7 DEFINITIONS:

A. Terms beginning with the letter “A”:

(1) “Abuse”
means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(a)
physical contact that harms or is likely to harm a child;

(b)
inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(c)
an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

(2) “Activity area” means space for children’s activities where related equipment and materials are accessible to the children.

(3)
“**Adult**” means a person who has a chronological age of 18 years or older.

~~[(4)]~~ ~~“AIM-HIGH”~~ is a voluntary quality child-care improvement program that is no longer open to new registered or licensed child-care programs. Recognition of AIM-HIGH will terminate on December 31, 2017.]

~~[(5)]~~ **(4)**
“**Assessment of children’s progress**” means children’s progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child’s behavior or skills in given situations). Children’s progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

~~[(6)]~~ **(5)**
“**Attended**” means the physical presence of a staff member or educator supervising and actively engaging children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Paragraph 12 of Subsection S of 8.16.2.7 NMAC).

B. Terms beginning with the letter “B”: [RESERVED]

C. Terms beginning with the letter “C”:

(1)
“**Capacity**” means the maximum number of children a licensed child care facility can care for at any one time.

(2) “Cease and desist letter” means a formal letter from the licensing authority outlining any ongoing violation of applicable regulations and providing 24 to 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the licensing authority. A cease and desist letter is usually issued when a provider violates applicable regulations, but there is not an immediate threat to the health and

safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the licensing authority will take if the violation(s) is not corrected by that deadline.

~~(2)~~ **(3) “Child”** means a person who is under the chronological age of 18 years.

~~(3)~~ **(4) “Child care center”** means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

~~(4)~~ **(5) “Child with a disability or special needs”** means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

~~(5)~~ **(6) “Class A deficiency”** means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

~~(6)~~ **(7) “Class B deficiency”** means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

~~(7)~~ **(8) “Class C deficiency”** means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

~~(8)~~ **(9) “Clean”** means to physically remove all dirt and contamination.

~~(9)~~ **(10) “Conditions of operation”** means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

~~(10)~~ **(11) “Core hours”** means the daily hours of operation of the child care facility.

~~(11)~~ **(12) “Corrective action plan”** means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

~~(12)~~ **(13) “Curriculum”** is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program’s mission statement, philosophy (which, in turn, is based on assumptions about young children’s development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

D. Terms beginning with the letter “D”:

(1) “Deficiency” means a violation of these regulations.

(2) “Direct provider of care” means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

(3) “Director” means the person in charge of the day-to-day operation and program of a child care center.

(4) “Disinfect” means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

(5) “Drop-in” means a child who attends a child care facility on an occasional or unscheduled basis.

E. Terms beginning with the letter “E”:

(1) “Educator” means an adult who directly cares for, serves, and supervises children in a licensed child care facility. Educators are considered staff members.

(2) “Environment” means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

(3) “Exploitation” of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child’s property for another person’s profit, advantage or benefit without legal entitlement to do so.

(4) “Expulsion” means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter “F”:

(1) “Facility” means any premises licensed under these regulations where children receive care, services, and supervision. A facility can be a center, home, program, or other site where children receive childcare.

(2) “Family child care home” means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day for no more than six children. The licensee will reside in the home and be the primary educator.

(3) **“FOCUS”** is a voluntary tiered quality rating and improvement program that is open to all registered and licensed child care programs.

G. Terms beginning with the letter “G”:

(1) **“Group child care home”** means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary educator.

(2) **“Group size”** is the number of children assigned to an educator or team of educators occupying an individual classroom or well-defined space within a larger room.

(3) **“Guidance”** means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

H. Terms beginning with the letter “H”:

(1) **“Home”** means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special consideration will be made for homes on tribal lands.

(2) **“Homeless children and youth”** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

- (a) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional

shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this Subsection.

I. Terms beginning with the letter “I”: **“Infant”** means a child age six weeks to 12 months.

J. Terms beginning with the letter “J”: [RESERVED]

K. Terms beginning with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”:

(1) **“License”** means a document issued by CYFD to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

(2) **“Licensee”** means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

(3) **“Licensing authority”** means the child care services bureau - licensing section of the early childhood services division of the New Mexico children, youth and families department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.

M. Terms beginning with the letter “M”:

(1) **“Media”** means the use of televisions, video games, and non-educational online streaming such as video and social media.

(2) **“Mission statement”** describes what the program aspires to do and whom the program aspires to serve.

N. Terms beginning with the letter “N”:

(1) **“National accreditation status”** means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(a) The following are the only national accrediting bodies that are approved by CYFD:

- (i) the association of Christian schools international (ACSI);
 - (ii) the council on accreditation (COA) for early childhood education and after school programs;
 - (iii) the international Christian accrediting association (ICAA);
 - (iv) the national accreditation commission for early care and education programs (NAC);
 - (v) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
 - (vi) the national association of family child care (NAFCC); or
 - (vii) the national early childhood program accreditation (NECPA).
- (b) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

(2) **“Night care”** means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

(3) **“Neglect”** means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

(4) **“Notice of provisional employment”** means a written notice issued to a child care center or home applicant indicating the Background Check Unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

(5) **“Notifiable diseases”** means confirmed or suspected diseases/ conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

O. Terms beginning with the letter “O”:

(1) **“Orientation”** means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

(2) **“Out of school time program”** means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

P. Terms beginning with the letter “P”:

(1) **“Pacifier”**
means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2) **“Parent handbook”** is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

(3) **“Pest”** means any living organism declared a pest pursuant to the Pesticide Control Act.

(4) **“Pesticide”** means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(5) **“Philosophy statement”** describes how the program’s mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program’s perspective on early care and education and the nature of how children learn. The program’s philosophy is implemented through the curriculum.

(6) **“Policy”** is a written directive that guides decision-making. Policies form the basis for authoritative action.

(7) **“Premises”** means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

(8) **“Procedure”** is a series of steps to be followed, usually in a specific order, to implement policies.

(9) **“Professional development”** is an on-going plan for continued professional development for each educator, including the director.

(10) **“Program administrator”** means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child’s development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

(11) **“Punishment”** means the touching of a child’s body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

Q. Terms beginning with the letter “Q”: [RESERVED]

R. Terms beginning with the letter “R”:

(1) **“Ratio”** is the maximum number of children one educator can be responsible for.

(2) **“Requirements”** means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

(3) **“Restriction”** means to control enrollment, service type, capacity, activities, or hours of operation.

(4) **“Revocation”** means the act of making a license null and void through its cancellation.

S. Terms beginning with the letter “S”:

(1) **“Sanction”** means a measure imposed by the licensing authority for a violation(s) of these standards.

(2) **“Sanitize”** means to reduce germs on inanimate surfaces to levels considered safe by

public health codes or regulations. Mix one and one half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

(3) **“Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(4) **“School-age”** means a child in care who is age five to 18 years.

(5) **“Staff evaluation”** means that each staff member is evaluated by the director, using criteria from the individual’s job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual’s professional development plan.

(6) **“Staff member”** means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

(7) **“Substitute”** means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

(8) **“Suspension”** means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

(9) **“Site director”** means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

(10) **“Star level”** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

(11) **“Substantiated complaint”** means a complaint determined to be factual, based on an investigation of events.

(12) **“Supervision”** means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

(13) **“Survey”** means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

T. **Terms beginning with the letter “T”: “Toddler”** means a child age 12 months to 24 months.

U. **Terms beginning with the letter “U”:**
(1) **“U/L”** means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

(2) **“Unattended”** means an educator is not physically present with a child or children under care.

(3) **“Unsubstantiated complaint”** means a complaint not determined to be factual based on an investigation of events.

V. **Terms beginning with the letter “V”: [RESERVED]**
(1)

(2) **“Variance”** means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

(2) **“Volunteer”** means any person who is not employed by the child care facility, spends six hours or less per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members or educator.

W. **Terms beginning with the letter “W”:** **“Waiver”** means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority. [8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 10/1/2016, A, 10/1/2019; AE, 7/1/2021; A, 1/1/2022]

8.16.2.11 LICENSING:
A. TYPES OF LICENSES:
(1) ANNUAL LICENSE: An annual license is issued for a one-year period to a child care facility that has met all requirements of these regulations.

(a) 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.16.2.11 NMAC. 1-star level is designated for programs not receiving child care subsidy. All 1-star educators receiving subsidy and licensed at the time of publication of these rules shall have until July 1, 2012 to meet 2-star requirements included in the following sections of these regulations:

(i) for centers: Paragraph (16) of Subsection G of 8.16.2.22 NMAC, Paragraphs (5) through (9) of Subsection G of 8.16.2.24 NMAC, and Subsection H of 8.16.2.24 NMAC;

(ii) for licensed family and group child care homes: Paragraph (4) of Subsection E of 8.16.2.32 NMAC, Paragraph (14) of Subsection F of 8.16.2.32 NMAC, Paragraphs (4) through (8) of Subsection G of 8.16.2.34 NMAC, and Subsection H of 8.16.2.34 NMAC;

(iii) for licensed out of school time programs: Subparagraph (k) of Paragraph (1) of Subsection E of 8.16.2.41 NMAC, Paragraph (14) of Subsection F of 8.16.2.41 NMAC,

Paragraphs (5) through (9) of Subsection B of 8.16.2.43 NMAC and Subsection C of 8.16.2.43 NMAC.

(b)

2-star level requires meeting and maintaining licensing requirements at all times.

(c)

2+ star level is voluntary and requires meeting and maintaining licensing requirements as well as meeting the most recent FOCUS eligibility requirements and 2+ star criteria.

(d)

3-star level is voluntary and requires meeting and maintaining licensing requirements and ~~[AIM-HIGH or]~~ FOCUS level 3 quality criteria at all times. ~~[AIM-HIGH criteria will no longer be used for the determination of star level effective December 31, 2017.]~~

(e)

4-star level is voluntary and requires meeting and maintaining licensing requirements and ~~[AIM-HIGH or]~~ FOCUS levels 3 and 4 quality criteria at all times. ~~[AIM-HIGH criteria will no longer be used for the determination or a star level effective December 31, 2017]~~

(f)

5-star level is voluntary and requires meeting and maintaining licensing requirements, FOCUS levels 3, 4 and 5 quality criteria at all times and maintaining CYFD approved national accreditation status.

(2)

TEMPORARY LICENSE: The licensing authority will, at its discretion, issue a temporary license when it finds the child care facility in partial compliance with these regulations.

(a)

A temporary license can, at the discretion of the licensing authority, be issued for up to 120 days, during which time the child care facility will correct all specified deficiencies.

(b)

The licensing authority will not issue more than two consecutive temporary licenses.

(c)

After a second temporary license has been issued, a new application and

the required application fee must be submitted within 30 days in order to renew the license for the remainder of that one year period.

(3)

AMENDED LICENSE: A child care facility will submit a new notarized application to the licensing authority before modifying information required to be stated on the license. Examples of such modifications include dates, capacity, director and number of stars.

(a)

A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application ([Fee] fee \$20) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director's appointment is valid for 90 days.

(b)

A notarized application must be submitted for a change of capacity ([Fee] fee \$20). Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

(c)

A child care facility will apply to the licensing authority for an amended license in order to change the number of stars. An application for a different star level will not be approved nor an amended license issued until on-site visits have been made and it has been determined that the child care facility meets all applicable criteria.

(4)

PROVISIONAL 2-STAR LICENSE: Newly licensed programs receiving child care

subsidy will be given a provisional 2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

(5)

MILITARY LICENSE:

(a)

Centers on military installations are governed and inspected by the United States department of defense (DoD) and obtain national accreditations. Therefore, such centers do not require an inspection by the New Mexico licensing authority.

(b)

In order to participate in the child care assistance program, providers licensed by the DoD must submit the following:

(i)

Licensing application

(ii)

Annual submission of a letter or memo detailing the approved DoD background clearance status for the director and all staff members in accordance with 8.8.3 NMAC, to include the individual's name, date of birth, and home address;

(iii)

DoD annual certification;

(iv)

DoD approved accreditation, if applicable; and

(v)

W-9 form and supporting documentation, if applicable.

B. RENEWAL OF LICENSE:

(1)

A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. CYFD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a \$25 late fee must be submitted with the renewal fee.

(2) All licensed facilities must maintain an original background check eligibility letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence. The teenage child’s guardian shall sign the annual statement on behalf of the teenage child.

(3) Upon receipt of a notarized renewal application, the required fee and the completion of an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the child care facility is in compliance with these regulations.

(4) If a licensee fails to submit a notarized renewal application with the required fee before the current license expires, the licensing authority may require the agency to cease operations until all licensing requirements are completed.

C. POSTING OF LICENSE: A child care facility will post the license on the licensed premises in an area readily visible to parents, staff members, and visitors.

D. NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A licensee will not transfer a license by assignment or otherwise to any other person or location. The license will be void and the licensee will return it to the licensing authority when:

- (1) the owner of the child care facility changes;
- (2) the child care facility moves;
- (3) the licensee of the child care facility changes; or
- (4) the child care facility closes.

E. AUTOMATIC EXPIRATION OF LICENSE: A license will expire automatically at midnight on the expiration date noted on the license unless earlier suspended or revoked, or:

- (1) on the day a child care facility closes;
- (2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;
- (3) on the day a child care facility moves.

F. ACCREDITED PROGRAMS: Accredited programs must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to be designated as a 5-star facility. The licensing authority may, at its option, notify the program’s accrediting body of the program’s failure to meet and maintain licensing standards.
[8.16.2.11 NMAC - Rp, 8.16.2.11 NMAC, 10/1/2016; AE, 7/1/2021; A, 1/1/2022]

8.16.2.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

A. The licensing authority may revoke, suspend, or restrict a license, reduce star status, deny an initial or renewal license application, impose monetary sanctions pursuant to 7.1.8 NMAC, put in place conditions of operation, issue a cease and desist letter, impose other sanctions or requirements against a licensee, or reduce to a base level of child care assistance reimbursement a licensee who is in receipt of a higher than base level of child care assistance reimbursement, for any of the following reasons:

- (1) violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the licensee cannot reasonably safeguard the health and safety of children;
- (2) failure to allow access to the licensed premises

by authorized representatives of the licensing authority;

(3) misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;

(4) allowing any person to be active in the child care facility who is or would be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC; this will include all adults and teenaged children living in a family child care or group child care home operated in a private residence whether or not they are active in the child care operation;

(5) failure to timely obtain required background checks;

(6) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to employ any person whose health or conduct impairs the person’s ability to properly protect the health, safety, and welfare of the children;

(7) allowing the number of children in the child care facility to exceed its licensed capacity;

(8) substantiated abuse or neglect of children by an educator, staff member, volunteer, or household member as determined by CYFD or a law enforcement agency;

(9) failure to comply with provisions of the other related regulations listed in these regulations;

(10) discovery of repeat violations of the regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous licensure periods;

(11) discovery of prior revocations or suspensions that may be considered when reviewing a facility’s application for licensure or license renewal;

(12) loss of accreditation, regardless of reason, will result in a reduction in star status;

(13) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present or sold on the premises at any time, regardless of whether children are present;

(14) making false statements or representations to the licensing authority with the intent to deceive, which the licensee knows, or should know to be false; or

(15) background clearance suspension or denial.

B. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

C. A suspension, revocation, or conditions of operations imposed pursuant to Part A of this Section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

D. The children, youth and families department notifies the licensee in writing of any action taken or contemplated against the license/licensee. The notification shall include the reasons for the department's action.

E. The licensee may obtain administrative review of any action taken or contemplated against the license/licensee.

F. The administrative review shall be conducted by a hearing officer appointed by the department's secretary.

G. If the action is to take effect immediately, the department affords the licensee the opportunity for an administrative appeal within five working days. If

the license is suspended pending the results of an investigation, the licensee may elect to postpone the hearing until the investigation has been completed.

H. If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect or an appeal of the following action is concluded and the action is either upheld or overturned.

I. If the contemplated action does not take immediate effect, and the licensee is given advance notice of the contemplated action, the licensee is allowed 10 working days from date of notice to request an administrative appeal.

J. In circumstances in which Public Health Act, Subsection N of Section 24-1-5 NMSA 1978 (2005) may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a licensee, the provisions of Subsection N of Section 24-1-5 shall apply as follows.

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of 15 days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to

notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

(5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.

(6) Nothing in Subsection J of 8.16.2.12 NMAC shall be construed to require licensure that is not otherwise required in this regulation.

K. The licensing authority may require a direct provider of care to undergo an additional background check if information shows any of the following:

(1) that the direct provider of care has pending charges for any criminal offense;

(2) that the direct provider of care has a pending or substantiated CYFD protective services or juvenile justice service referral;

(3) that the direct provider of care has any criminal history or history of a referral to CYFD protective services or juvenile justice services discovered after the most recent background check; or

(4) that the direct provider of care is the subject of an allegation of abuse and neglect in any licensed facility.

L. There shall be no right to administrative review for reduction in star level resulting from loss of, or failure to maintain, national accreditation status. The licensee shall be bound by the rules, regulations, policies and procedures implemented by the national accreditation body that governs its accreditation process.

M. There shall be no right to an appeal or administrative review when the licensing authority issues a cease and desist letter; provided, however, that the licensee shall have the right to an appeal or administrative review of any subsequent action taken by the licensing authority as set forth herein.

[M.] N. The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee’s national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. The licensing authority shall reduce the star level of a provider granted national accreditation status by the department to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. If a provider holding accreditation from an accrediting body no longer approved by CYFD fails to maintain these requirements, this will result in the provider reimbursement reverting to the base reimbursement rate. The provider may increase their star level only by meeting FOCUS criteria or by attaining CYFD approved national accreditation status. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.

[8.16.2.12 NMAC - Rp, 8.16.2.12 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.17 SURVEYS FOR CHILD CARE FACILITIES:

A. The licensing authority will conduct a survey at least twice a year in each child care facility using these regulations as criteria. The licensing authority will conduct additional surveys or visit the child care facility additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate complaints.

B. Upon the completion of a survey, the licensing authority will discuss the findings with the licensee or their representative and will provide the child care facility with an official written report of the findings and a request for a plan or plans of correction, if appropriate.

C. The licensee, director, or operator, will submit

within 10 working days after the date of the survey, a corrective action plan to the licensing authority for deficiencies found during the survey. The corrective action plan will be specific on how and when the child care facility will correct the deficiency or deficiencies.

D. The licensing authority may accept the corrective action plan as written or require modifications of the plan.

E. By applying for either a new license or a license renewal, the licensee grants the licensing authority representative the right to enter the premises and survey the child care facility, including inspection and copying of child care facility records, both while the application is being processed and, if licensed, at any time during the licensure period.

F. The licensing authority may or may not announce a survey. The licensee must grant immediate access upon the licensing authority’s arrival. At all times, a person who is knowledgeable in the daily operations, has access to all records and locked areas, and can represent the licensee or director for survey purposes will be present in the child care facility.

G. If a facility has video cameras on the premises that has recording capabilities, footage must be accessible to the licensing authority upon request.

[8.16.2.17 NMAC - Rp, 8.16.2.17 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.20 CHILD CARE CENTER REGULATIONS:

A. APPLICABILITY TO CHILD CARE CENTERS: A center required to be licensed under regulations in 8.16.2.21 NMAC through 8.16.2.29 NMAC is one that provides care, education, services and supervision to children for less than 24 hours a day to children in a non-residential setting, and is not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

B. NEW OR INNOVATIVE PROGRAMS FOR

PROVIDING CHILD CARE TO CHILDREN: A new or innovative service for child care that is typically not governed by these regulations will be licensed if there is a substantiated need for the service and if it meets all requirements outlined in Paragraphs (1), (2) and (3) of Subsection C. New or innovative programs shall adhere to all basic licensing standards regulations except that the licensing authority may grant waiver(s) to the extent necessary to accommodate new and innovative services which may conflict with any regulations pertaining to curriculum and environment.

C. SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE CHILD CARE CENTERS: Applicants for new or innovative child-care services that do not fit under these regulations will submit a proposal to the licensing authority for review and approval. Applications shall be presented to the department for review. The proposal will include:

- (1) an explanation of any special needs or modifications for the children who will be receiving these services;
- (2) identification of those portions of the proposed program that would conflict with these regulations; and
- (3) statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations.

D. SPECIAL REQUIREMENTS FOR CENTERS LOCATED ON OR NEAR THE PREMISES OF CORRECTIONAL FACILITIES: Applicants for centers located on or near correctional facilities will submit a proposal to the licensing authority for review and approval. The proposal will include:

- (1) an explanation of security modifications that are deemed necessary to ensure the safety of the staff, parents, and children using the child care center; and
- (2) statement of how the proposed center will

modify or provide alternative measures, policies and procedures that meet the intent of these regulations if the proposed program is in conflict with these regulations.
[8.16.2.20 NMAC - Rp, 8.16.2.20 NMAC, 10/1/2016]

8.16.2.21 LICENSURE REQUIREMENTS FOR CENTERS:

A. LICENSING REQUIREMENTS:

(1)

APPLICATION FORM: An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2)

BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers or any person who may have unsupervised physical access to children as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff

member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(3)

ZONING, BUILDING AND OTHER APPROVALS: An applicant will have: current written finalized zoning approval from the appropriate city, county or state authority; current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority; current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; current written approval from the New Mexico environment department or other environmental health authority for:

(a) a

kitchen, if meals are prepared on site and served in the center;

(b)

private water supply, if applicable;

(c)

private waste or sewage disposal, if applicable; and

(d) a

swimming pool, if applicable.

(4)

ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW CENTERS:

(a)

Accessibility to individuals with disabilities is provided in all new centers and will include the following:

(i)

main entry into the center is level or has a ramp to allow for wheelchair access;

(ii)

building layout allows for access to the main activity area;

(iii)

access to at least one bathroom is required to have a door clearance of 32 inches; the toilet unit also provides a 60-inch diameter turning radius;

(iv)

if ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise; and

(v)

ramps exceeding a six-inch rise are provided with handrails.

(b)

Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the center.

(5)

SCHEDULE: All applications for a new license will include a description of the center's proposed activities and schedule.

(6) INITIAL

SURVEY: The licensing authority will schedule a survey for a center when it receives a complete application with all supporting documents.

B. CAPACITY OF CENTERS:

(1) The

number of children in a center, either in total or by age, will not exceed the capacity stated on the license.

(2) The

licensing authority will count all children in the care of the licensed facility, including school-age children and the children of staff members and volunteers, in the capacity of the facility, even if the children are on a field trip or other outing outside the licensed premises. The licensed capacity must not be exceeded by the presence of school-age children.

(3) Children

shall not be cared for in unlicensed areas of the facility.

~~(3)~~ **(4)** A center

must meet the following space requirements.

(a)

35 square feet of indoor activity space measured wall to wall on the inside for each child in a center, excluding single-use areas, such as restrooms, kitchens, halls and storage areas, and excluding offsets and built-in fixtures.

(b)

75 square feet of outdoor activity space for each child using the area at one time. The center will post on the doors to the playground the maximum capacity of the playground.

(c)

Centers must post classroom capacities, ratios, and group sizes

in an area of the room that is easily visible to parents, staff and visitors.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a)** a lost, [or] missing or unattended child;
- (b)** a serious injury;
- (c)** the abuse or neglect of a child;
- (d)** fire, flood, or other natural disaster that creates structural damages to a center or poses a health hazard;
- (e)** any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;
- (f)** any legal action against a center or staff members;
- (g)** any incident that could affect the background check eligibility of any cleared person related to this license;
- (h)** any declaration of intention or determination to inflict punishment, loss, injury or pain on child or staff member by the commission of an unlawful act, such as, but not limited to, a bomb threat;
- (i)** the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or
- (j)** any known change in an educator’s health condition or use of medication

that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A center will notify parents or guardians in writing of any incident, including notifiable illnesses, that have threatened the health or safety of children in the center. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to those listed in Paragraph (1) of Subsection C of 8.16.2.21 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children’s protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures. [8.16.2.21 NMAC - Rp, 8.16.2.21 NMAC, 10/1/2016, A, 10/1/2019; A, 1/1/2022]

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

A. ADMINISTRATION RECORDS: A licensee will display in a prominent place that is readily visible to parents, staff and visitors:

- (1)** all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the center;
- (2)** the current child care regulations;
- (3)** dated weekly menus for meals and snacks;
- (4)** the guidance policy; and
- (5)** the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

- (1)** mission statement;
- (2)** philosophy statement; and
- (3)** curriculum statement.

C. POLICY AND PROCEDURES: All facilities using these regulations must have written policies and procedures covering the following areas:

- (1)** actions to be taken in case of accidents or emergencies involving a child, parents or staff members;
- (2)** policies and procedures for admission and discharge of children;
- (3)** policies and procedures for expulsion of children. Policies and procedures shall include how the center will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The center must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- (4)** policies and procedures for the handling of medications;
- (5)** policies and procedures for the handling of complaints received from parents or any other person;
- (6)** policies and procedures for actions to be taken in case a child is found missing from the center;
- (7)** policies and procedures for the handling of children who are ill; [and]
- (8)** an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical

conditions, accommodations of infants and toddlers, and continuity of operations (see waivers, Subsection D of 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans[.]and

(9) policies and procedures that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

D. FAMILY

HANDBOOK: All facilities using these regulations must have a parent handbook [which includes] . Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following:

- (1) GENERAL INFORMATION:
- (a) mission statement;
- (b) philosophy statement;
- (c) program information (location, license information, days and hours of operation, services offered);
- (d) name of director and how he/she may be reached;
- (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
- (f) daily schedule;
- (g) a statement supportive of family involvement that includes an open door policy to the classroom;
- (h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays and parties; and

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) expulsion procedures;
- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program’s policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures, safety policies, and disaster preparedness plan;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure; [and]
- (m) guidance policy; and
- (n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

E. CHILDREN’S

RECORDS: A center will maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records will be

kept at the center for 12 months after the child’s last day of attendance. Records will contain at least:

- (1) PERSONAL INFORMATION:
 - (a) name of the child; date of birth, gender, home address, mailing address and telephone number;
 - (b) names of parents or guardians, parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;
 - (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;
 - (d) date the child first attended the center and the date of the child’s last day at the center;
 - (e) a copy of the child’s up-to-date immunization record or a public health division approved exemption from the requirement [,-a] . A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth [;] , or at-risk children and youth as determined by the department;
 - (f) a record of any accidents, injuries or illnesses which require first aid or medical attention which must be reported to the parent or guardian;
 - (g) a record of observations of recent bruises, bites or signs of potential abuse or neglect, which must be reported to CYFD;
 - (h) written authorization from the child’s parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;
 - (i) written authorization from the child’s parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child.

(j) a record of the time the child arrived and left the center and dates of attendance initiated by a parent, guardian, or person authorized to pick up the child;

(k) an enrollment agreement form which must be signed by a parent or guardian with an outline of the services and the costs being provided by the facility; and

(l) a signed acknowledgment that the parent or guardian has read and understands the parent handbook.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child.

(b) the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

(c) the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency.

(d) a document giving a center permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian.

(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

F. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. A center will keep the file for one year after the staff member's last day of

employment. Records will contain at least the following:

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification; if background check is in process then documentation of the notice of provisional employment showing that it is in process, must be placed in file. A background check must be conducted at least once every five years on all required individuals;

(f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC;

(g) documentation of current first-aid and cardiopulmonary resuscitation training;

(h) documentation of all appropriate training by date, time, hours and area of competency;

(i) emergency contact number;

(j) universal precaution acknowledgment form;

(k) confidentiality form;

(l) results of performance evaluations;

(m) administrative actions or reprimands;

(n) written plan for ongoing professional development for each educator, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals; and

(o) signed acknowledgment that the staff have read and understand the personnel handbook;

(p) signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan; and

(q) form I-9, employment eligibility verification.

(2) A center will maintain dated weekly work schedules for the director, all staff, all educators and volunteers and keep the records on file for at least 12 months. The record will include the time the workers arrived at and left work and include breaks and lunch.

G. PERSONNEL HANDBOOK: The center will give each employee a personnel handbook that covers all matters relating to employment [~~and includes~~]. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title;

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(4) code of conduct;

(5) training requirements, career lattice, professional development opportunities;

(6) procedures and criteria for performance evaluations;

(7) policies on absence from work;

(8) grievance procedures;

(9) procedures for resignation or termination;

(10) copy of licensing regulations;

(11) policy on parent involvement;

(12) health policies related to both children and staff;

(13) policy on sexual harassment;
 (14) child guidance policy;
 (15) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

~~(15)~~ (16) confidentially statement; and
~~(16)~~ (17) a plan for retention of qualified staff. [8.16.2.22 NMAC - Rp, 8.16.2.22 NMAC, 10/1/2016, A, 10/1/2019; AE; 7/1/2021; A, 1/1/2022]

8.16.2.23 PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children.

(2) All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) Clerical, cooking and maintenance personnel who also care for children and are included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios will not have as their primary responsibility cooking, clerical or cleaning duties while caring for children.

(5) Volunteers shall not be counted in the staff/child ratios or left alone with children unless they meet all requirements for an educator.

(6) Substitutes and part-time educators counted in the staff/child ratios will meet the same requirement as regular educators except for training requirements, professional development plan and evaluations. Substitutes, volunteers, and educators routinely employed in a center but working 20 hours or fewer a week, will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements and have professional development plans and evaluations. See Paragraph (2) of Subsection B of 8.16.2.23 NMAC for additional training requirements.

(7) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of fifty percent of the center's daily core hours of operation. The licensing authority may require proof of the director's time on-site. See Paragraph (2) of Subsection F of 8.16.2.22 NMAC.

(8) During any absence, the director will assign a person to be in charge and will post a notice stating the assignment.

(9) A program will maintain staff/child ratios and group sizes at all times based on the age of the majority of children in the group. Children must never be left unattended whether inside or outside the facility. Staff will be onsite, available and responsive to children during all hours of operation. All educators shall perform headcounts at regular intervals throughout the day.

(10) A center will have a minimum of two staff members present at all times, with one being an educator. If the center has fewer than seven children, the second staff member may conduct other

activities such as cooking, cleaning, or bookkeeping.

(11) A center will keep a list of [~~at least two~~] people who can substitute for any staff member. The list will include the people's names, telephone numbers, background check, health certificates and record of orientation.

(12) Each room of the center and its premises shall be inspected at closing time on a daily basis to assure the center is secure, free of hazards, and that no child has been left unattended.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

(a) Unless exempted under Subparagraph (b) below, a child care center will have a director who is at least 21 years old and meets the requirements outlined in the table below.

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Professional Preparation		Experience
Program Administration The first of three AA-level Early Childhood Program Administration courses in the Early Childhood Program Administration career pathway: <i>Program Management I</i> Or The National Administrator Credential (NAC)*	and	
The Provisional AA-Level NM Early Childhood Program Administration Certificate (All three AA-level Early Childhood Program Administration Courses and Practicum: <i>Program Management I, Effective Program Development for Diverse Learners and Their Families & Practicum, Professional Relationships & Practicum</i>)		
The New Mexico Child Development Certificate (CDC) (Includes the following four courses as well as additional non-coursework requirements: <i>Child Growth, Development and Learning; Health, Safety and Nutrition; Family and Community Collaboration; and Assessment of Children and Evaluation of Programs</i>)		
The Child Development Associate (CDA) certificate		
The Child Care Professional (CCP) certificate		
The New Mexico Early Childhood Program Administration Certificate		
Montessori Teacher Certification		
The New Mexico One-Year Vocational Certificate		
Associate of Arts (AA) or Applied Sciences (AA or AAS) in child development or early childhood education		
Or		
A bachelor's degree or higher in early childhood education or a related field. Related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or other degree with successful completion of courses in early childhood.	and	One year of experience in an early childhood growth and development setting

*The NAC and two years of experience in an early childhood growth and development setting will be accepted as sufficient qualification for a director under the following conditions: a) The NAC was received prior to November 30, 2012 and b) the NAC has been maintained and has not expired subsequent to November 30, 2012.

**Directors shall be given until the end of the first full academic semester following their start date to successfully complete this course.

(b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as a director. Current directors having a break in employment of more than one year must meet the requirements as specified in Subparagraph (a) above.

(2) TRAINING:

(a) The director will develop and document an orientation and training plan for new staff members and volunteers and will provide information on training opportunities. The director will have on file a signed acknowledgment of completion of orientation by employees, volunteers and substitutes as well as the director. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following:

- (i) scope of services, activities, and the program offered by the center;
- (ii) emergency first aid procedures, recognition of childhood illness and indicators of child abuse;
- (iii) fire prevention measures, emergency evacuation plans and disaster preparedness plans;
- (iv) review of licensing regulations;
- (v) policies regarding guidance, child abuse and neglect reporting, and handling of complaints;

<p>review of written policies and procedures as defined in Subsection C of 8.16.2.22 NMAC;</p>	(vi)	<p>planning for emergencies resulting from natural or man-caused disasters;</p>	(vii)	<p>professionalism. [The 24 hours of annual training will be waived for educators if employed by a person currently under FOCUS-consultation.]</p>
<p>center/parental agreement;</p>	(vii)	<p>handling and storage of hazardous materials and the appropriate disposal of bio contaminants;</p>	(viii)	(e)
<p>sanitation procedure;</p>	(viii)	<p>precautions in transporting children (if applicable);</p>	(ix)	<p>Training must be provided by individuals who are registered on the New Mexico trainer registry.</p>
<p>written goals of the program;</p>	(ix)	<p>first aid and cardiopulmonary resuscitation (CPR) [certification]</p>	(x)	(f)
<p>personnel handbook;</p>	(x)	<p><u>awareness with a pediatric component</u>; and</p>	(xi)	<p>Training provided by center employees, [and] directors, owners, and direct affiliates of the provider shall count for no more than half of the required 24 hours of training each year.</p>
<p>parent handbook;</p>	(xii)	<p>recognition and reporting of child abuse and neglect.</p>	(xi)	(g)
<p>names and ages of children;</p>	(xiii)	<p>New staff members working directly with children regardless of the number of hours per week will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment. Substitutes are exempt from this requirement.</p>	(c)	<p>On-line training courses shall count for no more than 16 hours each year. If the 45-hour entry level course or its equivalent is taken online, it is exempt from the online training limitation.</p>
<p>names of parents;</p>	(xiv)	<p>Each staff person working directly with children and more than 20 hours per week, including the director, is required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. The competency areas are [1}]</p>	(d)	(h)
<p>tour of the facility; and</p>	(xv)	<p>child growth, development and learning; [2}]</p>	(i)	<p>Online first aid and CPR training will not be approved, <u>unless there is a hands-on component included. In-person requirements may be waived in case of an emergency.</u></p>
<p>introduction to other staff and parents.</p>	(b)	<p>health, safety, nutrition and infection control; [3}]</p>	(ii)	(i)
<p>All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire. All current educators will have three months to comply with the following training from the date these regulations are promulgated:</p>	(i)	<p>family and community collaboration; [4}]</p>	(iii)	<p>Identical trainings shall not be repeated for the purpose of obtaining credit.</p>
<p>prevention and control of infectious diseases (including immunization);</p>	(ii)	<p>developmentally appropriate content; [5}]</p>	(iv)	(j)
<p>prevention of sudden infant death syndrome and use of safe sleeping practices;</p>	(iii)	<p>learning environment and curriculum implementation; [6}]</p>	(v)	<p>Directors may count hours in personnel and business training toward the training requirement.</p>
<p>administration of medication, consistent with standards for parental consent;</p>	(iv)	<p>assessment of children and programs; and [7}]</p>	(vi)	(k)
<p>prevention of and response to emergencies due to food or other allergic reactions;</p>	(v)	<p>college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours. Basic level pre-requisites, such as math and English courses, leading to a degree</p>	(l)	A
<p>building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;</p>	(vi)	<p>center will keep a training log on file for all staff with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate.</p>	(m)	A
<p>prevention of shaken baby syndrome and abusive head trauma;</p>	(vii)	<p>emergency preparedness and response</p>	(n)	A

in early childhood development will be considered equivalent to a minimum of 15 clock hours per credit hour.

(n) See Paragraph (6) of Subsection A of 8.16.2.23 NMAC for requirements for centers that operate less than 20 hours per week.

C. STAFF/CHILD RATIOS AND GROUP SIZES:

(1) Ratios and group sizes shall be observed as outlined in the tables below:

Centers where children are grouped by age		
Age Group	Adult to child ratio	Maximum group size
infants	1:6 or fraction of group thereof	12*
toddlers	1:6 or fraction of group thereof	12*
two years	1:10 or fraction of group thereof	20
three years	1:12 or fraction of group thereof	24
four years	1:12 or fraction of group thereof	24
five years	1:15 or fraction of group thereof	30
six years and older	1:15 or fraction of group thereof	30

Centers Where Age Groups Are Combined		
Age Group	Adult to child ratio	Maximum group size
six weeks through 24 months	1:6 or fraction of group thereof	12*
two through four years	1:12 or fraction of group thereof	24
three through five years	1:14 or fraction of group thereof	28
six years and older	1:15 or fraction of group thereof	30
18 to 24 months with children ages 24 through 35 months	1:6 or fraction of group thereof	12*

*Providers whose group size exceeds the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated shall continue with their current group size as long as ratios are maintained at all times. Providers whose group size meets the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated must continue to meet the maximum group size. All new licensed providers and those requesting an infant or toddler capacity change after the date these regulations are promulgated must meet the maximum group size as indicated above.

(2) The number of children who may be in a group and the number of caregivers is specified in Paragraph (1) of Subsection C of 8.16.2.23 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

- (a) the room is divided so that different activity/interest areas are well-defined (i.e. creative art, dramatic play, books, manipulatives, blocks, science, and math);
- (b) each activity/interest area will have a posted capacity, which may vary according to the activity and size of the space, and will not exceed the group size requirement as specified in Paragraph (1) of Subsection C of 8.16.2.23 NMAC;
- (c) placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;
- (d) individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;
- (e) a single educator is responsible for supervising up to the number of children allowed in the adult to child ratio age grouping specified in Paragraph (1) of Subsection C of 8.16.2.23 NMAC in one or more interest area as long as every child is in direct eyesight of the educator; and
- (f) the total number of children in a larger room must not exceed the room capacity based on activity space. For example, if a three to five year old classroom has a capacity of 40, and the maximum group size is 28, the room must be divided by at least two well-defined spaces that include various activity/interest areas and be supervised by at least three educators, who are spread out so that every child is “attended.”

(3) Child care facilities not meeting the requirements as specified in Paragraphs (1) of Subsection C of 8.16.2.23 NMAC, must be able to clearly demonstrate the intent of group sizing through written procedures that must be approved by CYFD. The written procedures will address the following:

(a) maintenance of adult to child ratio within the group size in Paragraph (1) of

Subsection C of 8.16.2.23 NMAC. to facilitate adult to child interaction and constructive activity among children;

(b) assignment of a group of children to an educator or team of educators; and

(c) demonstrate how the educators will meet the needs of all children in the assigned classroom and account for all children at all times.

(4) A center will schedule staff to minimize the number of primary educators a child has during the day and the week. A child will have no more than three primary, consecutive educators in any day including educators in the early morning and late afternoon. Each child must have an educator who is aware of details of the child's habits, interests, and any special concerns.

(5) The same educator who cares for the children under age two years will supervise those children when they play with children over two years. [8.16.2.23 NMAC - Rp, 8.16.2.23 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.24 SERVICES AND CARE OF CHILDREN IN CENTERS:

A. GUIDANCE:

(1) A center will have written policies and procedures clearly outlining guidance practices. Centers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A center will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

(5) Children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

B. NAPS OR REST PERIOD: A center will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(1) Children under the age of six years in the centers for more than five hours will have a rest period.

(2) A center will allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats. Cribs which have sneeze guards installed may be placed end-to-end as long as they remain easily accessible.

(4) Each child will have an individual bed, cot, or mat clearly labeled to ensure each child uses the same items between washing.

(5) Cots or mats will have a nonabsorbent,

cleanable surface. Mats will be at least three-fourths of an inch thick. Mats and cots shall be cleaned and [linens with] sanitized after each use regardless of the same child using the mat or cot. Linens may be used multiple times over the course of a week but must be laundered before being used by another child.

(6) Educators shall ensure that nothing covers the face or head of a child aged 12 months or younger when the child is laid down to sleep and while the child is sleeping. Educators shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(7) Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from ~~[a parent or]~~ physician justifying the sleeping arrangement. A physician's note must contain a timeframe for the specific sleep arrangement. The facility shall adhere to the timeframe recommended by the doctor.

(8) Staff must be physically available to sleeping children at all times. Children must not be isolated for sleeping or napping in an un-illuminated room unless attended by an educator.

(9) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping. Illumination must be enough to see the entire room, clearly observe sleeping children and allow for quiet activities for non-sleeping children.

(10) Staff/child ratios and group sizes shall be maintained at naptime.

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS

(1) The center will provide a crib for each infant and, when appropriate, for a toddler.

(2) Cribs will meet federal standards and be kept in good repair. The center will not use plastic bags or lightweight plastic

sheeting to cover a mattress and will not use pillows in cribs. Stacking cribs is prohibited. Cribs will not be used for storage. Animals and pets will not be allowed in cribs or on sleeping materials.

(3) No child will be allowed to sleep in a playpen, pack and play, car seat, stroller [or] , swings, bouncers or high chairs, or other equipment not intended for sleep purposes.

(4) Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.

(5) Toys that are mouthed by infants and toddlers will be cleaned after mouthing by one child before other children do the same.

(6) A center will not admit any child under the age of six weeks except with the written approval of a licensed physician.

(7) A center will care for children under age two years in self-contained rooms separate from those used by older children. Children age six weeks to 12 months may be in the same room with children age 13 to 24 months, when they are physically separated from the older children. A center may group toddlers ages 18 to 24 months with children ages 24 through 35 months.

(8) Throughout the day, an educator will give each infant and toddler physical contact and attention. A caregiver will hold, talk to, sing to and take inside and outside walks with the child. A caregiver will respond immediately to all cries of infants and to the cries of all children within two minutes.

(9) An educator will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(10) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake

should be moved every 30 minutes to offer new stimulation.

(11) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping and waking periods.

(12) A center will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children. Infant rooms shall be arranged so that placement of cribs in an area used by other children does not encroach upon the minimum usable floor space requirements.

(13) Infants shall either be held or fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

(14) Children will not be allowed to walk or run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers will not be tied to the child. Pacifiers that contact the floor or ground will be cleaned and sanitized appropriately.

~~(14)~~ (15) Foods served will meet the nutritional needs of the infant or toddler. Foods will be developmentally appropriate for each infant served.

~~(15)~~ (16) A center shall provide an evacuation crib with wheels suitable for the surfaces around the facility and placed closest to the means of egress (exit).

D. DIAPERING AND TOILETING:

(1) An educator will plan toilet training with a parent so the toilet routine is consistent. A center will not attempt to toilet train a child who is not developmentally ready.

(2) A center will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single-use gloves when changing a diaper and

wash their hands after changing a diaper. Food service gloves are not permissible for diaper changing.

(3) A center will have a change of clothes on hand, including dry, clean clothing and diapers sufficient to meet the needs of each child. A center will label diapers and diapering supplies for each child and store them properly. Diaper bags will be inaccessible to children. Soiled diapers will be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

(4) An educator will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If center staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. ADDITIONAL REQUIREMENTS FOR NIGHT CARE:

(1) A center that provides night care will have 50 square feet of activity area per child for night care.

(2) Staff will be awake and immediately available to children who need attention during the night.

(3) The beds and cots provided for children shall be completely furnished with mattress, waterproof mattress protectors, sheets under and over the child, blanket, pillow and pillowcase and will meet all requirements for nap or rest period in accordance with Paragraphs (3) through (10) of Subsection B of 8.16.2.24 NMAC.

(4) Linens shall be changed immediately in case of soiling.

(5) The same menu shall not be used for lunch and supper.

G. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

- (a) dramatic play;
- (b) creative art;
- (c) books;
- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and
- (i) sensory.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.

(5) Learning areas have adequate space and noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(6) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(7) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(8) Floor surface is suitable for activities that will occur in each learning area.

(9) File and storage space is available for educators' materials.

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

(1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily. Toys will be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a

communicable disease, following appropriate guidance.

(2) A center will not use accordion-style baby gates.

(3) A child care center will provide activities that encourage children to be actively involved in the learning process and to experience a variety of developmentally appropriate activities and materials.

(4) A center will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time, each child can be individually involved.

(5) Each child at a center will have a designated space for storage of clothing and personal belongings.

(6) A center will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A center will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(7) A center will provide children with toys and other materials that are safe and encourage the child's creativity, social interaction, and a balance of individual and group play.

(8) A center will post a daily activity schedule. A center will follow a consistent pattern for routine activities such as meals, snacks and rest.

(9) Media viewing will not be permitted for children under two years of age. [Media] Non-educational viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing includes all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

- (10) Children and family members shall be acknowledged upon arrival and departure.
- (11) Full-time children shall have a minimum of 60 minutes of physical activity daily, weather permitting, preferably outside. Part-time children shall have a minimum of 30 minutes of physical activity daily, preferably outside. The center will ensure drinking water is available and maintained at a cool temperature while playing outside.
- (12) Equipment and program requirements apply during all hours of operation of the licensed facility.

J. OUTDOOR PLAY AREAS:

- (1) Outdoor play equipment used in child care centers shall be:
 - (a) intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; or
 - (b) if intended for residential use, shall be safe and securely anchored.
- (2) A center will enclose the outdoor play area with a fence at least four feet high and with at least one latched gate available for an emergency exit. Outside play areas must be on the premises and approved by the licensing authority.
- (3) A center will place sufficient energy absorbing surfaces beneath climbing structures, swings, and slides (as determined by Subsection P of 8.16.2.8 NMAC). Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material.

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.
 When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

- (4) Playground equipment shall be inspected and inspections documented weekly.
- (5) An outdoor play area for children under age two years will have an area protected from the general traffic where the children can crawl in safety.
- (6) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.
- (7) Children shall be protected from the sun during outdoor play [~~as instructed~~] by providing shade (as necessary), sunscreen, proper attire and limiting the time of exposure to the elements. The center must also consider instructions by the child’s parent or guardian. Drinking water should be available as needed and outlined in Paragraph (11) of Subsection I of 8.16.2.24 NMAC.

K. SWIMMING, WADING AND WATER:

- (1) Each child will have written permission from a parent or guardian before the child enters the pool.
- (2) If a center has a portable wading pool:
 - (a) a center will drain and fill the wading pool with fresh water daily and disinfect pool before and after each use;
 - (b) a center will empty a wading pool when it is not in use and remove it from areas accessible to children; and
 - (c) a center will not use a portable wading pool placed on concrete or asphalt.
- (3) If a center has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

- (a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;
- (b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and
- (c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.
- (4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
0-23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:
(1) A center will ensure the children’s safety on field trips and excursions. See Subparagraph (h) of Paragraph (1) of Subsection E of 8.16.2.22 NMAC for requirements for permission slips.
(2) Children will not go to a private residence unless accompanied by two adults. [8.16.2.24 NMAC - Rp, 8.16.2.24 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.25 FOOD SERVICE REQUIREMENTS FOR CENTERS:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the center will conform to the guidelines from United States department of agriculture’s (USDA’s) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:
(1) A center will provide a child a meal or snack at least every three hours except when the child is sleeping at night.
(2) A center will serve, if necessary, a child a therapeutic or special diet with written prescription/diet orders from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not

subject to interpretation by the center staff.

(3) A center shall make water freely available to children.

(4) A center that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA’s current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

(a) Only one hundred percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables

over canned.
(5) A center shall vary snacks each day and shall include a selection of two different food group components from the four food group components.

C. MENUS:
(1) Menus shall include a variety of foods. The same menu will not be served twice in one week.

(2) Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.

(3) Dated weekly menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

D. KITCHENS:
Centers shall comply with current New Mexico environment department requirements regarding food service.

(1) A center will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A center will serve food promptly and refrigerate immediately after use.

(4) A center will protect food and drink from insects, rodents, and other vermin by

properly storing items in an airtight container or by tightly wrapping them. A center will label and date all leftover food.

(5) If food is brought from the child’s home, a center will label it with the child’s name and refrigerate if necessary. A center will label and refrigerate bottles of infant formula or breast milk. The center must ensure children are fed the food or bottle provided by their parent/guardian and as instructed by them.

(6) A center’s refrigerators and separate freezers will have working internal thermometers and keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below, and frozen food at 0 degrees Fahrenheit or below.

~~(7) A center will protect all food from insects, rodents and other vermin.]~~

~~(8) (7)~~ A center will discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

~~(9) (8)~~ A center will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize. Disposable plates and cups and plastic utensils of food-grade, medium weight may be used for single service, but Styrofoam cups may not be used.

~~(10) (9)~~ A center will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

~~(11) (10)~~ A center shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A center will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and sanitize the areas before and after use.

(2) Staff/child ratios and group size must be maintained at meal times.

(3) Adults must sit with the children at meal and snack times to assist children with eating, drinking, and self-feeding and to encourage family-style dining and socialization.

(4) Time allowed for meals shall enable the children to eat at reasonable rate.

(5) A center will provide sanitary cups or glasses or a drinking fountain for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A center will not allow children to share drinking or eating utensils.

[8.16.2.25 NMAC - Rp, 8.16.2.25 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.26 HEALTH AND SAFETY REQUIREMENTS FOR CENTERS:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating;

(e) before and after feeding a child; ~~and~~

(f) after handling pets or animals or items used by animals such as water and food bowls [-] ; and

(g) after handling trash.

(2) A center will label with the child’s name and store separately any item used for an individual child’s personal hygiene.

(3) If a center promotes tooth brushing activities, the center will store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

B. FIRST AID

REQUIREMENTS:

(1) All educators, staff, and management in direct contact with children must be certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component. From the date of hire, staff will have three months to obtain the first aid and CPR certification. All staff must maintain first aid and CPR certification with a pediatric component. Prior to licensure, at a minimum, the director will have first aid and CPR certification.

(2) A center will keep a first-aid kit and a first-aid manual together in the center in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum, band aids, gauze pads, adhesive tape, scissors, soap, nonporous gloves, and a thermometer.

(3) A center will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A center will clean contaminated surfaces first with hot soapy water then with a disinfecting solution effective against HIV and hepatitis B.

C. MEDICATION:

(1) All staff and children’s medications must be labeled. A center will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Facilities will give medication only with written permission from a parent or guardian,

to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement [(Paragraph (2) of Subsection C of 8.16.2.26 NMAC)] only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the center. A center will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep and sign a written record of the dosage, date and time a child is given medication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The center shall not administer expired medication.

[8.16.2.26 NMAC - Rp, 8.16.2.26 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.27 ILLNESS REQUIREMENTS FOR CENTERS:

A. Children or staff members absent due to any notifiable disease will not return to the center

without a signed statement from a physician.

B. A center will separate and constantly observe a child who becomes sick at the center and promptly notify a parent or guardian of the child's illness.

C. A center will send a child home when:

(1) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

[b] (2) an educator observes signs of contagious disease or severe illness.

D. The center will have a cot or mat available for sick children and it will be disinfected thoroughly after each use.

E. The center must perform daily health check/screenings of all children in care. Findings will be documented and maintained for review.

[8.16.2.27 NMAC - Rp, 8.16.2.27 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.28 TRANSPORTATION REQUIREMENTS FOR CENTERS:

A. When a center provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.

B. A center will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(1) Children less than one year of age shall be properly secured in a rear-facing child

passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(2) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(4) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

D. Vehicles operated by the center to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the center will ensure the vehicle is heated.

E. A center will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The center will ensure children do not cross a street unsupervised after leaving the vehicle.

F. No one will smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

G. A second adult will accompany the driver of the vehicle when a center transports five or more children under age five years.

H. Children may be

transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

I. At least one adult transporting children, shall be currently certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component.

J. At all times, drivers will have a way to communicate to the facility the number of children being transported. Drivers will maintain a log to include the name of child, drop off and pick up times of all children being transported. The log will be kept for a minimum of 12 months for review.

[8.16.2.28 NMAC - Rp, 8.16.2.28 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.29 BUILDING, GROUNDS AND SAFETY REQUIREMENTS FOR CENTERS:

A. HOUSEKEEPING:

(1) A center will keep the premises, including furniture, fixtures, floors, drinking fountains, toys and equipment clean, safe, and in good repair. The center and premises will be free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will be durable, constructed of materials that will not absorb liquids and have tight fitting lids.

B. PEST CONTROL:

(1) All licensed child care centers must use a New Mexico licensed applicator whenever applying pesticides on the center's buildings or grounds.

(2) The licensed applicator may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides, herbicides, and other natural repellants and kept out of reach of children.

C. MECHANICAL SYSTEMS:

(1) A center will maintain comfortable temperatures (68 degrees through 82 degrees Fahrenheit) in all rooms used by children. A center may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a center exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A center must maintain all heating and cooling equipment so that it is in good working order.

(3) A center will not use un-vented heaters, open flame heaters or portable heaters. A center will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, infrared heaters, ceramic heaters, fireplaces, fireplace inserts and wood stoves.

(4) A center will provide fresh air and control odors by either mechanical or natural ventilation. If a center uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet will be below 110 degrees Fahrenheit. A center will install a tempering valve ahead of all domestic water-heater piping.

D. WATER AND WASTE: All food preparation areas, sinks, washrooms, laundries, bathrooms and any self-contained area for infants and toddlers in diapers will have hot and cold running water pressure.

E. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A center will have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A center will use U/L approved equipment only and will properly maintain this equipment.

(b) All electrical outlets within reach of children will be safety outlets or will have protective covers.

(c) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

F. EXITS AND WINDOWS:

(1) When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

(2) There must be at least two exits remote from each other in each activity area of the center.

(a) All exits must be marked, including fire exits, by signs having letters at

least six inches high whose principal strokes are at least three-fourths of an inch wide.

(b)

When illuminated exit signs are installed they must be maintained in operable condition.

(c)

All activity spaces for children under the age of two and a half years shall be on the "level of exit discharge" or ground floor.

(3) Exit ways

must be kept free from obstructions at all times.

(4) Activity

areas for children must have windows or skylight area of at least one-twentieth of the floor area. A skylight means an opening in a roof or ceiling, framed, and fitted with glass for admitting natural light. A skylight is also a tubular skylight, solar tube, or light tunnel. Tubular skylights are devices which uses a rooftop dome to transfer light indoors through reflective tubing running from the roof to the ceiling. Natural lighting received from an adjacent room will not meet the natural lighting requirements.

G. TOILET AND BATHING FACILITIES:

(1) A center

shall have one sink in any room for infants, toddlers, and combination thereof. Centers licensed after November 30, 2012 shall have one sink and one toilet in any room that has children ages 24 - 35 months, which shall be used exclusively by the children in this room. All sinks referred to in this paragraph shall have permanent plumbing, hot and cold running water, and shall not be used for food preparation or bottle cleaning. A basin with multiple compartments with a shared faucet will be considered one sink.

(2) All toilet

rooms will have toilet paper, soap and disposable towels at a height accessible to children. A center will not use a common towel or wash cloth.

(3) All closets

and bathroom locks must have an

outside release. A center will enclose all bathrooms. Bathrooms must be accessible and functional.

(4) Toilets

and lavatories must be provided in the following ratios. These ratios also apply to programs that share lavatories with unlicensed facilities.

(a)

one toilet and one lavatory for one to 12 children;

(b)

two toilets and two lavatories for 13 through 25 children;

(c)

one toilet and one lavatory for each additional 15 children or fraction thereof; or

(d)

when a center's capacity exceeds 30 children a separate toilet room must be provided for staff.

H. SAFETY

COMPLIANCE:

(1) A center

will conduct emergency preparedness practice drills at least quarterly beginning January of each calendar year.

(2) A center

will conduct at least one fire drill each month.

(3) A center

will:

(a)

hold the drills at different times of the day;

(b)

use the fire alarm or detector system;

(c)

emphasize an orderly rather than a speedy evacuation;

(d)

a center will keep a record of the fire drills and emergency preparedness practice drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill on file for at least 12 months;

(e)

a center shall request an annual fire inspection from the fire authority having jurisdiction over the center; if the policy of the fire authority having jurisdiction does not provide for an annual inspection of the center, the center must document the date the

request was made and to whom; a copy of the latest inspection must be posted in the center;

(f) a

center will post an evacuation plan in each room used by children;

(g)

a center will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone; a center will not use a pay phone to fulfill this requirement; if cordless phones or cellular telephones and devices are used, emergency numbers shall be posted on the phone itself; facilities shall post the center's telephone number and address in a conspicuous location next to the emergency phone numbers; a center shall have at least one corded phone or cell phone for use in the case of a power outage;

(h)

a center must be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction;

(i) a

center must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement;

(j) a

center must be equipped with carbon monoxide detectors to cover all licensed areas of the center if the child care program uses any sources of coal, wood, charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions. A center must comply with this requirement by July 1, 2022.

(k)

a center must have a minimum of two 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the center; and

~~(*)~~ (1) fire extinguishers, alarm systems, automatic detection equipment, and other firefighting must be properly maintained and inspected on a least yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection E of 8.16.2.29 NMAC for emergency lighting requirements.

I. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A center will prohibit smoking, e-cigarettes, and vaporizers in all areas, including vehicles, and will not allow any alcoholic beverages, firearms, lethal or non-lethal weapons or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

J. PETS:
(1) A center will inform parents or guardians in writing before pets are allowed in the center.

(2) A center will not allow pets in the kitchen, food serving, food storage areas, bathrooms, or infant room.

(3) A center will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the center.

(4) A center will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

[8.16.2.29 NMAC - Rp, 8.16.2.29 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.31 LICENSURE REQUIREMENTS FOR HOMES:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A home will submit a new application to the licensing authority before changing anything required to be stated on the license such as dates, capacity, operator, or address.

(3) BACKGROUND CHECK: In addition to the basic requirements at 8.16.2.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.8.3 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. A household member reaching the age of 18 must

submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(4) ZONING AND OTHER APPROVALS: An applicant will have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority if applicable;

(c) current written approval from the New Mexico environment department or other environmental health authority for: 1) Private water supply, if applicable; 2) Private waste or sewage disposal, if applicable; and 3) A swimming pool, if applicable.

(5) SCHEDULE: All applications for a new license will include a description of the home's proposed activities and schedule.

(6) INITIAL SURVEY: The licensing authority will schedule a survey for a home when it receives a complete application with all supporting documents.

B. CAPACITY OF A HOME:

(1) The number of children in a home, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed

home, including the educator’s own children under the age of six, in the capacity of a home, even if the children are on a field trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of non-residential school age children.

(3) A home may be licensed for up to 12 children.

(4) A home licensed as a family day care home under these regulations providing care for a maximum capacity of six children may care for up to four children under the age of two providing a second educator is present in the home and the home is licensed to provide such care. A home licensed as a group day care home under these regulations providing care for a maximum of 12 children may care for up to four children under age two providing a second educator is present in the home and the home is licensed to provide such care.

(5) A home must have 35 square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than 12 children. A home must have at least one bathroom with a toilet and sink. For a home licensed for no more than six children, one activity room will be measured. For a home licensed for 12 children, no more than two rooms will be measured. Children shall not be cared for in unlicensed areas of the home.

(6) The home will have an outdoor play area, which must be [fenced-in:] contained by a fence. Outside play areas must be on the premises or approved by the licensing authority.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred.

A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(a) a lost, [øf] or missing or unattended child;

(b) a serious injury;

(c) the abuse or neglect of a child;

(d) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;

(e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(f) any legal action against a home, household member, or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(i) any known change in an educator’s health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the home. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.31 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children’s protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures. [8.16.2.31 NMAC - Rp, 8.16.2.31 NMAC, 10/1/2016, A, 10/1/2019, AE; 7/1/2021; A, 1/1/2022]

8.16.2.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

A. ADMINISTRATIVE RECORDS: A licensee will post the child care home license in an area readily visible to parents and visitors. The licensee will also keep on file:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;

(2) the current child care regulations;

(3) the guidance policy;

(4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and

(5) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

(1) mission statement;
 (2) philosophy statement; and
 (3) curriculum statement.

C. PARENT

HANDBOOK: All facilities using these regulations must have a parent handbook [~~which includes~~]. Upon updating the parent handbook, changes must be approved and submitted to licensing and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following:

(1) GENERAL

INFORMATION:
 (a) mission statement;
 (b) philosophy statement;
 (c) program information (location, license information, days and hours of operation, services offered);
 (d) name of licensee and how he/she may be reached;
 (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
 (f) daily schedule;
 (g) a statement supportive of family involvement that includes an open door policy to the family or group child care home;
 (h) appropriate dress for children, including request for extra change of clothes;
 (i) celebrating holidays, birthdays and parties; and
 (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES

AND PROCEDURES:
 (a) enrollment procedures;
 (b) disenrollment procedures;

(c) policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;

(d) fee payment procedures, including penalties for tardiness;

(e) notification of absence;

(f) fee credits, if any (e.g. for vacations, absences, etc.);

(g) field trip policies;

(h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i) emergency procedures, safety policies, and disaster preparedness plan;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure; [and]

(m) guidance policy; and

(n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

D. CHILDREN'S

RECORDS: A home will maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for 12 months after the child's last day of attendance. Records will contain at least:

(1) PERSONAL INFORMATION:

(a) name of the child, date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the home and the date of the child's last day at the home;

(e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth [;] or at-risk children and youth as determined by the department;

(f) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or potential signs of abuse or neglect, both of which must be reported to a parent or guardian;

(g) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

(h) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child;

(i) a record of the time the child arrived and left the home and dates of attendance initialed by a parent,

guardian, or person authorized to pick up the child;

(j)

an enrollment agreement must be signed by a parent or guardian with an outline of the services and the costs being provided by the home; and

(k)

a signed acknowledgement that the parent or guardian has read and understands the parent handbook.

(2)

EMERGENCY INFORMATION:

(a)

information on any allergies or medical conditions suffered by the child;

(b)

the name and telephone number of two people to contact in the local area in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times.

(c)

the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency;

(d)

a document giving a home permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian; and

(e)

if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

E. PERSONNEL

RECORDS: A home will keep the following records on file and make them available to the licensing authority.

(1)

Documentation of a background check and employment history verification for all staff members and all adults living in the home. If a background check is in process for a staff member, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background

check must be conducted at least once every five years on all required individuals.

(2) An

annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC.

(3) A record of

the time the second educators arrived at and left work, to include breaks and lunch.

(4) A written

plan for ongoing professional development for each educator that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals. Family child care homes who do not have employees are exempted from this requirement.

F. PERSONNEL

HANDBOOK: The educator will give each non-resident employee a personnel handbook that covers all matters relating to employment [and includes] . Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following critical contents:

(1) job

description of second educator;

(2) benefits,

if provided, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(3) code of

conduct;

(4)

training requirements, professional development opportunities;

(5) procedures

and criteria for performance evaluations;

(6) policies on

absence from work;

(7) procedures

for resignation or termination;

(8) copy of

licensing regulations;

(9) policy on

parent involvement;

(10) health

policies related to both children and staff;

(11) policy on

sexual harassment;

(12) child

guidance policy;

(13) anti-

discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

~~(13)~~ (14)

confidentially statement; and

~~(14)~~ (15)

plan for retention of qualified staff.

[8.16.2.32 NMAC - Rp, 8.16.2.32 NMAC, 10/1/2016, A, 10/1/2019; A, 1/1/2022]

8.16.2.33 PERSONNEL AND STAFFING

REQUIREMENTS FOR HOMES:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) A licensee

will not allow any staff member, including the licensee, or any other adult living in the home involved in an incident which would disqualify that staff member or other adult under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children or to reside in the home.

(2) All staff

members will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators

who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) The

licensee shall be in the licensed child

care home during at least seventy-five percent of the home's core hours of operation.

(5)

Substitutes, volunteers and part time second educators counted in the staff/child ratios shall meet the same requirements as regular staff members, except for training requirements. Substitutes and part time second educators routinely employed in the home but working 20 hours or less a week shall complete half the required training hours. Such employees working more than 20 hours per week shall complete all required training hours. The primary educator in a licensed home shall complete all required training hours, regardless of the number of hours worked.

(6)

A home licensed to provide care for six or fewer children will have at least one educator in the home at all times. A home licensed to provide care for more than two children under the age of two will have at least two educators in the home at all times.

(7)

A home licensed for seven to 12 children will have at least two educators at the home when more than six children are present or when more than two children under the age of two are present.

(8)

Children will never be left unattended. An educator will be with the children at all times whether activities are inside or outside of the home. Educators will be onsite, available and responsive to children during all hours of operation. Providers and secondary caregivers shall perform headcounts at regular intervals throughout the day.

B. STAFF QUALIFICATIONS AND TRAINING:

(1)

All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire. All current educators will have three months to comply with the following

training from the date these regulations are promulgated:

(a)

prevention and control of infectious diseases (including immunization);

(b)

prevention of sudden infant death syndrome and use of safe sleeping practices;

(c)

administration of medication, consistent with standards for parental consent;

(d)

prevention of and response to emergencies due to food or other allergic reactions;

(e)

building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(f)

prevention of shaken baby syndrome and abusive head trauma;

(g)

emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;

(h)

handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(i)

precautions in transporting children (if applicable);

(j)

first aid and cardiopulmonary resuscitation (CPR) [~~certification~~ awareness with a pediatric component]; and

(k)

recognition and reporting of child abuse and neglect.

(2)

A home will keep a training log on file including the date of the training, name of educator, hours earned, subject/competency area, source of training, and training certificates.

(3)

Educators working for a home will receive at least 12 documented hours of training during each year, including six hours in child growth and development

and three hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven competency areas. The competency areas are: [1]

(a)

child growth, development and learning; [2]

(b)

health, safety, nutrition and infection control; [3]

(c)

family and community collaboration; [4]

(d)

developmentally appropriate content; [5]

(e)

learning environment and curriculum implementation; [6]

(f)

assessment of children and programs; and [7]

(g)

professionalism.

(4)

An educator cannot count more than three hours in first aid or CPR training toward the total hours required. Online first aid and CPR training will not be approved unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. For this purpose, a year begins and ends at the anniversary date of employment. Training must be provided by individuals who are registered on the New Mexico trainer registry. On-line training courses shall count for no more than eight hours each year. If the 45-hour entry level course or its equivalent is taken online, it is exempt from the online training limitation. Identical trainings shall not be repeated for the purpose of obtaining credit. [~~The 12-hours-of annual training will be waived for educators if employed by a program currently under FOCUS consultation.~~]

(5)

Infant and toddler educators must have at least two hours of training in infant and toddler care within six months of starting work. The two hours will count toward the 12-hour requirement in Paragraph (2).

~~(5)~~ **(6)** The primary educator will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment.

~~(6)~~ **(7)** A home must have all educators certified in first aid and cardio-pulmonary resuscitation (CPR) with a pediatric component. Staff shall obtain the first aid and CPR certification within three months of being hired. All staff shall maintain current first aid and CPR certification. Prior to licensure, the primary caregiver shall have CPR certification.

[8.16.2.33 NMAC - Rp, 8.16.2.33 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.34 SERVICES AND CARE OF CHILDREN IN HOMES:

A. GUIDANCE:

(1) A home will have written policies and procedures clearly outlining guidance practices. Care-givers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A home will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

(5) Children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

B. NAPS OR REST PERIOD:

(1) A home will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(2) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Each child will have an individual bed, cot, or mat that is sanitized after each use, regardless of the same child using the mat or cot. Linens can be used multiple times over the course of a week but must be laundered before being used by another child.

(4) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats. Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths of an inch thick. Mats and cots shall be cleaned and linens must be laundered before being used by another child.

(5) Educators shall ensure that nothing covers the face or head of a child aged 12 months or younger when the child is laid down to sleep and while the child is sleeping. Educators shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(6) Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from ~~[a parent or]~~ physician justifying the sleeping arrangement. A physician's note must contain a timeframe for the specific sleep arrangement. The facility shall adhere to the timeframe recommended by the doctor.

(7) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping. Illumination must be enough to see the entire room, clearly observe sleeping children and allow for quiet activities for non-sleeping children.

(8) Children shall be directly supervised during naptime.

(9) All children shall sleep in the licensed area of the home. No children shall be allowed to sleep behind closed doors.

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS:

(1) The home will provide a crib for each infant and, when appropriate, for a toddler.

(2) Cribs will meet the most current federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. No child shall be allowed to sleep in a play pen, pack and play, infant swing, car seat and/or bouncer. Only a crib meeting the CPSC 16 CFR 1219 or 1220 guidelines will be allowed.

(3) No child will be allowed to sleep in a playpen, pack and play, car seat, stroller [or swing], swings, bouncers or highchairs, or other equipment not intended for sleep purposes.

(4) Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician. Providers shall place infants in cribs for safe sleeping.

(5) A home will not admit any child under the age of six weeks except with the written approval of a licensed physician.

(6) Throughout the day, an educator will give each infant and toddler physical contact and attention. An educator will hold, talk to, sing to and take inside and outside walks with the child. An educator will respond immediately to all cries of infants and to the cries of all children within two minutes.

(7) An educator will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(8) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

(9) A home will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(10) Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

(11) Children will not be allowed to walk or run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers will not be tied to the child. Pacifiers that contact the floor or ground will be cleaned and sanitized appropriately.

~~(11)~~ (12) Each infant shall be allowed to form and observe his or her own pattern of feeding, sleeping, and waking periods.

~~(12)~~ (13) Food served shall meet the nutritional needs of the infant or toddler. Foods

shall be developmentally appropriate for each infant served.

D. DIAPERING AND TOILETING:

(1) An educator will plan toilet training with a parent so the toilet routine is consistent. A home will not attempt to toilet train a child who is not developmentally ready.

(2) A home will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single use gloves when changing a diaper and wash their hands after changing a diaper. Food service gloves are not permissible for diaper changing.

(3) A home will have a supply of dry, clean clothing and diapers sufficient to meet the needs of the child. A home will label diapers and diapering supplies for each child and store them separately. Diaper bags will be inaccessible to children.

(4) An educator will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If family or group home educators believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with

Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. NIGHT CARE: In addition to all other requirements, a home providing night care will have an educator onsite, physically available and responsive to children who need attention during the night.

G. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into functional identifiable learning areas. Family child care homes that have dedicated space shall have at least four of the following learning areas. Family child care homes that do not have dedicated space shall have at least three of the following learning areas:

- (a) a place for messy play;
- (b) a place for loud, active play;
- (c) a place for playing quietly;
- (d) a place to pretend; and
- (e) a place to read.

(2) Each learning area is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) Learning areas have adequate space and noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(5) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(6) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(7) Floor surface is suitable for activities that will occur in each learning area.

(8) File and storage space is available for educators' materials.

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

(1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily. Toys shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

(2) A home will not use accordion-style baby gates.

(3) A home will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time, each child can be individually involved.

(4) A home will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A home will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(5) A home will provide children with toys and other materials that are safe, developmentally

appropriate, and encourage the child's creativity, social interaction, and a balance of individual and group play.

(6) A home will post a daily activity schedule. A home will follow a consistent pattern for routine activities such as meals, snacks and rest.

(7) Media viewing will not be permitted for children less than two years of age. Media viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing includes all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

(8) Children and family members shall be acknowledged upon arrival and departure.

(9) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part time children shall have a minimum of 30 minutes of physical activity daily, preferably outside. The provider will ensure drinking water is available and maintained at a cool temperature while playing outside.

(10) Equipment and program requirements apply during all hours of operation of the licensed facility.

J. OUTDOOR PLAY:

(1) Outdoor play equipment used in child care homes shall be:

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer's instructions; or

(b) if intended for residential use, shall be safe and securely anchored.

(2) A home will enclose the outdoor play area with a fence at least four feet high and with at least one latched gate

available for an emergency exit.

(3) A home will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection P of 8.16.2.8 NMAC).

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Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

(4) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

(5) Children shall be protected from the sun during outdoor play [as instructed] by providing shade (as necessary), sunscreen, proper attire and limiting the time of exposure to the elements. The provider must also consider instructions by the child’s parent or guardian. Drinking water should be available as needed and outlined in Paragraph (11) of Subsection I of 8.16.2.34 NMAC.

K. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters a pool.

(2) If a home has a portable wading pool:

(a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.

(4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
0-23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:

(1) A home will ensure the children’s safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection D of 8.16.2.32 NMAC for information on permission slips.

(2) Children will not go to a private residence other than the licensed home unless accompanied by two adults. [8.16.2.34 NMAC - Rp, 8.16.2.34 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.35 FOOD SERVICE REQUIREMENTS FOR HOMES:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home will conform to the guidelines from United States department of agriculture’s (USDA’s) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A home will provide a child a meal or snack at least every three hours except when the child is sleeping at night.

(2) A home will serve if necessary a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the educators.

(3) A home shall make water freely available to children.

(4) A home that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA’s current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

(a) Only one hundred percent fruit or

vegetable juice shall be served. The use of fruit drinks containing less than one hundred percent or artificially flavored drinks for meals or snacks is prohibited. one hundred percent fruit or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.

(5) A home will vary snacks each day and will include a selection of two different food group components from the four food group components.

C. MENUS:

(1) Weekly menus must be dated and posted in an area easily visible to parents.

(2) Menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

(3) Menus shall include a variety of foods. The same menu will not be served twice in one week.

D. KITCHENS:

(1) A home will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A home will serve food promptly and refrigerate immediately after use. Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

(4) A home will protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A home will label and date all leftover food.

(5) If food is brought from the child’s home, a home will label it with the child’s name and refrigerate if necessary. A home will label and refrigerate bottles of infant formula or breast milk. Labeling is not necessary if only one child is using bottles.

(6) A home will keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below, and frozen food at 0 degrees Fahrenheit or below.

(7) Refrigerators and separate freezers will have working internal thermometers.

~~[(8)] A home will protect all food from insects, rodents and other vermin.~~

~~[(9)]~~ (8) A home will discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

~~[(10)]~~ (9) A home will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize.

~~[(11)]~~ (10) A home will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

~~[(12)]~~ (11) A home shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A home will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served. Areas will be sanitized before and after each use.

(2) A home will provide sanitary cups or glasses ~~[or a drinking fountain]~~ for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home will not allow children to share drinking or eating utensils. Disposable plates, cups and plastic

utensils of food-grade, medium weight may be used for single service. Styrofoam cups may not be used at any time.

(3) Time allowed for meals shall enable children to eat at a reasonable rate. [8.16.2.35 NMAC - Rp, 8.16.2.35 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.36 HEALTH AND SAFETY REQUIREMENTS FOR HOMES:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating or feeding a child; and

(e) after handling pets or animals or items used by animals such as water and food bowls; and

(f) after handling trash.

(2) A home will label with the child's name and store separately any item used for an individual child's personal hygiene.

B. FIRST AID REQUIREMENTS:

(1) A home will keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(2) A home will treat blood spills cautiously and

promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A home will clean contaminated surfaces first with hot soapy water then with a disinfecting solution, which is effective against HIV and hepatitis B.

(3) If a home promotes tooth brushing activities, the provider will store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

C. MEDICATION:

(1) A home will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Homes will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement (Paragraph (2) of Subsection C of 8.16.2.36) only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.

(3) The licensee will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the home. A home will keep non-prescription and prescription medication in the original container with written instructions, including the name of

medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The licensee will keep and sign a written record of the dosage, date and time a child is given medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The home shall not administer expired medication.

D. ILLNESS AND NOTIFIABLE DISEASES:

(1) Children or staff members absent due to any notifiable disease will not return to the home without a signed statement from a physician.

(2) A home will separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.

(3) A home will send a child home when:

(a) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

(b) the educator observes signs of contagious disease or severe illness. [8.16.2.36 NMAC - Rp, 8.16.2.36 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.37 TRANSPORTATION REQUIREMENTS FOR HOMES:

A. When a home provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable, fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.

B. A home will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows.

(1) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(2) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(4) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

D. A home will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home will ensure children do not cross a street unsupervised after leaving the vehicle.

E. No one will smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

F. Children may be transported only in vehicles that have

current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

G. At least one adult transporting children shall be currently certified in first aid and cardiopulmonary resuscitation with a pediatric component.

H. Vehicles operated by the home provider to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the provider will ensure the vehicle is heated.

I. Providers will conduct frequent head counts on all trips and when loading and unloading the vehicle.

[8.16.2.37 NMAC - Rp, 8.16.2.37 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.38 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES:

A. HOUSEKEEPING:

(1) An educator will keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will have a tight fitting lid, be durable and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed child care homes must use a New Mexico licensed pest applicator whenever applying pesticides on the home's buildings and grounds.

(2) The pest control company may not apply

pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides and insecticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides, herbicides, weed killer and other natural repellants.

C. MECHANICAL SYSTEMS:

(1) A home will maintain comfortable temperatures (68 degrees through 82 degrees Fahrenheit) in all rooms used by children. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a home exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A home will not use unvented heaters, open flame heaters or portable heaters. A home will install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

(3) A home must maintain all heating and cooling equipment so that it is in good working order.

(4) A home will provide fresh air and control odors by either mechanical or natural ventilation. If a home uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet will be below

110 degrees Fahrenheit. A home will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) A home will use U/L approved equipment only and will properly maintain this equipment.

(2) All electrical outlets within reach of children will be safety outlets or will have protective covers.

(3) The use of multi-prong or gang plugs is not allowed. Surge protectors are not gang plugs under these regulations.

E. EXITS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be useable for an emergency exit. All activity spaces for children under the age of two and a half years shall be on the "level of exit discharge" or ground floor.

F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A home will not use a common towel or wash cloth.

(2) All closets and bathroom locks must have an outside release. A home will enclose all bathrooms. Bathrooms must be accessible to the children in care and fully functional.

G. SAFETY COMPLIANCE:

(1) A home will have an operating smoke detector in each child-activity room and in each room in which a child sleeps.

(2) A home must be equipped with carbon monoxide detectors to cover all licensed areas of the home if the child care program uses any sources of coal, wood,

charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions. A center must comply with this requirement by July 1, 2022.

~~(2)~~ (3) A home will have a fully-charged 210ABC extinguisher mounted in the kitchen in a visible and easily accessible place. A professional will inspect each fire extinguisher once a year and fire extinguishers will have official tags noting the date of inspection.

~~(3)~~ (4) A home will conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A home will hold the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

~~(4)~~ (5) A home will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. Emergency numbers shall be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only telephone in the home. The cellular telephone will remain in the same room, always charged and accessible to a caregiver.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home will prohibit smoking, e-cigarettes, vaporizers, and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. A home will unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises

at any time regardless of whether children are present is prohibited.

I. PETS:

(1) A home will inform parents or guardians in writing before pets are in the home.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the home.

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(5) An educator must be physically present during the handling of all pets or other animals.

[8.16.2.38 NMAC - Rp, 8.16.2.38 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A program will submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3)
BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department’s background check and employment history verification provisions (8.8.3 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department’s background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. Prior to a staff member’s employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(4)
ZONING, BUILDING AND OTHER APPROVALS: An applicant will use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department’s requirements. Acceptable documents will be provided to the licensing authority before licensure. Otherwise, an applicant will have:

- (a) current written zoning approval from the appropriate city, county or state authority;
- (b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;
- (c) current written approval of the state fire marshal office or other

appropriate city, county or state fire-prevention authority; and

(d) current written approval from the New Mexico environment department or other environmental health authority for:

- (i) a kitchen, if meals are prepared and served on site in the program;
- (ii) private water supply, if applicable;
- (iii) private waste or sewage disposal, if applicable; and,
- (iv) a swimming pool, if applicable.

(5)
ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES: Accessibility for individuals with disabilities is provided in all new facilities and will include the following.

- (a) Main entry into the facility is level or has a ramp to allow for wheelchair access.
- (b) Building layout allows for access to the main activity area.
- (c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.
- (d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.
- (e) Ramps exceeding a six-inch rise are provided with handrails.
- (f) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the facility.

(6)
SCHEDULE: All applications for a new license will include a description of the programs proposed activities and schedule.

(7) **INITIAL SURVEY:** The licensing authority

will schedule a survey for a program when it receives a complete application with all supporting documents.

B. CAPACITY OF A PROGRAM:

- (1) The number of children in a program, either in total or by age, will not exceed the capacity stated on the license.
- (2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site. Children shall not be cared for in unlicensed areas of the facility.
- (3) A program must meet the following space requirements:

- (a) 35 square feet of indoor activity space measured wall to wall on the inside for each child in a program, excluding single-use areas, such as restrooms, kitchens, and storage areas, and excluding offsets and built-in fixtures.

(b) A program must have an outdoor activity space.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a) a lost, [or] missing, or unattended child;
- (b) a serious injury;

(c) the abuse or neglect of a child;

(d) fire, flood, or other natural disaster that creates structural damages to a program or poses a health hazard;

(e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(f) any legal action against a program or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(i) any known change in an educator’s health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A program will notify parents and guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.40 NMAC. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children’s protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures. [8.16.2.40 NMAC - Rp, 8.16.2.40

NMAC, 10/1/2016, A, 10/1/2019; A, 1/1/2022]

8.16.2.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, staff and visitors:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the program;

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

(5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

C. [PARENT] FAMILY HANDBOOK: All facilities using these regulations must have a family handbook [which includes] . . . Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The family handbook will include the following.

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, license information, days and hours of operation, services offered);

(d) name of director and how he/she may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the classroom;

(h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays and parties; and

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) expulsion procedures;

(d) fee payment procedures, including penalties for tardiness;

(e) notification of absence;

(f) fee credits, if any (e.g. for vacations, absences, etc.);

(g) field trip policies;

(h) health policies (program’s policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i) emergency procedures and safety policies;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) guidance policy; [and]

(n) emergency procedures, safety policies, and disaster preparedness plan[-:] and

(o) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

D. CHILDREN'S RECORDS: A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program, unless otherwise indicated in the list below, for 12 months after the child's last day of attendance. Records will contain at least:

(1) **PERSONAL INFORMATION:**

(a) name of the child; date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, and pager, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the program and the date of the child's last day at the program;

(e) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian; these records may be kept at a central location;

(f) written authorization from the child's

parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

(g) a record of the time the child arrived and left the program and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child; and

(h) an enrollment agreement; this form will be signed by a parent or guardian with an outline of the services and the costs; these forms may be kept at a central location.

(2) **EMERGENCY INFORMATION:**

(a) information on any allergies or medical conditions suffered by the child; the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times;

(b) the name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency;

(c) a document giving a program permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian;

(d) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

E. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children. A program will keep the file for one year after the staff member's last day of employment. Unless otherwise indicated, a licensee

may keep the items listed below in a central location except the following items which shall be kept on site: background clearances, abuse and neglect statements, staff emergency numbers and first aid/CPR certificates. Records will contain at least the following:

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification. If a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals. A copy must be kept onsite;

(f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC. A copy must be kept onsite;

(g) documentation of first-aid and cardiopulmonary resuscitation [training] with a pediatric component. A copy must be kept onsite;

(h) documentation of all appropriate training by date, time, hours and area of competency;

(i) emergency contact number;

(j) universal precaution acknowledgement; and

(k) a written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals.

(2) A program will maintain current work schedules and daily sign in sheets for the director, all staff, all educators, and volunteers and keep the records on file for at least 12 months. The record will include the time the employee arrived at and left work and include breaks and lunch.

F. PERSONNEL HANDBOOK: The educator will give each employee a personnel handbook that covers all matters relating to employment [~~and includes~~]. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following critical contents:

- (1) organizational chart;
- (2) job descriptions of all employees by title;
- (3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (4) code of conduct;
- (5) training requirements
- (6) procedures and criteria for performance evaluations;
- (7) policies on absence from work;
- (8) grievance procedures;
- (9) procedures for resignation or termination;
- (10) copy of licensing regulations;
- (11) policy on parent involvement;
- (12) health policies related to both children and staff;
- (13) policy on sexual harassment;
- (14) plan for retention of qualified staff; [~~and~~]
- (15) anti-discrimination policy that promotes the equal access of services for all children and

families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(16) child guidance policy;

(17) confidentiality statement;

(15) (18) an up-to-date emergency evacuation and disaster preparedness plan, which shall

Include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, and continuity of operations (see waivers, Subsection D of 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans; and

(16) (19) policies and procedures for expulsion of children. Policies and procedures shall include how the program will maintain a positive environment and will focus on preventing the expulsion of children age five. The program must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement. [8.16.2.41 NMAC - Rp, 8.16.2.41 NMAC, 10/1/2016, A, 10/1/2019, AE; 7/1/2021; A, 1/1/2022]

8.16.2.42 PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC

to continue to work directly or unsupervised with children;

(2) All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators (staff members) who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios will not be responsible for cooking, clerical or cleaning duties while caring for children.

(5) Substitutes, volunteers and part-time educators counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and educators routinely employed in a facility but working 20 hours or fewer a week, will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements. See Paragraph (4) of Subsection C of 8.16.2.42 NMAC for additional training requirements.

(6) Each site will have a site director. The site director or a designated co-director who meets the same qualifications as the site director will be on site 50 percent of the program's core hours of operation.

(7) A program will maintain staff/child ratios and group sizes at all times. Children must never be left unattended whether inside or outside the facility. Providers will conduct frequent head counts on all trips and when loading and unloading the vehicle.

(8) A program will have a minimum of two staff members present at all times, with one being an educator. If the program has less than seven children, the second staff member may be engaged in other duties.

(9) Each site will have one adult for every 15 children age five or older. Maximum group size of 30.

(10) The number of children who may be in a group and the number of caregivers is specified in Paragraph (9) of Subsection A of 8.16.2.42 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) The room is divided so that different activity/interest areas are well-defined (i.e. art, dramatic play, fine motor, homework, science, math, and quiet homelike area);

(b) Each activity/interest area will have a posted capacity, which may vary according to the activity and size of the space, and will not exceed 30;

(c) Placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

(d) Individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

(e) A single educator is responsible for supervising up to 15 children in one or more interest area as long as every child is in direct eyesight; and

(f) The total number of children in the larger room must not exceed the room capacity based on activity space. For example, if the larger room has a capacity of 90, and the maximum group size is 30, the room must be divided by at least three well-defined activity/interest areas and be supervised by at least six caregivers, who are spread out so that every child is “attended”.

B. STAFF QUALIFICATIONS:

(1) Unless exempted under Paragraph (3) below, an out of school time program will have an administrator/director who is at least 21 years old and has proof of a current copy of:

(a) a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC), or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b) a bachelor’s degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development setting; early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

(3) Program administrators and site directors employed in a licensed program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

C. TRAINING:

(1) The program administrator will develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following areas:

(a) scope of services and activities offered by the program;

(b) emergency first aid procedures;

(c) indicators of child abuse and neglect;

(d) fire prevention measures, emergency evacuation plan and disaster preparedness plan;

(e) review of licensing regulations;

(f) review of policies regarding guidance;

(g) child abuse and neglect reporting;

(h) handling of incidents and complaints; and

(i) health and safety, including infection and injury prevention and control.

(2) All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire. All current educators will have three months to comply with the following training from the date these regulations are promulgated:

(a) prevention and control of infectious diseases (including immunization);

(b) administration of medication, consistent with standards for parental consent;

(c) prevention of and response to emergencies due to food or other allergic reactions;

(d) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(e) abusive head trauma;

(f) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;

(g) handling and storage of hazardous

materials and the appropriate disposal of bio contaminants;

(h) precautions in transporting children (if applicable);

(i) first aid and cardiopulmonary resuscitation (CPR) [~~certification~~ awareness with a pediatric component]; and

(j) recognition and reporting of child abuse and neglect.

(3) A program will keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(4) All educators are required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. Training shall be relevant to school age children. Identical trainings shall not be repeated for the purpose of obtaining credit. The competency areas are:

- (a) child growth, development, and learning;
- (b) health, safety, nutrition, and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

~~[(5) — The 24 hours of annual training will be waived for educators if employed by a program currently under FOCUS-consultation.]~~

~~[(6)]~~ (5) Training must be provided by individuals who have education or experience in the

competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department.

~~[(7)]~~ (6) Program administrators may count hours in personnel and business training toward the training requirement. [8.16.2.42 NMAC - Rp, 8.16.2.42 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.43 SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE:

A. GUIDANCE:
(1) A program will have written policies and procedures clearly outlining guidance practices. Facilities will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.
(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A program will not use the following disciplinary practices:

- (a) physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child's mouth;
- (b) withdrawal of food, rest, bathroom access, or outdoor activities;
- (c) abusive or profane language, including yelling;
- (d) any form of public or private humiliation, including threats of physical punishment; or
- (e) unsupervised separation.

~~[(5)]~~ Children will not be lifted by the arms, hands,

wrist, legs, feet, ankles, or clothing.

B. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

- (a) dramatic play;
- (b) creative art;
- (c) books;
- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and
- (i) sensory.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members, and visitors.

(5) Learning areas have adequate space and quiet areas are arranged so that children's activities can be sustained without interruption.

(6) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(7) Examples of children's individually expressed

artwork are displayed in the environment at the children’s eye level.

(8) The floor surface is suitable for activities that will occur in each learning area.

(9) File and storage space is available for educators’ materials.

C. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children’s questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

D. EQUIPMENT AND PROGRAM:

(1) A program will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved. Toys shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

(2) Each child at a program will have a designated space for storage of clothing and personal belongings.

(3) A program will store equipment and materials for children’s use within easy reach of the children, including those with disabilities. A program will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(4) A program will provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate, and encourage the child’s educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.

(5) A program will post a daily activity schedule. A program will follow a consistent pattern for routine activities such as meals, snacks and rest.

(6) Media viewing will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing to include all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

(7) Children and family members shall be acknowledged upon arrival and departure.

(8) Equipment and program requirements apply during all hours of program operation.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent’s consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with

Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment used in out of school time programs shall be:

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; [or] and

(b) if intended for residential use, shall be safe and securely anchored.

(2) A program will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection P of 8.16.2.8 NMAC).

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Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.
 When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

(3) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

(4) Licensees shall protect children from the sun during outdoor play by providing shade (as necessary), sunscreen, proper attire and limiting the time of exposure to the elements. The program must also consider instruction by the child’s parent or guardian. Drinking water shall be available as needed and maintained at a cool temperature while children are playing outside.

G. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters the pool.

(2) If a program has a portable wading pool:
 (a) a program will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;
 (b) a program will empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a program will not use a portable wading pool placed on concrete or asphalt.
 (3) If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:
 (a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;
 (b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and
 (c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

(4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
5 years	1	10
6 years and older	1	12

H. FIELD TRIPS:

(1) A program will ensure the children’s safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection D of 8.16.2.41 NMAC for requirements concerning field trip permission slips.

(2) Children will not go to a private residence unless accompanied by two adults.

[8.16.2.43 NMAC - Rp, 8.16.2.43 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.16.2.44 FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the program will conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A program will provide a child a meal or snack at least every three hours.

(2) A program will serve a child a therapeutic or special diet with a written prescription/diet order from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the program staff.

(3) A program will serve snacks each day and will include a selection of two different food group components from the four food group components.

(4) A program shall serve only one hundred percent fruit or vegetable juice. The use of fruit drinks that contain less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent fruit or vegetable juice may be diluted with water.

(5) A program shall serve a wide variety of fruits and vegetables, with a preference for fresh or frozen fruits and vegetables over canned.

(6) A program shall make water freely available to children.

(7) Menus shall contain a variety of foods. The same menu must not be served twice in one week.

C. KITCHENS:

(1) A program will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A program will serve food promptly and refrigerate immediately after use.

(4) A program will discard any leftover milk.

(5) A program will keep food requiring refrigeration, at 41 degrees Fahrenheit or below and frozen food at 0 degrees Fahrenheit or below.

(6) Refrigerators and separate freezers will have working internal thermometers.

(7) A program will protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A program will label and date all leftover food.

~~[(8) A program will protect all food from insects, rodents and other vermin.]~~

~~[(9)]~~ (8) A program will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps:

- (a) wash with soapy water;
- (b) rinse with clean warm water; and
- (c) sanitize

~~[(10)]~~ (9) A program will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

~~[(11)]~~ (10) A program will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and sanitize the areas before and after use.

~~[(12)]~~ (11) A program will provide sanitary cups or glasses or a drinking fountain for drinking water. A program will not allow children to share drinking or eating utensils.

~~[(13)]~~ (12) A program shall thoroughly sanitize food preparation surfaces before and after each use.

(13) Disposable

plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups shall not be used at any time. [8.16.2.44 NMAC - Rp, 8.16.2.44 NMAC, 10/1/2016; A, 1/1/2022]

8.16.2.45 HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. HYGIENE:

Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

- (1) after using a toilet;
- (2) before and after caring for a sick child;
- (3) before any food service activity, including setting the table;
- (4) before and after eating; ~~and~~
- (5) after handling pets or animals or items used by animals such as water and food bowls; and
- (6) after handling trash.

B. FIRST AID

REQUIREMENTS:

(1) A program will have all educators certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Online first aid and CPR training will not be approved, unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. Staff shall obtain the first aid /CPR certification within three months of being hired. All staff shall maintain current first aid /CPR certification. Prior to licensure, at a minimum, the site director shall have first aid/CPR certification.

(2) A program will keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, as a minimum,

band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(3) A program will treat blood spills cautiously and promptly decontaminate the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program will clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A program will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Programs will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the program. A program will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep a written record of the dosage, date, and time a child is given medication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of the information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The program shall not administer expired medication.

D. ILLNESSES:

(1) Children or staff members absent due to any notifiable disease will not return to the program without a signed statement from a physician.

(2) A program will separate and constantly observe a child who becomes sick at the program and promptly notify a parent or guardian of the child's illness.

(3) A program will send a child home when:

(a) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

(b) an educator observes signs of contagious disease or severe illness.

(4) The program will have a cot or mat available for sick children and it will be cleaned and disinfected thoroughly after use.

[8.16.2.45 NMAC - Rp, 8.16.2.45 NMAC, 10/1/2016; AE, 7/1/2021; A, 1/1/2022]

8.16.2.46 TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. All vehicles used for transportation of children will have an operable, fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.

B. A program will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program will ensure children do not cross a street unsupervised after leaving the vehicle.

C. No one will smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

D. A program will license all vehicles used for transporting children and will meet

all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(1) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(2) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

E. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

F. Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the program will ensure the vehicle is heated.

G. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

H. At least one adult transporting children shall be currently certified in cardiopulmonary resuscitation (CPR) with a pediatric component.

I. Providers will conduct frequent head counts on all trips and when loading and unloading the vehicle.

[8.16.2.46 NMAC - Rp, 8.16.2.46 NMAC, 10/1/2016; AE; 7/1/2021; A, 1/1/2022]

8.16.2.47 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. HOUSEKEEPING:

(1) A program will keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will be durable, and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed programs must use a New Mexico licensed applicator whenever applying pesticides in or on the program's buildings and grounds.

(2) The applicator may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

C. MECHANICAL SYSTEMS:

(1) A program will maintain comfortable temperatures (68 degrees Fahrenheit through 82 degrees Fahrenheit) in all rooms used by children. A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A program must maintain all heating and cooling equipment so that it is in good working order.

(3) A program will not use unvented heaters, open flame heaters or portable heaters. A program will install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

(4) A program will provide fresh air and control odors by either mechanical or natural ventilation. If a program uses a window for ventilation, it will have a screen. If a door is used for ventilation, it must have a screen door.

(5) Water coming from a faucet will be below 110 degrees Fahrenheit. A program will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A program will have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A program will use U/L approved equipment only and will properly maintain this equipment.

(b) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

E. EXITS AND WINDOWS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be

opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

(1) There must be at least two exits remote from each other in each activity area of the program.

(2) Exit ways must be kept free from obstructions at all times.

F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A program will not use a common towel or wash cloth.

(2) All toilets and sinks must be accessible, functional, and located within 100 feet of the licensed area. The staff member shall maintain a direct line of sight of the child until the child enters the bathroom and from the time the child leaves the bathroom until the child returns. A staff member will accompany children to the bathroom door when maintaining a line of sight is impossible due to bathrooms being not located within a direct line of sight.

G. SAFETY COMPLIANCE:

(1) A program will conduct emergency preparedness practice drills at least quarterly beginning of each school calendar year.

(2) A program will conduct at least one fire drill each month. A program will:

(a) hold the drills at different times of the day;

(b) use the fire alarm, detector system or a simulated fire alarm;

(c) emphasize an orderly evacuation rather than speedy; and

(d) a program will keep on file a record of the drills with the date, time, number of adults and children participating, and any problems encountered during the drills. Records will be kept for one year.

(3) A program shall request an annual fire inspection from the fire authority having jurisdiction. If the policy of the fire authority having jurisdiction does not provide for an annual inspection of the program, the program must document the date the request was made and to whom. A copy of the latest inspection must be posted in the program.

(4) A program will post evacuation plans for each room used by children in the appropriate room.

(5) A program will keep a working telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. A pay phone will not fulfill this requirement. If cordless phones are used, emergency numbers shall be posted on the phone itself. Facilities shall post the program's telephone number and address in a conspicuous location next to the emergency phone numbers.

(6) A program must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement.

(7) A program must have a minimum of two fully-charged 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the program.

(8) Fire extinguishers, alarm systems, automatic detection equipment, and other firefighting must be properly maintained and inspected on at least a yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection D of 8.16.2.47 NMAC for emergency lighting requirements.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A program will prohibit smoking, use of e-cigarettes and vaporizers in all areas, including vehicles, and will not allow any alcoholic beverages, firearms, lethal or non-lethal weapons or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. PETS:

(1) A program will inform parents or guardians in writing before pets are at the program site.

(2) A program will not allow pets in the kitchen, food serving, food storage areas, or bathrooms.

(3) A program will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the program.

(4) A program will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

[8.16.2.47 NMAC - Rp, 8.16.2.47 NMAC, 10/1/2016; A, 1/1/2022]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.17.2 NMAC, Sections 6, 7, 8, 10, 11, 12,

13, 14, 15, 17, 20, 22, 23, 24 and 25, effective 1/1/2022.

8.17.2.6 OBJECTIVE:
The objective of 8.17.2 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulation 8.16.2 NMAC to participate in the federal child and adult care food program and the state and federal child care assistance programs through the registration process. The objective of 8.17.2 NMAC is also to establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

[8.17.2.6 NMAC - Rp, 8.17.2.6 NMAC, 10/1/2016, A, 1/1/2022]

8.17.2.7 DEFINITIONS:
A. Terms beginning with the letter "A":

[A-] (1) "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

[(+) (a)] physical contact that harms or is likely to harm a child;

[(+) (b)] inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;

[(+) (c)] punishment that is hazardous to the physical, emotional or mental state of the child; and

[(+) (d)] an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

[B-] (2) "Adult" means a person who has a chronological age of 18 years or older.

(3) "Attended" means the physical presence of a staff member of

educator supervising children under care. Merely being within eyesight of hearing of the children does not mean actively engaged or meet the intent of this definition.

B. Terms beginning with the letter “B”: [RESERVED]

C. Terms beginning with the letter “C”:

(1) “Care”
means the provisions of what is necessary to meet the needs of the health, welfare, maintenance, and protection of a child.

(2) “Cease and desist letter” means a formal letter from the registered authority to a provider outlining any ongoing violation of applicable regulations and providing 24 - 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the registered authority. A cease and desist letter is usually issued when a registered care giver violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the registered authority will take if the violation(s) is not corrected by that deadline.

[C:] (3) “Child”
means any person who is under the chronological age of 18 years.

[D:] “Child care assistance program (CCAP)” means the state of New Mexico’s child care services bureau (CCSB) which administers the federal child care and development fund (CCDF);

[E:] (4) “Child and adult care food program (CACFP)” means the state of New Mexico’s family nutrition bureau which administers the federal child and adult care food program.

(5) “Child care assistance program (CCAP)” means the state of New Mexico’s child care services bureau (CCSB) which administers the federal child

care and development fund (CCDF).

[F:] (6) “Child with a disability or special needs” means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(7) “Clean”
means to physically remove all dirt and contamination.

(8) “Conditions of operation” means a written plan that applies to a registered home and is developed by the licensing authority when the registered authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the caregiver must take within a specified timeframe.

(9) “Corrective action plan” means the plan submitted by the caregiver addressing how and when identified deficiencies will be corrected.

[G:] D. Terms beginning with the letter “D”:
(1)

“Disinfect” means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

(2) “Drop-in” means a child who attends a child care home on an occasional or unscheduled basis to include children who come to play with provider’s children without parent being present.

[H:] E. Terms beginning with the letter “E”:
(1)

“Emergency caregiver” means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, eight hours or less, on behalf of the primary caregiver.

[I:] (2) “Exempt caregiver” means a child care home

primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

(3) “Exploitation” of a child consists of the act or process, performed intentionally, knowingly, or recklessly, or using a child’s property for another person’s profit, advantage or benefit without legal entitlement to do so.

[J:] (4) “Expulsion” means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter “F”: **“Family, friend or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

[K:] G. Terms beginning with the letter “G”: **“Guidance”** means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

[L:] H. Terms beginning with the letter “H”:
(1) “Home”

means a private residence and its premises registered under these regulations where children receive care, services, and supervision. The caregiver will reside in the home and be the primary caregiver. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special considerations will be made for homes on tribal lands.

(2) “Homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a) children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels,

trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b)

children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c)

children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d)

migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in [Paragraphs (1) through (3) of this subsection] Subparagraphs (a) through (c) of this Paragraph.

[M.] I. Terms beginning with the letter “I”:

(1) “Infant”

means a child from birth to ~~one-year-old~~ 12 months.

(2) “In-home

care” means care provided in the child’s own home. In-home care registrations are limited to care of children with documented special needs or a medical condition, and the siblings of qualifying child. In-home care registrations must comply with the following:

(a)

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

(b)

Parents or guardians are responsible for submitting documentation from a medical professional detailing the need for in-home care.

(c)

Parent or guardians must consent to initial and annual inspections in accordance with 8.17.2.13 NMAC.

(d)

In-home care registrations are exempt from the health and safety requirements outlined in Subsections C, D, E, F, G, H, I, J, R, T, U, V, W, X, Z of 8.17.2.22 NMAC; 8.17.2.23 NMAC; and, Subsections D and I of 8.17.2.25 NMAC.

J. Terms beginning with the letter “J”: [RESERVED]

K. Terms beginning with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”: [RESERVED]

M. Terms beginning with the letter “M”: “Media”

means the use of televisions, video games, and non-educational on-line streaming such as video and social media.

N. Terms beginning with the letter “N”:

(1) “Neglect”

means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

[O:] (2) “Non-resident child” means any child who does not reside in the primary caregiver’s home.

[P:] (3) “Notice of Provisional Employment” means a written notice issued to a child care center or home applicant indicating the [Background Check Unit]

background check unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

[Q:] (4)

“Notifiable diseases” means confirmed or suspected diseases/ conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

O. Terms beginning with the letter “O”: [RESERVED]

P. Terms beginning with the letter “P”:

(1) “Pacifier”

means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2)

“Premises” means all parts of the buildings, grounds, and equipment of a non-licensed home pursuant to these regulations.

[R:] (3) “Primary caregiver”

means a registered child care home caregiver 18 years of age or older who is personally providing care to children, less than 24 hours a day, in his/her own residence and has completed the registration process, paid the required fee and has no other employment during hours of care. The primary caregiver must reside in the home.

O. Terms beginning with the letter “O”: [RESERVED]

R. Terms beginning with the letter “R”:

[S:] (1)

“Registered authority” means the child care services bureau - registration section of the early childhood services division of the New Mexico children, youth and families department.

[T:] (2)

“Registered family child care home” means the residence of an independent primary caregiver who registers the home under these regulations to participate in the child and adult care food program or in the state and federal child care assistance programs.

[U:] (3)

“Registered family child care food-only home” means the residence of

an independent primary caregiver who registers the home under these regulation to participate in the child and adult care food program only and does not participate in the state and federal child care assistance program.

~~[V.]~~ **(4) “Resident child”** means any child who resides in the home, such as the primary caregiver’s own children by birth or adoption, foster children, grandchildren, or cohabitant’s children who are part of the residential unit.

S. Terms beginning with the letter “S”:

~~[W.]~~ **(1) “Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(2)
“Significant amount of time” means someone who is on the premises for more than one hour per day during hours of care.

(3)
“Substantiated” means an incident or complaint determined to factual, based on an investigation of events.

~~[X.]~~ **(4)**
“Substitute caregiver” means someone 18 years of age or older who is authorized by the primary caregiver and the registered authority to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions.

~~[Y.]~~ **“Substantiated”** means an incident or complaint determined to be factual, based on an investigation of events.]

~~[Z.]~~ **(5)**
“Supervision” means the direct observation and guidance of children at all times and requires being physically present with them.

~~[AA.]~~ **(6) “Survey”** means a representative of CYFD’s authority to enter a home, observes activity, examine the records and premises, interviews parents and records deficiencies.

T. Terms beginning with the letter “T”: **“Toddler”** means a child age 12 months to ~~[35]~~ 24 months.

U. Terms beginning with the letter “U”:

~~[BB.]~~ **(1)**
“Unattended” means a caregiver is not physically present with a child or children under care.

~~[CC.]~~ **(2)**
“Unsubstantiated” means an incident or complaint not determined to be factual based on an investigation of events.

V. Terms beginning with the letter “V”: **[RESERVED]**

W. Terms beginning with the letter “W”: **[RESERVED]**

X. Terms beginning with the letter “X”: **[RESERVED]**

Y. Terms beginning with the letter “Y”: **[RESERVED]**

Z. Terms beginning with the letter “Z”: **[RESERVED]**
[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021, A, 1/1/2022]

8.17.2.8 APPLICATION:

A. An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must apply as a registered family child care home by submitting an application, receiving an on-site health and safety inspection by CYFD, completing the registration process and paying the processing charge. One primary caregiver per household can be registered or licensed with CCSB. All registered homes receiving child care assistance subsidies must be enrolled [are encouraged to enroll] and participate in the CACFP, unless they are exempt. Primary caregivers must provide [proof of] photo identification to prove identity and documentation of proof of address.

B. An applicant will complete an application form provided by the registered authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are

received within six months of the date indicated on the application. A 45 day extension will be granted if the applicant provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies. In home care registrations are exempt from the application fee.

C. A home will submit a new application to the registered authority before changing anything required to be stated on the registration such as: change of name, dates, status or address.
[8.17.2.8 NMAC - Rp, 8.17.2.8 NMAC, 10/1/2016; A, 1/1/2022]

8.17.2.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

C. Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions. A request for a background check must be submitted prior to a substitute caregiver employment. A substitute caregiver must receive a notice of provisional employment prior to beginning employment or obtain a background check in accordance with 8.8.3 NMAC.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Emergency caregivers must comply with background check requirements, and be certified in first – aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Emergency caregivers may be exempted from all other training requirements. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. A substitute caregiver is anyone who provides care repeatedly or in reasonably foreseeable circumstances and must have the required background checks and training.

F. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

~~[F:]~~ **G.** All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

~~[G:]~~ **H.** All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their original date of initial registration. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

- (1) prevention and control of infectious diseases (including immunization);
- (2) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) administration of medication, consistent with standards for parental consent;
- (4) prevention of and response to emergencies due to

food or other allergic reactions;

(5) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(6) prevention of shaken baby syndrome and abusive head trauma;

(7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;

(8) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(9) precautions in transporting children (if applicable);

(10) first aid and cardiopulmonary resuscitation (CPR) [~~certification~~] awareness with a pediatric component; and

(11) recognition and reporting of child abuse and neglect.

~~[H:]~~ **L.** Primary and substitute caregivers are required to attend six hours of training annually. Training documentation must be maintained for three years and include the caregiver’s name, the date of training, instructor’s name and signature, topic of training and number of hours completed.

~~[I:]~~ **J.** Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

~~[J:]~~ **K.** If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

~~[K:]~~ **L.** Primary and substitute caregivers are required to [~~maintain~~] obtain current first aid and CPR certification with a pediatric component prior to becoming registered and maintain this certification at all times. On-

line first aid and CPR classes are not valid unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

~~[L:]~~ **M.** Training shall be within the seven competency areas. The competency areas are:

- (1) child growth, development and learning;
- (2) health, safety, nutrition and infection control;
- (3) family and community collaboration;
- (4) developmentally appropriate content;
- (5) learning environment and curriculum implementation;
- (6) assessment of children and programs; and
- (7) professionalism.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021; A, 1/1/2022]

8.17.2.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions as promulgated by the children, youth and families department. All non-licensed child care caregivers must adhere to these provisions to maintain their registration status. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

- (1) the staff member was found eligible as a direct provider of care in a child care center, licensed child care home, licensed group home, or registered home within the past five years and has not

been separated from employment for more than 180 days; and

(2) submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

B. The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department’s most current version of the background checks and employment history verification provisions (8.8.3 NMAC). A household member reaching the age of 18, must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

C. Any adult who is present in the registered primary caregiver’s home for significant periods while children are in care, or who commences being present in the registered primary caregiver’s home for significant periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen. Family members or guests visiting for temporary periods (less than five days) are not considered as spending significant periods of time. However, such visiting family or guests must not have unsupervised access to the children in care at any time.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.

F. The primary caregiver shall certify upon renewal that they, or any other adult living in the home have not been convicted of a disqualifying offense during the last twelve month.

[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021; A, 1/1/2022]

8.17.2.12 ANNUAL REGISTRATION:

An annual registration is issued for a one-year period to a child care home that has met all requirements of these regulations.

A. Primary caregivers must renew registration annually, and only after receiving an onsite inspection by CYFD, by submitting a registration application and paying the processing charge with cashier’s check or a money order. In-home care registrations are exempt from the application fee.

B. Primary caregiver’s who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.

C. Primary caregivers shall ensure that all adults residing in the home, as well as secondary caregivers and adults spending a significant amount of time in the home, are listed on all documentation required by CYFD and sponsoring agencies.

[8.17.2.12 NMAC - N, 10/1/2016; A/E, 7/1/2021; A, 1/1/2022]

8.17.2.13 VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY:

Caregivers ~~[must consent to visits, to include unannounced visits,]~~ will grant the registered authority representative the right to enter the premises and, conduct visits, including unannounced and complaint investigations ~~[by the children, youth and families department and the child and adult care food program sponsoring agency]~~ when child care children are present and during the caregiver’s stated normal hours of operation.

A. The registered authority will conduct a survey at least once a year at each registered residence using these regulations as the criteria. The registered authority will conduct additional surveys or visit the registered residence additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate any complaints.

B. Upon the completion of a survey, the registered authority will discuss the findings with the caregiver or their substitute caregiver and will provide an official written report of the findings and a request for a plan or plans of correction, if appropriate. Each survey will be made available for review on a public web portal.

C. By applying for either a new registration or a registration renewal, the caregiver grants the registering authority representative the right to enter the premises and survey the registered residence, including inspecting and copying of child care records, both while the application is being processed and, if registered, at any time during the registration period.

D. The registering authority may or may not announce a survey. A substitute caregiver knowledgeable in the daily operations, that has access to all records and locked areas, and can represent the caregiver for survey purposes, must be present in the residence if the primary caregiver is not present.

[8.17.2.13 NMAC - Rp, 8.17.2.14 NMAC, 10/1/2016; A, 1/1/2022]

8.17.2.14 NON-TRANSFERABILITY OF REGISTRATION:

A. The primary caregiver’s registration agreement is personal, and not transferable to any other person or location.

B. A registration will expire automatically at midnight of the expiration date unless earlier suspended or revoked, or:

(1) if the primary caregiver moves; or
 (2) changes their name.

C. If the primary caregiver moves to a new location or has a change of name, the primary caregiver must register again by submitting a new application and pay the processing charge. The caregiver must report a new location or change of name prior to the occurrence and receive a new on-site health and safety inspection by CYFD.

D. A caregiver with only a change in name will not need to pay an amended fee or processing charge.
 [8.17.2.14 NMAC - Rp, 8.17.2.15 NMAC, 10/1/2016; A, 1/1/2022]

8.17.2.15 INCIDENT REPORTS: Registered caregiver shall notify the appropriate authorities immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger. After making a report to the appropriate authorities, the caregiver shall notify CYFD of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report shall first be made by telephone and followed with written notification. The caregiver shall report to the appropriate authorities the following incidents, including but not limited to:

- A. Any incident that has threatened or could threaten the health and safety of children, including but not limited to:
- (1) a lost, [or] missing child or unattended child;
 - (2) a serious injury;
 - (3) the suspected abuse or neglect of a child;
 - (4) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
 - (5) any of the illnesses on the current list of notifiable diseases and communicable published by the office of epidemiology of the New Mexico department of health;

(6) any legal action against a caregiver or household member;

(7) any incident that could affect the background check eligibility of any cleared person related to this registration;

(8) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(9) any known change in a caregiver’s health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

B. A home will notify parents or guardians in writing of any incident, including notifiable illnesses that have threatened the health or safety of children in the home. The provider shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The provider shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Subsection A of 8.17.2.15 NMAC.

C. Incident reports involving suspected child abuse and neglect must be reported immediately to children’s protective services and local law enforcement. The registered authority follows written protocols/ procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.17.2.15 NMAC - Rp, 8.17.2.16 NMAC, 10/1/2016; A, 1/1/2022]

8.17.2.17 NON-COMPLIANCE:

A. The children, youth and families department may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with these regulations, or is unable to maintain compliance with registration standards.

B. Violation of any provisions of these regulations, especially when the registered authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children may be grounds to suspend, revoke, issue a cease and desist letter or decline to renew registration include but are not limited to:

- (1) failure to comply with the group composition requirement;
- (2) any health and safety violations which place the children in immediate danger, including but not limited to:
 - (a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;
 - (b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface; and
 - (c) unlocked or unsecured firearms and weapons in the home;
- (3) background check denial or suspension;
- (4) failure to timely obtain required background checks;
- (5) misrepresentation or falsification of any information given to CYFD or CACFP;
- (6) failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;
- (7) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to allow any person whose health or conduct impairs the person’s ability to properly protect the health, safety, and welfare of the children;
- (8) discovery of repeat violations of these regulations or failure to correct

deficiencies of survey findings in current or past contiguous or noncontiguous certification periods;

(9) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present on the premises at any time, regardless of whether children are present;

(10) substantiated non-compliance with caregiver requirements to care for children in the registered home as defined in these regulations;

(11) substantiated abuse or neglect of children by the caregiver or household member as determined by CYFD or a law enforcement agency;

(12) allowing any person to be active in the child care home who is or would be disqualified as a primary caregiver under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC; this will include all adults and teenaged children living in a family child care home operated in a private residence whether or not they are active in the child care operation;

(13) situations where the children in care are placed in unreasonable or unnecessary danger, including but not limited to: evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender maintaining residence in the home, a convicted sex offender in the home when children are present, accusations of sexual child abuse against a caregiver or household member, or pending the outcome of a child protective services referral; and

(14) any serious violation or other circumstance which reasonably leads the department to determine that the caregiver cannot reliably safeguard the health and safety of children.

C. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the

investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

D. A suspension, revocation, or conditions of operations imposed pursuant to part A of this section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

E. The children, youth and families department notifies the primary caregiver in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The primary caregiver may obtain an administrative appeal of the department's action.

F. The child care services bureau notifies the family nutrition bureau of any revocation or suspension of registration for a primary caregiver participating in the child care assistance programs.

G. Primary caregivers whose registration has previously been suspended or revoked may re-apply for registration through the regular registration process. The child care services bureau may consider the reasons for the previous action, as well as changed and current circumstances, in determining whether to allow the new application. The children, youth and families department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

H. The children, youth and families department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to maintain registered status. Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the primary caregiver's home.

Examples:

(1) The department may require caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

(2) The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to health or safety, or otherwise create a risk of harm to children.

I. Caregivers who are required to implement actions or to agree to conditions pursuant to Subsections G or H, are notified in writing, and shall have the opportunity for administrative appeal.

J. There shall be no right to an appeal or administrative review when the registered authority issues a cease and desist letter; provided, however, that the registered care giver shall have the right to an appeal or administrative review of any subsequent action taken by the registered authority as set forth herein.

[8.17.2.17 NMAC - Rp, 8.17.2.18 NMAC, 10/1/2016, A, 1/1/2022]

8.17.2.20 PROBABLE CAUSE OF IMMINENT DANGER:

A. In circumstances in which Public Health Act Paragraph (N) of Section 24-1-5 (2005) NMSA 1978 may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a provider, the provisions of Paragraph (N) of Section 24-1-5 NMSA 1978 shall apply as follows:

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing

to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children [~~in the child care facility of the notice and opportunity for hearing given to the owner or operator.~~] in the care of the registered home of the notice and opportunity for hearing given to the caregiver.

(5) No later than the conclusion of the fifteen day period, the department shall determine whether other action is warranted under this regulation.

B. Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.

[8.17.2.19 NMAC - Rp, 8.17.2.21 NMAC, 10/1/2016, A, 1/1/2022]

8.17.2.22 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees Fahrenheit and no more than 82 degrees Fahrenheit. A home may use portable fans if the fans are

secured and inaccessible to children and do not present any tripping, safety or fire hazard.

E. The home must be adequately ventilated at all times.

F. A home will not use un-vented heaters or open flame heaters. Portable heaters will be used in accordance with manufacture instructions. A home will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

G. All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees Fahrenheit in all areas accessible to children. A home may install a water tempering control valve ahead of all domestic water-heater piping.

H. A caregiver must provide safe playing areas inside and outside the home. [~~Outside play areas must be approved by the registered authority.~~] A caregiver's inside and outside play areas must be safe, clean and free of any debris.

I. A caregiver's outside play area must be [~~safe, clean and free of any debris~~] on the premises and approved by the registered authority. The caregiver will fence the outside play area when [~~it is next to a highway, busy street, ditch or arroyo, hazardous area or when~~] determined to be necessary for safety by the registered authority. The fence must be at least four feet high and will have one latched gate for emergency exits. For apartment buildings or residences with no outdoor play areas, a common park/ playground can be used for outdoor play but will not be inspected or approved by the registered authority. The provider will ensure the play area is safe from hazards prior to allowing children to play.

J. The use of a trampoline is prohibited at any time during the hours of operation or by

any children receiving care at the registered home.

K. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, alcoholic beverages, prescriptions, and over the counter medications, intoxicating substances, sharp and pointed objects or any other dangerous materials in a storage area inaccessible to children.

L. The primary caregiver must have a working telephone in the home and a valid working phone number on file with CYFD at all times. Emergency numbers will be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only phone in the home. The cellular telephone will remain in the same room, charged and accessible to the provider a caregiver at all times.

M. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.

N. A caregiver will install at least one working smoke detector and a carbon monoxide detector in an appropriate area in the home.

O. A caregiver will unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. For purposes of this regulation, a weapon is (including but not limited to): firearms, tasers and stun guns, pepper spray, knives, swords and other items designed or used for inflicting bodily harm or physical damage.

P. [~~A caregiver will keep all weapons in a locked area inaccessible to children.~~] A caregiver, will prohibit smoking, the use of e-cigarettes/vaporizers and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

~~[R:]~~ **Q.** A home will have a fully - charged 2A-10B:C fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and will have official tags noting the date of inspection.

~~[S:]~~ **R.** A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, heaters, fireplaces or laundry rooms.

~~[T:]~~ **S.** In case of a fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available. An up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the registered authority and the department will provide guidance on developing these plans.

~~[U:]~~ **T.** Caregiver's will conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A caregiver will hold the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

~~[V:]~~ **U.** A home will have two major exits readily accessible to children with no obstructions in the pathways of these exits.

~~[W:]~~ **V.** Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Toys will be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

~~[X:]~~ **W.** Cribs will meet federal standards ~~[and]~~ (CPSC 16

CFR1219,1220), be kept in good repair, and not be used for storage. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. Animals and pets will not be allowed in cribs or on sleeping materials.

~~[Y:]~~ **X.** Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

~~[Z:]~~ **Y.** The home will have a first aid kit stored in a convenient place inaccessible to children, but easily accessible by caregiver. The kit will contain at least ~~[Band-Aids]~~ band-aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

~~[AA:]~~ **Z.** A caregiver with pets will comply with the following requirements:

(1) A home will inform parents or guardians in writing before pets are allowed at the residence.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the residence.

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily.

(5) A caregiver must be physically present during the handling of all pets or other animals

~~[BB:]~~ **AA.** A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will wash their hands and the child's hands after every diaper change. A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.

~~[CC:]~~ **BB.** Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device. Persons who have been convicted in the last seven years of a misdemeanor or felony driving while intoxicated/driving under the influence cannot transport children under the auspices of a registered home certification.

CC. Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated if the vehicle is equipped with a deactivation switch for the passenger-side air bag.

DD. Children one year of age through four years of age, regardless of weight, or children who weigh 40 pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

EE. Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

FF. Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

GG. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

HH. Vehicles operated by the home to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air

temperature falls below 50 degrees Fahrenheit the center will ensure the vehicle is heated

II. A home will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home will ensure children do not cross a street unsupervised after leaving the vehicle.

JJ. No one will smoke, use e-cigarettes or vaporizers - in a vehicle used for transporting children.

KK. Persons transporting children will also take the safe transportation practices training.
[8.17.2.22 NMAC - Rp, 8.17.2.23 NMAC, A, 10/1/2016; A/E, 7/1/2021, A, 1/1/2022]

8.17.2.23 MEAL REQUIREMENTS:

A. Children will not use shared eating or drinking utensils.

~~[A.]~~ B. Children will not use common eating or drinking utensils.

~~[B.]~~ C. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.

~~[C.]~~ D. Meals must meet age-appropriate USDA requirements.

~~[D.]~~ E. A caregiver must keep a daily menu.

~~[E.]~~ F. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.

~~[F.]~~ G. Caregivers will feed children a meal or snack every three hours.

~~[G.]~~ H. Caregivers and children will wash their hands regularly and before each meal time.

~~[H.]~~ I. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below.

~~[I.]~~ J. Refrigerators and freezers shall have working ~~[refrigerator]~~ thermometers.
[8.17.2.23 NMAC - Rp, 8.17.2.24 NMAC, 10/1/2016, A, 1/1/2022]

8.17.2.24 RECORD KEEPING REQUIREMENTS:

Caregivers must keep an information card for each child (including drop-in children) with:

A. the child's full name;

B. the child's birth date;

C. any known food or drug allergies or unusual physical condition;

D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;

E. the name and telephone number of the child's physician;

F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;

G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;

H. an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth ~~[; and]~~ , or at-risk children and youth as determined by the department;

I. written permission from parent to transport children outside of the registered home ~~[-] ; and~~ and

J. A record of the time the child arrived and left the home and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child. The attendance log must be kept on file for 12 months.

[8.17.2.24 NMAC - Rp, 8.17.2.25 NMAC, 10/1/2016; A/E, 7/1/2021, A, 1/1/2022]

8.17.2.25 CAREGIVER'S RESPONSIBILITIES:

A. A caregiver will directly supervise and actively care for children at all times during hours of operation including outdoor playtime and naptime. Caregivers will interact with children and provide a safe and positive learning environment.

B. Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Caregivers will be onsite, available and responsive to children during all hours of operation.

C. A caregiver will use guidance that is positive, consistent and age-appropriate. The caregiver will not use:

(1) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(2) withdrawal of food, rest, bathroom access, or outdoor activities;

(3) abusive or profane language, including yelling;

(4) any form of public or private humiliation, including threats of physical punishment; or

(5) unsupervised separation; or
(6) children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

D. Each home must develop policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement.

E. Each home must develop an anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 and older).

~~[E.]~~ F. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social,

emotional, physical and intellectual growth and well-being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children’s daily routine. Other activities should be flexible based on changes in the children’s interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children’s developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

~~[F:] G.~~ Caregivers of infants will allow them to crawl or toddle. ~~[Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted. Caregivers will allow infants to eat and sleep on their own schedules.]~~ Infants shall not be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

~~[F:] H.~~ Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted. Caregivers will allow infants to eat and sleep on their own schedules. Children will not be allowed to walk/run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers will not be tied to the child. Dropped pacifiers shall be cleaned using warm water and soap.

~~[G:] I.~~ Caregivers will ensure age appropriate naps or rest periods as follows:

(1) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(2) Caregivers shall ensure that nothing covers the face or head of a child age 12 months or younger when the child is laid down to sleep and while the child is sleeping.

(3) Caregivers shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(4) No child(ren) shall be allowed to sleep behind closed doors.

~~[H:] J.~~ Swimming, wading and water:

(1) A caregiver must obtain written permission from a parent or guardian before a child enters a pool;

(2) If a home has a portable wading pool:
(a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fish pond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and ensure adequate safety for the ages, abilities

and type of water hazard in use. [8.17.2.25 NMAC - Rp, 8.17.2.26 NMAC, 10/1/2016, A, 1/1/2022]

HOME INSPECTORS BOARD

This is an amendment 16.66.1 NMAC, Section 7, effective 1/14/2022.

16.66.1.7 DEFINITIONS: These rules adopt, as if stated herein, all of the definitions contained in Section 61-24D-2 NMSA 1978.

A. Definitions beginning with the letter “A”:

(1) **“Access panel”** means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person. Its edges and fasteners are not painted in place. Access panels are limited to those panels within normal reach at human height or from a stepladder, and those which are not blocked by stored items, furniture, or building components.

~~[(2) “Activate” means the act of turning on, supplying power, or otherwise enabling systems, equipment, or devices to become active by normal operating controls;]~~

~~[(3) (2) “Adverse condition” means a condition which is producing, or which has the potential to produce, a detrimental effect on a system or component that either impairs the system or component’s normally intended function or operation or which is inconsistent with generally established practice(s) regarding the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use.~~

~~[(4) (3) “Alarm” means a warning device that is either permanently installed or freestanding, including but not limited to smoke detectors and alarms, carbon-monoxide detectors, flue gas and other spillage detectors, security~~

equipment, ejector pumps, and smoke alarms.

~~(5)~~ (4)

“**Appliance**” means a permanently installed household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components.

~~(6)~~ (5)

“**Architectural service**” means any practice involving the art and science of building design for construction of any structure or grouping of structures, and the use of space within and surrounding the structures or the design, design development, preparation of construction contract documents, and administration of the construction contract.

~~(7)~~ (6)

“**Automatic safety controls**” means devices designed and installed to protect systems and components.

B. Definitions

beginning with the letter “B”:

“**Board**” means the New Mexico Home Inspectors Board.

C. Definitions

beginning with the letter “C”:

~~(1)~~ — “**Central**

~~**air conditioning**” means a system which uses ducts to distribute either or both cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room. This definition does not include systems or appliances that are plugged into an electrical convenience outlet;~~

~~(2)~~ (1)

“**Component**” means a constituent element or part of a system.

~~(3)~~ (2)

“**Concealed, latent, or intermittent condition**” means any condition affecting any system or component which occurs after the inspection or is intermittent or otherwise not reasonably detectable by a competent and professional home inspector for any reason during the inspection.

~~(4)~~ (3)

“**Condition**” means the visible and conspicuous state of being of an object regarding its appearance, quality, or working order.

(4) “**Cooling**

and air conditioning” means:

(a)

designed to be permanently installed for central cooling and or heating (ducted) or modular (non-ducted) systems. Systems may include evaporator coil(s), condenser unit(s), heat pump(s), air handler(s) and furnace(s) or

(b)

permanently installed evaporative cooling ducted systems. This definition does not include cooling units or appliances that are designed and intended to be portable, non-permanent and are designed for installation at windows.

(5) “**Cosmetic**

imperfection” means an irregularity or imperfection which does not affect a component’s normally intended function or operation, and which could but is not required to be repaired.

(6)

“**Crawlspace**” or “**underfloor crawlspace**” means the area within the confines of the foundation and between the ground and the underside of the lowest floor’s structural components.

D. Definitions

beginning with the letter “D”:

(1)

“**Describe**” means to document in writing.

(2)

“**Dismantle**” means the act of taking apart or removing any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and which would not otherwise be taken apart or removed by a homeowner in the course of normal household maintenance.

E. Definitions

beginning with the letter “E”:

(1)

“**Engineering**” means the application of scientific knowledge for the design, control, or use of building structures, equipment, or apparatus.

(2)

“**Engineering service**” means any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge of the mathematical, physical

and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

F. Definitions

beginning with the letter “F”:

(1)

“**Foundation**” means the base upon which a structure or wall rests, typically constituted by masonry, concrete, or stone, and typically located at least partially underground.

(2) “**Fuel**

burning appliance” means any natural gas, LP gas, wood, coal, or other similar organic fuel burning device or appliance, including but not limited to fireplaces, whether masonry or factory built; fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of said devices or appliances.

~~(2)~~ (3) **Function**”

means the action for which an item, component, or system is specially fitted or used, or for which an item, component, or system exists.

~~(3)~~ (4)

“**Functional**” means the ability of an item, component, or system to perform its function.

~~(4)~~ (5)

“**Functional drainage**” means the act or ability of a drain to empty in a reasonable amount of time without overflowing when another fixture is drained simultaneously.

~~(5)~~ (6)

“**Functional flow**” means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

~~(6)~~ (7) “**Further**

evaluation” means examination and analysis by a qualified professional, tradesman, or service technician beyond that provided by a home inspection. Further evaluation may provide additional clarification, provide needed repairs, or discover additional adverse conditions that need modifications or repairs

for the component or system to perform its normally intended function or operation provided by an appropriately licensed or qualified individual.

G. Definitions beginning with the letter “G”:
“Generally established practice” means a practice of or pertaining to one or more of the following: the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use of residential systems and their related materials and components. Generally established practices may vary based on whether they were applicable at the time of construction or whether modifications to the property were made after the original construction.

H. Definitions beginning with the letter “H”:
(1) “Home inspection”, as defined by Subsection E of Section 61-24D-2 NMSA 1978, means a noninvasive, nondestructive examination by a person of the interior and exterior components of a residential real property, including the property’s structural components, heating, foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its attached or detached carports, garages and reasonably accessible installed components. “Home inspection” includes the examination of the property’s heating, cooling, plumbing and electrical systems, including the operational condition of the systems’ controls that are normally operated by a property owner.

(2) “Home inspector”, as defined by Subsection F of Section 61-24D-2 NMSA 1978, means a person who performs home inspections for compensation.

I. Definitions beginning with the letter “I”:
(1) “Identify” means to describe a specific system or component by its type and to distinguish it by characteristics such as general or specific materials, energy sources,

etc., which differentiate that system of components from other similar systems and components.

(2) “Inspected Property” means the readily accessible areas of the buildings, site, items, components and systems included in the Home Inspection.

(3) “Inter-NACHI examination” means the examination offered, conducted, and proctored by the international association of certified home inspectors (Inter-NACHI).

J. Definitions beginning with the letter “J”:
[RESERVED]

K. Definitions beginning with the letter “K”:
[RESERVED]

L. Definitions beginning with the letter “L”:
(1)

“Licensure by [endorsement²²] credentials” means the process by which an individual applicant applies for a license as a home inspector in New Mexico on the basis of the applicant’s pre-existing license in another jurisdiction.

(2) “Licensure by training and examination” means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s education, training, and passage of the national home inspector examination (NHIE) or the proctored Inter-NACHI examination.

(3) “Licensure by experience and examination” means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s previous work in New Mexico as a home inspector in each of the 24 months immediately preceding January 1, 2020, the applicant’s performance of at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020, and the applicant’s passage of a national home inspector examination, whether the NHIE [~~or otherwise;~~] or the proctored Inter-NACHI examination.

M. Definitions beginning with the letter “M”:
[RESERVED]

N. Definitions beginning with the letter “N”:
(1) “National home inspector examination” or “NHIE” means the examination offered, conducted, and proctored by the examination board of professional home inspectors (EBPHI); or the examination offered, conducted and proctored by the international association of certified home inspectors (Inter-NACHI).

(2) “Normal operating controls” means thermostats, switches, valves, and other devices intended by design and manufacture to be used by homeowners or occupants in the normal and regular day-to-day operation of systems or components.

(3) “Normally intended function or operation” means the customary or conventional purpose or use for which a system or component is installed and for which it is designed or intended by its manufacturer.

O. Definitions beginning with the letter “O”:

(1) “On-site water supply quality” means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(2) “On-site water supply quantity” means the rate of flow of water.

P. Definitions beginning with the letter “P”:

(1) “Permanently installed” means an item, system, or component designed or intended to remain where originally placed, not easily moved, and which is attached, connected, or set in place for use so as to render moving or removing the item, system, or component impossible without the use of tools or equipment.

(2) “Proctored examination” means a test taken under the supervision of testing staff. The proctor’s function is to ensure procedural integrity and security of the examination in a

secure environment. Examination passage must be in writing and written by the organization or entity that administered the examination.

(3)

“Professional liability insurance” means [general liability insurance;] errors and omissions insurance.

Q. Definitions

beginning with the letter “Q”:

“Qualified” means having the training, skills, knowledge, expertise, competence and any special tools or equipment necessary to address adverse conditions and routine maintenance conditions and, where applicable, holding all required licenses and meeting all applicable industry standards and all governmental and statutory requirements.

R. Definitions

beginning with the letter “R”:

(1)

“Reactivation” means the process and board act of reactivating an inactive or expired license, thereby permitting the licensee to engage in the practice of home inspection.

(2) **“Readily**

accessible” means visually observable and able to be examined without requiring destructive measures; without risk to the inspector or others; without risk of damage to any item of personal or real property; without requiring the inspector to move, remove, damage, or disturb any wall, floor, ceiling, or window coverings; or any interior or exterior claddings or finish treatments; to move, remove, damage, disturb, climb upon, climb over, or straddle any item of personal property; to move, remove, damage, or disturb any landscape elements; or to interrupt the business of occupants, and not requiring disassembly or the use of any special protective clothing or special tools or equipment.

(3) **“Readily**

openable access panel” means a panel located within normal reach or from a four-foot stepladder, and which is not blocked by stored items, furniture, or building components, provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices

in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not painted in place, but not including electrical panel board enclosure dead front covers.

(4)

“Residential recreational facilities” means residential spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground and other similar equipment, and associated accessories that are installed at the inspected property.

(5)

“Reinstatement” means the process and board act of reinstating a suspended or revoked license, thereby permitting the licensee to engage in the practice of home inspection either with or without future conditions.

(6)

“Representative number” means all readily accessible identical components such as windows, electric switches and electric receptacles that serve as a typical or characteristic example of the items or components inspected. When one or a number of components or systems has identified “adverse conditions,” the report should indicate further evaluation of all identical components by qualified personnel.

(7) **“Roof**

drainage systems” means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(8) **“Routine**

maintenance” means typical, regular, ongoing, and expected maintenance that is part of an ongoing and prudent overall property and building systems upkeep program.

S. Definitions

beginning with the letter “S”:

(1) **“Safety**

glazing” means tempered glass, laminated glass, or rigid plastic.

(2) **“Shut**

down” means a piece of equipment whose safety switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a system that cannot be operated by the device or control that a homeowner should normally use to operate it.

~~(3)~~ **“Solid fuel**

~~heating device”~~ means any wood, coal, or other similar organic fuel-burning device, including but not limited to fireplaces, whether masonry or factory built, fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of these devices;]

~~(4)~~ (3)

“Structural component” means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls, and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.

~~(5)~~ (4) **“System”**

means a permanently-installed group of interacting, interrelated, or interdependent components historically and conventionally designed and intended to perform one or more specific functions.

T. Definitions

beginning with the letter “T”:

“Technically exhaustive” means a comprehensive and detailed examination beyond the scope of a real estate home inspection that would involve or include, but would not be limited to: dismantling, specialized knowledge or training, special equipment, measurements, calculations, testing, research, analysis, or other means.

U. Definitions

beginning with the letter “U”:

[RESERVED]

V. Definitions

beginning with the letter “V”:

[RESERVED]

W. Definitions

beginning with the letter “W”:

(1) **“Wall**

cladding” means a protective or insulating layer fixed to the outside of a building such as aluminum, brick, EIFS, stone, stucco, vinyl, or wood.

(2) **“Wiring**

method” means the identification of electrical conductors or wires by their general type, such as nonmetallic sheathed cable, armored cable, and

knob and tube.
[16.66.1.7 NMAC – N, 1/15/2021; A, 1/14/2022]

HOME INSPECTORS BOARD

This is an Amendment to 16.66.3 NMAC, Sections 8, 9, 11, 12, 13 and 15, effective 1/14/2022.

16.66.3.8 APPLICATION FOR LICENSURE BY TRAINING AND EXAMINATION:

A. The board shall issue a license to an applicant for licensure by training and examination if the applicant fulfills the following requirements and provides the following information and evidence:

- (1) Completion of the board-issued application form;
- (2) Payment of the non-refundable application fee in full as provided in Part 2;
- (3) Provision to the board of the applicant’s fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age [and a legal resident of the United States] ;
- (5) Completion of at least 80 hours of classroom training:
 - (a) The cumulative total of 80 hours of classroom training must include all of the following subjects:
 - (i) Site characteristics and exterior;
 - (ii) Structural components;
 - (iii) Roofing;
 - (iv) Plumbing;
 - (v) Electrical;

- (vi) Heating, cooling, and air conditioning;
- (vii) Interiors, appliances, and garages;
- (viii) Insulation and ventilation;
- (ix) Fireplaces and fuel burning appliances;
- (x) New Mexico standards of practice and code of ethics;
- (xi) Business practices, including New Mexico rules and regulations, pre-inspection agreements, and report writing.
 - (b) All 80 hours of classroom training must be obtained through an educational course that satisfies one of the following criteria:
 - (i) The course is approved or accepted by another governmental state home inspector licensing authority;
 - (ii) The course is approved by the United States Department of Education or the New Mexico Department of Education; or
 - (iii) The course is designated as pre-licensing education and is certified or approved by any society, institute, council, or association of home inspectors;
 - (c) All 80 hours of classroom training may be completed online;
 - (6) Passage of the national home inspector examination (NHIE); or the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI):
 - (7) Completion of a total of at least 80 hours of field training spent conducting a minimum of 30 parallel home inspections, evidenced by documents including, but not necessarily limited to, a completed board-issued inspection log, pre-inspection agreements, notarized affidavits, and other similarly-reliable evidence;

- (8) Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC; and
- (9) Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC.
 - B. For the purposes of this rule, parallel home inspections mean inspections that are either:
 - (1) Conducted in New Mexico prior to the effective date of this rule; or
 - (2) Those home inspections at which the applicant, for observational, experiential, and educational purposes, accompanied another home inspector who:
 - (a) Is legally engaged in the practice and profession of home inspection in the jurisdiction in which the home inspection is conducted;
 - (b) Has at least two years of experience in the profession of home inspection; and
 - (c) Has previously completed at least 100 home inspections for compensation. [16.66.3.8 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.3.9 APPLICATION FOR LICENSURE BY EXPERIENCE AND EXAMINATION:

- A. An individual is eligible for licensure by experience and examination if the individual satisfies both of the following criteria:
- (1) The applicant worked as a home inspector in each of the 24 months immediately preceding January 1, 2020; and
 - (2) The applicant performed at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020.
- B. The board shall issue a home inspector license to

applicant for licensure by experience and examination if the applicant fulfills the following requirements and provides the following information and evidence:

- (1) Completion of the board-issued application form;
- (2) Payment of the non-refundable application fee in full as provided in Part 2;
- (3) Provision to the board of the applicant’s fingerprints and all information necessary for the board to complete a state and national criminal background check;
- (4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;
- (5) Passage of a national home inspector examination. For the purposes of this rule, the applicant must either have passed the national home inspector examination (NHIE), or ~~have passed prior to the date falling 6 months after the effective date of these rules InterNACHI’s Home Inspector Exam~~ the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI); subject to the following limitations:
 - (a) Evidence of the applicant’s examination passage must be in writing and written by the organization or entity that administered the examination; and
 - (b) The examination must have been proctored and the applicant must provide evidence as to this requirement.
- (6) Satisfactory evidence that the applicant has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC; and
- (7) Provision to the board of sufficient documentation and evidence to

establish the applicant’s home inspector activities in the 24 months immediately preceding January 1, 2020. Such documentation may include, but is not limited to, tax records, notarized affidavits from persons other than the applicant, pre-inspection agreements, and other ~~[similarly-reliable]~~ similarly reliable evidence of the applicant’s home inspection activities in the 24 months immediately preceding January 1, 2020.

C. For the purposes of this rule, the phrase “worked as a home inspector in each of the 24 months immediately preceding January 1, 2020” means having personally conducted any business activity directly associated with the profession of home inspection but is not limited to having conducted an actual home inspection. To qualify for licensure by experience and examination, an individual does not need to have personally conducted a home inspection in each of the 24 months immediately preceding January 1, 2020, if that individual conducted another business activity directly associated with the profession of home inspection during each of the 24 months.

[16.66.3.9 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.3.11 EXAMINATIONS:

A. Licensure by training and examination: All applicants for licensure by training and examination must either pass the national home inspector examination (NHIE) or the proctored examination of the international association of certified home inspectors (Inter-NACHI) following the date of application for licensure with the board or have previously passed the national home inspector examination (NHIE) or the proctored Inter-NACHI examination prior to the date of the applicant’s application for licensure.

B. Licensure by experience and examination: All applicants for licensure by experience and examination must either:

- (1) Pass the national home inspector examination (NHIE); or

(2) Have passed prior to the date falling six months after the effective date of these rules the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI) subject to the following limitations:

(a) Evidence of the applicant’s examination passage must be in writing and written by the organization or entity that administered the examination; and

(b) The examination must have been proctored and the applicant must provide evidence as to this requirement.

C. Licensure by credentials: Applicants for licensure by licensure by credentials are not required to provide the Board with evidence as to prior examination passage. However, the Board will consider whether the applicant’s prior licensing jurisdiction requires the passage of a national examination in determining whether the prior licensing jurisdiction’s standards are substantially equivalent to those in New Mexico.

D. It is the applicant’s responsibility to make all arrangements with the examination board of professional home inspectors (EBPHI) to take the NHIE or with Inter-NACHI to take the proctored Inter-NACHI home inspectors examination.

E. The applicant shall send the applicant’s examination score to the board, provided that the examination score must be in a document originally written by the organization or entity that administered the examination.

F. Any applicant who fails the NHIE may retake the exam at the next available opportunity. [16.66.3.11 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.3.12 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, CHILDREN, AND [RECENT] VETERANS:

A. Pursuant to Section 61-1-34 of the Uniform Licensing Act, any individual who is a military service member, spouse, or child, or who is a recent veteran having received an honorable discharge or separation from military service within the three years immediately preceding the date of the individual's application, is entitled to expedited licensure as provided herein.

B. Such an individual eligible for expedited licensure shall submit:

(1) An application for licensure on a form provided by the Regulation and Licensing Department;

(2) Satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of armed forces of the United States, whose licensure standards are substantially equivalent to those set forth in these rules and the Home Inspector Licensing Act;

(3) Proof of honorable discharge, military identification card, proof of marriage for spousal status, or proof of the individual's parentage so as to qualify for an expedited license pursuant to Section 61-1-34 of the Uniform Licensing Act; and

(4) Satisfactory evidence that the applicant has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.8 NMAC.

C. An individual eligible for expedited licensure shall not be required to pay an application fee or an initial three-year license fee.]

A. Application requirements:

(1) Applications for licensure shall be completed on a form provided by the Home Inspectors Board.

(2) The applicant shall provide a complete application that includes the following information:

(a) applicant's full name;
(b) current mailing address;
(c) current electronic mail address, if any;
(d) date of birth;
(e) background check, if required; and
(f) proof as described in subsection C below.

(3) The applicant shall provide the following satisfactory evidence as follows:

(a) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(b) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(c) the following documentation:

(i) for military service member: a copy of military orders;

(ii) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(iii) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(iv) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(v) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

(4) The license shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

(5) Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

(6) A license issued pursuant to this section shall be valid for the time period that is specified in the Home Inspectors Licensing Act.

B. Renewal requirements:

(1) A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.66.4.8 NMAC pursuant to 61-24D-8 NMSA 1978.

(2) As a courtesy, the board will send via electronic mail license renewal notifications to licensees before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of timely renewal on or before the expiration date.

[16.66.3.12 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.3.13 [~~INITIAL LICENSE LENGTH (RULE IN EFFECT UNTIL DECEMBER 31, 2021):~~]

A. A new license issued pursuant to these rules shall be valid for no more than three years. Until the close of business on December 31, 2021, initial license expiration dates shall be staggered and initial licenses shall be issued for durations of one, two, or three years for the purposes of ensuring an orderly expiration period and the continuity of professional home inspector services in New Mexico.

The durations of licenses shall be determined at random by Board staff. Each new license shall expire either after one, two, or three years.

B. Following the expiration of each initial license, the licensee shall be issued a license for a duration of three years.

C. This rule shall automatically, without further rulemaking action on the part of the Board, expire as of the close of business on December 31, 2021.]

[RESERVED]

[16.66.3.13 NMAC – N, 1/15/2021;

Repealed 1/14/2022]

16.66.3.15 CRIMINAL CONVICTIONS:

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board. This includes conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term “conviction” shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

(1) homicide, voluntary or involuntary manslaughter;

(2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;

(3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect, or financial exploitation;

(6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous uses of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property;

(8) financial crimes involving fraud, forgery, embezzlement, credit card fraud,

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual’s conduct to the extent that such conduct violated the Home Inspector Licensing Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the board/ commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.66.3.15 NMAC – N, 1/14/2022]

HOME INSPECTORS BOARD

This is an amendment to 16.66.7 NMAC, Sections 12 thru 16, effective 1/14/2022.

16.66.7.12 SITE CHARACTERISTICS AND EXTERIOR:

A. The licensee shall inspect:

(1) Wall cladding materials, flashing, and trim;

(2) eaves, soffits, and fascia where accessible and observable from the ground level;

(3) exterior doors and windows;

(4) attached and adjacent decks, balconies, stairs, steps, stoops, stairways, and porches and the associated railings, guards, and handrails;

(5) vegetation, grading, surface drainage, and retaining structures that, as determined by the licensee, adversely affect the building;

(6) attached and adjacent walkways and exterior stoops, landings, and patios;

(7) adjacent driveways and other paved, masonry, or hardscape areas;

(8) attached portals and ramadas;

(9) garages and carports.

B. In the home inspection report, the licensee shall describe at least the wall cladding.

C. The licensee is not required to inspect:

(1) Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;

(2) items that are not visible or readily accessible from the ground, including window and door flashing;

(3) fencing, privacy walls, and retaining walls, unless as determined by the licensee to adversely affect the subject building.

(4) erosion control and other earth stabilization measures;

(5) soil or geological conditions, site engineering, property boundaries, encroachments, or easements;

(6) adequacy of retaining walls, sea walls, waterfront bulkhead, docks, and piers;

(7) ponds, fountains, or decorative water features;

(8) safety glazing;

(9) integrity of multiple-pane window glazing or thermal window seals;

(10) recreational facilities;

(11) [Outbuildings] Additional structures other than attached garages and carports; and one detached garage or carport utilized as the primary vehicle structure in proximity to the subject home;

(12) swimming pools and spas.
[16.66.7.12 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.7.13 STRUCTURAL COMPONENTS:

A. The licensee shall inspect all structural components, including but not limited to foundation and framing.

B. In the home inspection report, the licensee shall describe at least the following:

- (1) Methods used to inspect basements, underfloor crawlspaces and attics;
- (2) foundation;
- (3) floor structures;
- (4) wall structures;
- (5) ceiling structures; and
- (6) roof structures.

C. The licensee is not required to:

- (1) Provide engineering or architectural services or analysis;

(2) offer an opinion about the adequacy of structural systems and components;

(3) enter underfloor crawlspace areas that have less than 24 inches of vertical clearance between components and the ground or that have an access opening smaller than 16 inches by 24 inches;

(4) enter attics or crawlspaces when access is obstructed or when entry could damage the property;

~~[(5) Enter attics or crawlspaces when the licensee suspects dangerous or adverse situations;]~~

~~[(6) (5) traverse attic load-bearing components that are concealed by insulation or by other materials;~~

~~[(7) (6) move insulation.~~
[16.66.7.13 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.7.14 ROOFING:

A. The licensee shall inspect:

- (1) Roofing covering materials;
- (2) roof drainage systems;
- (3) flashing;
- (4) skylights, chimneys, and roof penetrations.

B. In the home inspection report, the licensee shall describe at least the following:

- (1) roof materials; and
- (2) methods used to examine the roof as well as any general area of the roof that was not examined and the reason the area was not examined.

C. The licensee is not required to:

- (1) Perform a water test;
- (2) warrant or certify the roof or predict the service life expectancy;
- (3) remove snow, ice, debris, or other conditions that prohibit the observation of the roof surfaces;

(4) inspect antennae, satellite dishes, lightning arresters, de-icing equipment, or similar attachments;

(5) confirm proper fastening or installation of any roof-covering material.

[16.66.7.14 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.7.15 PLUMBING:

A. The licensee shall inspect:

(1) Interior water supply and distribution systems, including fixtures and fixture trim components (faucets, valves, drain stops, shower arms and showerheads, flush handles, etc.);

(2) interior drain, waste, and venting systems, including fixtures;

~~(3) [Water heating equipment and hot water supply systems;] domestic potable water heating equipment and hot water distribution systems;~~

(4) vent systems, flues, and chimneys;

(5) fuel storage and fuel distribution systems;

(6) sewage ejectors, sump pumps, and related piping; and

(7) functional flow at each fixture group.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Interior water supply, drain, waste, and vent piping materials;

(2) water heating equipment, including energy sources;

(3) location of main water supply shut-off valve; and

(4) location of main fuel supply shut-off valve.

C. The licensee is not required to inspect:

(1) Interiors of vent systems, flues, and chimneys that are not readily accessible;

(2) sewage drain waste systems;

(3) on-site (septic) waste disposal systems;

(4) wells, well pumps, and water storage related equipment;

(5) on-site (well) water supply quantity and quality;

(6) water conditioning systems;

(7) solar, geothermal, and other renewable energy water heating systems;

(8) manual and automatic fire extinguishing and sprinkler systems;

(9) landscape irrigation systems;

(10) clothes-washing machine connections;

(11) refrigerator or ice maker water connections.

D. The licensee is not required to:

(1) Light or ignite pilot flames;

(2) operate any shut-off or manual stop valves, except water closet flush valves and fixture valves;

(3) test shower pans, tub, and shower surrounds or enclosures for leakage or functional overflow protection;

(4) operate automatic safety controls;

(5) inspect or test for gas or fuel leaks or indications thereof.

E. The licensee is not required to determine:

(1) capacity, temperature, life expectancy, or adequacy of the water heater;

(2) adequacy of combustion air components;

(3) whether water supply and waste disposal systems are public or private;

(4) water supply with respect to flow rate, volume, pressure, temperature, quantity, and quality;

(5) effectiveness of anti-siphon devices.

[16.66.7.15 NMAC – N, 1/15/2021; A, 1/14/2022]

16.66.7.16 ELECTRICAL:

A. The licensee shall inspect:

(1) Service drop (overhead) or the readily accessible components of the service lateral (underground);

(2) service entrance conductors and cables;

(3) service equipment and main disconnects;

(4) service and system grounding;

(5) interior Components of service distribution panelboards and secondary panelboards by removing the panelboards dead front cover.

(a) When, as determined by the licensee, primary electrical distribution panelboards or secondary panelboards and their related dead front covers and fasteners are readily accessible, the inspector will remove the dead front covers of such panelboards in order to examine readily accessible components installed on their interiors.

(b) Use of tools to remove dead front covers is specifically excluded when dead front covers or their fasteners are painted or otherwise sealed into place or when they cannot be removed with a standard, non-power-assisted slot head or Phillips head screwdriver or hex head nut driver.

(c) Exception for home inspector safety: The home inspector is not required to remove the covers of the service and distribution panels when hazardous conditions are present. The home inspector should use caution whenever removing the covers of service and distribution panels. Before touching the fasteners and cover, the home inspector should use available voltage test tools to verify if the panel assembly, panel dead front, and fasteners have live voltage conditions. Example tools include voltage sniffers, neon bulb testers, three light testers or voltmeters.

(6) Conductors (wiring methods);

(7) overcurrent protection devices;

(8) presence of labeling of overcurrent protection devices;

(9) ground fault circuit interrupter (“GFCI”) protection devices;

(10) arc fault circuit interrupter (“AFCI”) protection devices;

(11) a representative number of installed lighting fixtures, switches, and receptacles; and

(12) the polarity and grounding of all readily accessible receptacles within six feet of interior plumbing fixtures, in the attached garage or carport, and on the exterior of inspected structures.

B. In the home inspection report, the licensee shall describe at least the following:

(1) Service location type: overhead service drop or underground service lateral;

(2) amperage and voltage rating of the service;

(3) service and system grounding and bonding (i.e. concrete encased, ground rod, equipotential cold-water metal pipe);

(4) location of main service entry and distribution panelboards and the associated disconnects;

(5) predominant branch circuit wiring methods;

(6) presence or absence of smoke detectors and alarms;

(7) presence or absence of carbon monoxide detectors and alarms;

(8) presence or absence of ground fault circuit interrupter (“GFCI”) protection devices;

(9) presence or absence of arc fault circuit interrupter (“AFCI”) protection devices;

(10) any unused circuit-breaker panel opening that was not filled;

(11) the presence of solid conductor aluminum branch-circuit wiring;

(12) any tested receptacle in which power was not present, polarity was incorrect, the cover was not in place, the GFCI

devices were not properly installed or did not operate properly, there was evidence of arcing or excessive heat, or where the receptacle was not grounded or was not secured to the wall;

(13) wiring methods which are not consistent with generally established practices such as terminations, multiple tapping of hot and neutral conductors, insulation, improper color-coding of conductor insulation, over-stripping, securing and protection of conductors, and bonding of components. [,-etc-];

(14) condition of visible conductors and insulation (damaged, scorched, burned, or melted insulation; nicked conductors; cut off strands of multiple strand conductors, anti-oxidant compound on aluminum conductors, etc.);

(15) corrosion on components; and

(16) the presence a utility interactive system (i.e. solar, wind turbine, and electric vehicle charging systems).

C. The licensee is not required to inspect:

(1) Remote control devices;

(2) Low voltage wiring systems and components;

(3) Ancillary wiring systems and components not a part of the primary electrical power distribution system;

(4) Private or emergency electrical supply systems;

(5) [Spark] Surge protection devices or lightning arrestors.

D. The licensee is not required to:

(1) Operate electrical systems that are shut down;

(2) test or operate overcurrent protection devices except ground fault and arc fault circuit interrupters;

(3) test or operate any overcurrent device or safety device in the electrical service panel or elsewhere that may adversely affect the personal property or activity of the resident;

(4) determine the accuracy of the labeling of all overcurrent protection devices;

(5) calculate or measure amperage, voltage, and impedance;

(6) determine (present or future) service capacity amperage, voltage, or the capacity, when not readily accessible, of the electrical system or main service equipment;

(7) determine the age and type of smoke alarms and carbon monoxide alarms;

(8) test or determine the interconnectivity or effectiveness of smoke alarms and carbon monoxide alarms;

(9) verify that smoke or carbon monoxide alarms are interconnected or suitable for the hearing-impaired;

(10) insert any tool, probe, or testing device inside panels or dismantle any electrical device or control other than to remove the primary electrical distribution panelboards or secondary panelboards and their related dead front covers and fasteners when no hazard conditions exist and when readily accessible;

(11) remove the covers of junction, fixture, receptacle, or switch boxes unless specifically required by this standard; and

(12) the home inspector is not required to remove electrical device covers when removal would damage or mar any painted surface or covering materials.

[16.66.7.16 NMAC – N, 1/15/2021; A, 1/14/2022]

**HUMAN SERVICES
DEPARTMENT
CHILD SUPPORT
ENFORCEMENT DIVISION**

This is an amendment to 8.50.100 NMAC, Sections 2, 3, 7, 10, 11, 13, 14, 15, 16, and 17 effective 1/1/2022.

8.50.100.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.100.2 NMAC - Rp, 8.50.100.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978.

The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).

[8.50.100.3 NMAC - Rp, 8.50.100.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.7 DEFINITIONS: Unless otherwise apparent from the context, the following definitions shall apply throughout these regulations.

A. "Account" means a demand deposit account checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

B. "Arrearage" means the amount of support owed that was unpaid and has been consolidated into a judgment. Also referred to as arrears or past-due support.

C. "AFDC" means aid to families with dependent children. AFDC is now replaced by the TANF/ NM works program. Where TANF/ NM works is referenced in these regulations, the provisions apply to AFDC cases.

D. "Authorized representative" means a person acting under the authority of a valid power of attorney (with a general or specific designation regarding a child support case), a guardian ad litem, an attorney representing a person, or the parent of a minor having a child support case. The person will be required to produce documentation of his or her authorized status.

E. "Business day" means a day on which state offices are open for regular business.

F. "CP" means custodial party or custodial parent.

G. "CSED" means the child support enforcement division of the human services department that is the New Mexico Title IV-D

agency, designated by [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978, as the single state agency for the enforcement of child, medical, and spousal support obligations pursuant to Title IV-D of the Social Security Act.

H. “CSES” means the child support enforcement system (the computer system for CSED).

I. “Delinquency” means any payment under an order for support that has become due and is unpaid and has not been consolidated into a judgment. This may also be known as overdue support.

J. “Department” means the New Mexico human services department.

K. “Department’s records” means all physical and automated records maintained by the department on any person, as well as access to automated and physical records maintained by other persons.

L. [~~“Dependant”~~] “Dependent” means a minor who has not emancipated by age or by court order. This is the same as a “minor child.”

M. “DMSH” means data match specification handbook.

N. “Distribution” means the act of collecting child support payments and disbursing those payments to the proper individual or agency.

O. “District court” means the judicial district courts, family courts, and child support hearing officers having jurisdiction over child support matters in the state of New Mexico.

P. “Employer” means the same as the term in Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

Q. “FIDM” means financial institution data match.

R. “Financial institution” is defined in [~~NMSA-1978, Section 27-1-13~~] Section 27-1-13 et seq., NMSA 1978.

S. “Family violence” means the family violence indicator or non-disclosure indicator on the child support computer system.

T. “Genetic testing” means any testing methodology used to determine parent and child relationship as described in [~~NMSA-1978, Section 40-11A-503~~] Section 40-11A-503 et seq., NMSA 1978.

U. “Hearings bureau” means the Title IV-D hearings bureau.

V. “Hearing officer” means the Title IV-D administrative hearings officer or administrative law judge.

W. “HSD” means the human services department.

X. “Location” means information concerning the physical whereabouts of a person or the person’s employer(s), other sources of income, or assets as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

Y. “NCP” means non-custodial party or non-custodial parent.

Z. “Obligee” means any person who is entitled to receive support under an order for support or that person’s legal representative or assignee pursuant to [~~NMSA 1978, Section 27-2-28~~] Subsection F of Section 27-2-28 NMSA 1978.

AA. “Obligor” means the person who owes a duty to make payments under an order for support.

BB. “Order for support” means any order that has been issued by any judicial, quasi-judicial or administrative entity of competent jurisdiction of any state, territory, or nation that has entered into a reciprocal agreement for the establishment and enforcement of orders for support with the United States and which order provides f

(1) periodic payment of funds for the support of a child or a spouse;

(2) modification or resumption of payment of support;

(3) payment of delinquency; or

(4) reimbursement of support.

CC. “Payor” means any person or entity who provides income to an obligor.

DD. “Person” means an individual, corporation, partnership, governmental agency, public office or other entity.

EE. “Physical or emotional harm” means being subjected to: physical acts that resulted in, or threatened to result in, physical injury; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities; threats of, or attempts at, physical or sexual abuse; mental abuse; being subject to a pattern of emotional or psychological attacks that may include embarrassment, isolation, blaming, name-calling, humiliation, threats, shaming, extreme jealousy, gaslighting, intimidation, and manipulation resulting in a range of emotional trauma that may include: confusion, fear, difficulty concentrating, anxiety, social withdrawal, sleep disruption, and depression; or neglect or deprivation of medical care.

FF. “Proof of service” means the completed document demonstrating that service has been completed in accordance with the New Mexico rules of civil procedure at Rule 1-004 NMRA. The documents include, but are not limited to: an affidavit of mailing, acceptance of service, certificate of service, or return of service.

GG. “Secretary” means the secretary of the human services department.

HH. “SDU” means the state disbursement unit that collects and disburses payments in all Title IV-D cases.

II. “Service of process” means:

(1) service has been accepted by the person signing an acceptance of service; or

(2) service performed pursuant to Rule 1-004 NMRA.

JJ. “Support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent

jurisdiction, for the support and maintenance of a child or children, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, medical support, or arrearages.

KK. “TANF/NM works” means federally funded temporary assistance to needy families / New Mexico works (see AFDC).

LL. “Title IV” programs mean the various programs operated under the Social Security Act (42 USC Chapter 7, Title IV). IV-A refers to TANF and IV-B or IV-E refers to foster care. See definition below for “IV-D”.

MM. “Title IV-D” or “**Title IV-D agency**” or “**IV-D agency**” means the single and separate state agency authorized by Title IV, Subsection D of the Social Security Act (42 USC 651 et seq.) to operate a child support program. Both states and tribes may administer a Title IV-D program. The New Mexico “Title IV-D” agency is authorized by ~~[NMSA 1978, Section 27-2-27]~~ Section 27-2-27 et seq., NMSA 1978.

NN. “Title IV-D agency director” or “**division director**” means the director of the child support enforcement division of the New Mexico human services department.

OO. “Title IV-D staff” or “**IV-D staff**” means employees of the state of New Mexico assigned to operate a child support program to also include any contractors with the IV-D agency.

PP. “Title XIX” means medicaid programs that are operated under Title XIX of the Social Security Act.

QQ. “UIFSA” means Uniform Interstate Family Support Act (replaces the former Uniform Reciprocal Enforcement of Support Act). A case from another jurisdiction that has not yet adopted UIFSA shall be treated as a New Mexico UIFSA case. [~~(See NMSA 1978, Section 40-6A-101 et seq.)~~] (See Section 40-6A-101 et seq., NMSA 1978.)

[8.50.100.7 NMAC - Rp, 8.50.100.7 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.10 RESPONSIBILITY AND DELEGATION OF AUTHORITY:

Pursuant to ~~[NMSA 1978, Section 27-2-27]~~ Section 27-2-27 et seq., NMSA 1978, the New Mexico human services department’s child support enforcement division (CSED) is the single and separate organizational unit designated to administer Title IV-D of the Social Security Act. It is responsible and accountable for the operation of the child support enforcement program insuring that its functions are being carried out in accordance with the relevant federal and state laws and regulations.

[8.50.100.10 NMAC - Rp, 8.50.100.10 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.11 ATTORNEY

REPRESENTATION: Per ~~[NMSA 1978, Section 27-2-27(E)]~~ Subsection E of Section 27-2-27 et seq., NMSA 1978, the Title IV-D attorneys only represent the human services department. There is no express or implied attorney-client relationship between IV-D attorneys and applicants or recipients of IV-D services. Although applicants and recipients of IV-D services may interact with IV-D attorneys regarding their cases, the interaction with the IV-D attorneys does not indicate any confidential relationship that the person would have with a private attorney. All IV-D applicants and recipients are on notice that information provided to the IV-D agency (either to IV-D staff or attorneys) will not be disclosed to the general public, but may be used to collect support from either parent. The IV-D agency reserves the right to invoke the attorney work product privilege as it pertains to its attorneys and their work for the IV-D agency.

[8.50.100.11 NMAC - Rp, 8.50.100.11 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.13 CONFIDENTIALITY:

A. The Title IV-D agency has access to the entire Title IV-A case file and to material in the medicaid case file. Information contained in the Title IV-A and Title IV-D records is subject to federal and state confidentiality requirements. Federal and state law restrict the use or disclosure of information concerning applicants or recipients of program services to purposes directly connected with the administration of the Title IV-D program. No unauthorized use, dissemination or disclosure of information in the possession of the Title IV-D agency will be made or permitted. (See 42 USC 654 (a) (26) and 45 CFR 303.21). Department records are confidential and may not be released to third parties without a court order or as otherwise provided by federal or state law. Department records include, but are not limited to: address/locate information, audits, correspondence with other state agencies, payment records, distribution records, and employer information.

B. Unless authorized by federal law, no release of information concerning the whereabouts of persons subject to a protective order or about whom the state has reasonable evidence of domestic violence or child abuse shall be made.

C. A non-disclosure indicator will be entered on the child support enforcement system (CSES) and on the physical case file if a protective order or family violence affidavit is submitted. A court order for unsupervised visitation is not generally compatible with a non-disclosure indicator. A non-disclosure indicator will not be entered if a support order or divorce decree provides for unsupervised visitation, unless there is a specific court protective order.

D. The federal government may disclose confidential information on a New Mexico Title IV-D case in accordance with 42 USC 653.

E. All state and local staff and contractors who may

have access to or be required to use confidential program data in the computerized support system will:

(1) be informed of applicable requirements and penalties, including those in section 6103 of the Internal Revenue Service Code (26 USC 6103);

(2) be adequately trained in security procedures; and

(3) be subject to have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure, or use of confidential information.

F. The Title IV-D agency will redact personal identifying information to include social security numbers and dates of birth when releasing documents pursuant to a request for information, unless that information is being released pursuant to a specific program operation (i.e. court required information or administrative enforcement).

[8.50.100.13 NMAC - Rp, 8.50.100.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.14 AUTHORIZED RELEASE OF INFORMATION:

Some information must be released to persons outside the agency. IV-D staff will exercise caution in releasing information on a Title IV-D case. Information should be released only after the identity of the requestor and the right to receive the information is clearly established. The burden of proving the legitimacy of a request is on the requestor.

A. Information may be released to the following parties:

(1) Applicants or recipients of Title IV-D services: Custodial and non-custodial parties of Title IV-D cases, their respective attorney of record, guardian, or power of attorney may obtain information concerning the receipt and distribution of payments, copies of legal documents filed in court on their case, public assistance benefits history, payment records, official notifications for a fee established by HSD, and correspondence from

either the custodial or non-custodial party. They are not entitled to receive information that relates to the state's legal strategy or is otherwise protected by federal and state laws.

(2) Information may be released per the operational requirements of the program, subject to federal and state laws on confidentiality. Other agencies/requesters include, but are not limited to: district courts, credit reporting agencies, tax intercept programs, financial institutions, other Title IV agencies, medicaid agencies, authorized government agents (both federal and state authorized government agents must present adequate identification and permission from the individual concerned unless otherwise authorized to receive information), the federal office of child support enforcement and other state governmental bodies that are responsible for issuing licenses or holding money that is collectible by the Title IV-D agency.

(3) Congressional, executive or legislative inquiries - Congressional, executive and legislative inquiries are subject to all regulations governing confidentiality.

(4) Other individuals - Other individuals may obtain information through legal discovery procedures or from the custodial or non-custodial party.

B. Requests for information:

(1) Phone inquiries - Title IV-D staff will not release information on the telephone to anyone other than the custodial party, the non-custodial party, or his or her authorized representative. Requests by a third party for information must be submitted in writing.

(2) Written requests - Written requests for case information shall be screened by the Title IV-D agency to determine what information, if any, will be released.

(3) Walk-in requests - The same precautions applying to phone inquiries shall be used in dealing with walk-in requests

for information. If uncertainty exists as to the identity of the requestor, the worker will ask to see identification before providing case information.

(4) Third party requests - The Title IV-D agency will not honor a request for information from a third party without a notarized release from either the custodial party or non-custodial party that specifies the information to be released. A third party may not obtain information pursuant to an authorized release unless the party consenting to the release is entitled to receive the information. The information provided will be in accordance with authorized releases according to federal and state law. The Title IV-D agency reserves the right to provide the requested information directly to either the custodial party or non-custodial party rather than the third party requestor or to redact personal or confidential information, as appropriate. An attorney of record for a custodial or non-custodial party is not considered a third party requestor. [8.50.100.14 NMAC - Rp, 8.50.100.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.15 WRITTEN STATEMENTS OF COLLECTION PROVIDED TO RECIPIENTS OF IV-D SERVICES:

A. General written communication regarding collections: Upon a request from a recipient of Title IV-D services, the Title IV-D agency will make available a written statement, no more than twice a year, of payments made to the obligee by the obligor through the Title IV-D agency pursuant to an order for support, and the amount of any delinquency still owed to the obligee by the obligor.

B. Notice of collection of assigned support: The IV-D agency provides notice to recipients of benefits under Title IV-A of the Social Security Act of the amount of support payments collected for each quarter. No notice will be sent if:

(1) no collection is made in the quarter;

(2) the assignment is no longer in effect; and
 (3) there are no assigned arrearages.
 [8.50.100.15 NMAC - Rp, 8.50.100.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.16 CONTROLS AND REPORTING: The Title IV-D agency maintains records necessary for the proper and efficient operation of the state plan and for the reporting accountability required by the federal office of child support enforcement including records regarding the following:

- A. application for support services available under the state plan;
- B. location of non-custodial parties, action to establish paternity, and obtain and enforce support and the costs incurred in such action;
- C. amount and sources of support collections and the distribution of these collections;
- D. any fees charged or paid for support enforcement services;
- E. administrative costs; and
- F. statistical, fiscal, and other records necessary to the reporting required.
 [8.50.100.16 NMAC - Rp, 8.50.100.18 NMAC, 12/30/2010; A, 1/1/2022]

8.50.100.17 CHANGE OF ADDRESS: ~~[All requests for address and phone number changes must be made in writing or made in person with proper identification. If a person changing his or her address on file with the Title IV-D agency is receiving distributions by warrant (check), the request to update an address must be in writing and notarized or made in person with proper identification.]~~ The Title IV-D agency and its representatives must verify an individual's identity prior to changing the address and phone number in agency records. The failure of a custodial party or non-custodial party to maintain a valid address on file with the Title

IV-D agency may result in one of the following, as appropriate for that party: further enforcement actions, closure of the Title IV-D case, or the surrender of support that has been determined to be unclaimed property pursuant to 8.50.132 NMAC.
 [8.50.100.17 NMAC - N, 12/30/2010; A, 1/1/2022]

**HUMAN SERVICES
 DEPARTMENT
 CHILD SUPPORT
 ENFORCEMENT DIVISION**

This is an amendment to 8.50.106 NMAC, Sections 2, 3, 9, 10, 11, 12, 13, 14, 15, and 16, effective 1/1/2022.

8.50.106.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.
 [8.50.106.2 NMAC - Rp, 8.50.106.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
 [8.50.106.3 NMAC - Rp, 8.50.106.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.9 TIME FRAMES FOR PARENT LOCATE: Federal regulations require that within [~~seventy-five (75)~~] 75 calendar days of determining that location is necessary, the Title IV-D agency will access all appropriate location sources.
 [8.50.106.9 NMAC - Rp, 8.50.106.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.10 VERIFICATION OF LOCATION: Location information must be verified prior to service of process. Federal regulations require that the Title IV-D case record contain documentation of the date,

time, and name of each location source, even when the source failed to provide helpful information.

A. Location sources will be verified by a second source verification when necessary.

B. The following location sources are acceptable forms of location verification for single source verification:

(1) employer letter;

(2) driver's license or vehicle registration with a date of issuance which is 90 days or less;

(3) federal, state and local agencies and departments sources; and

(4) personal knowledge as to the non-custodial parent's whereabouts where the person is willing to testify to that fact.

[8.50.106.10 NMAC - Rp, 8.50.106.12 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.11 THE STATE PARENT LOCATOR SERVICE: The New Mexico Title IV-D agency established a state parent locator service (SPLS) that operates out of the agency's central office. The state parent locator service is authorized to submit location information requests to the federal parent locator service. If all attempts to locate a non-custodial parent fail at the local office level, these cases may be referred to the state parent locator service provided that at least the non-custodial parent's full name and either an approximate date of birth or social security number are known.
 [8.50.106.11 NMAC - Rp, 8.50.106.10 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.12 FEDERAL PARENT LOCATOR SERVICE (FPLS): The Title IV-D agency may utilize the FPLS in accordance with 42 USC 653 and 45 CFR § 303.70. All information obtained is subject to federal and state laws regarding confidentiality of information. Neither parties nor their respective private legal representative may

apply directly to the SPLS for FPLS information in parental kidnapping and child custody cases. Parties or their respective legal representative may, however, petition a state district court to request location information from the FPLS concerning the absconding parent and missing child. A party can request appropriate state officials who are authorized persons to make a locate request. A state district court may request FPLS information in connection with a child custody determination in adoption and parental rights determination cases. [8.50.106.12 NMAC - Rp, 8.50.106.13 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.13 DECEASED PARTIES: If a party or [dependant] dependent is reported as deceased, the death must be verified. Verification may consist of written verification from the vital statistics bureau, office of the medical investigator or from any other accepted official source. [If the deceased is a non-custodial parent, after receipt of verification, a determination as to the existence of an estate is to be made and the possibility of a levy against the estate. If it is determined that no further action can be taken and no levy against the non-custodial parent's estate can occur, the case qualifies for closure.] [8.50.106.13 NMAC - Rp, 8.50.106.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.14 STATE CASE REGISTRY: The Title IV-D agency established a state case registry that contains records with respect to:

A. each case in which services are being provided on or after October 1, 1998 by the state Title IV-D agency; and

B. each support order established or modified in the state on or after October 1, 1998, whether or not the order was obtained by the Title IV-D agency. [(NMSA 1978, Section 27-1-8)] (Section 27-1-8 et seq., NMSA 1978). [8.50.106.14 NMAC - Rp, 8.50.106.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.15 LOCATOR INFORMATION FROM INTERSTATE NETWORKS: The state Title IV-D agency is authorized to have access to any system used by the state to locate an individual for purposes relating to motor vehicle or law enforcement. [8.50.106.15 NMAC - Rp, 8.50.106.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.106.16 STATE DIRECTORY OF NEW HIRES: The department established a state directory of new hires pursuant to the State Directory of New Hires Act ("Act"), [NMSA 1978,] Section 50-13-1 et seq., NMSA 1978 The department may, at its discretion, contract this service, as appropriate. All information required by the act may be provided to a contractor designated by the department. [8.50.106.16 NMAC - Rp, 8.50.106.18 NMAC, 12/30/2010; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

This is an amendment to 8.50.107 NMAC, Sections 2, 3, 6, 8, 9, 11, and 12, effective 1/1/2022.

8.50.107.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services. [8.50.107.2 NMAC - Rp/E, 8.50.107.2 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.3 STATUTORY AUTHORITY: Public Assistance Act, [NMSA 1978, Section 27-2-27,] Section 27-2-27 et seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.). [8.50.107.3 NMAC - Rp/E,

8.50.107.3 NMAC, 1/1/2010; A, 1/1/2022]

8.50.107.8 DETERMINATION OF PARENTAGE: A determination of parentage is necessary for the establishment of child support. The Title IV-D agency extends full faith and credit to a determination of parentage made by another jurisdiction, whether established through voluntary acknowledgment or through administrative or judicial process. Alleged fathers may initiate parentage actions through the Title IV-D agency. The Title IV-D agency may petition a court of competent jurisdiction to establish parentage so long as the [dependant] dependent child is still under the age of majority.

A. Federal time-frames and requirements for establishment of parentage. The IV-D agency shall establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, parentage (or document unsuccessful attempts to serve process) within [ninety (90)] 90 calendar days of locating the alleged father or non-custodial parent. (45 CFR Section 303.4(d)).

B. The Title IV-D agency is not required to establish parentage or pursue genetic testing in any case involving incest or rape, or in any case in which legal proceedings for adoption are pending, or if, in the opinion of the IV-D agency, it would not be in the best interests of the child.

C. The Title IV-D agency may identify and use laboratories that perform, at reasonable cost, legally and medically acceptable genetic tests that tend to identify the biological parent or exclude the alleged biological parent. The IV-D agency may make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

D. The Title IV-D agency may seek entry of a default order by the court or administrative

authority in a parentage case according to state law and rules of procedure regarding default orders.

E. The Title IV-D agency may seek to establish maternity in compliance with the New Mexico Uniform Parentage Act, as appropriate.

F. The IV-D agency will not initiate an action to rescind or disestablish parentage.

G. If a child in a Title IV-D case has an acknowledged, presumed, or an adjudicated father as defined within the New Mexico Uniform Parentage Act, then parentage has been determined and the Title IV-D agency will pursue the establishment of support on behalf of or against the parent, as appropriate. [8.50.107.8 NMAC - Rp/E, 8.50.107.8 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.9 PARENTAGE INVOLVING MINOR FATHERS AND MOTHERS:

If the biological parent is under the age of emancipation, and is not otherwise emancipated by law, the Title IV-D agency will take measures to establish parentage and support, as appropriate. If a biological parent is a minor, his or her parent, legal guardian, or attorney who has entered an appearance on behalf of the minor biological parent may be present at all meetings or discussions between the minor biological parent and the representatives of the Title IV-D agency. The Title IV-D agency will seek to establish parentage. If the alleged minor non-custodial parent is employed, the Title IV-D agency will pursue guideline support. Any order or stipulation will include a requirement that the minor non-custodial parent will notify the Title IV-D agency of his or her employment and educational status on a regular basis. In uncontested cases, the Title IV-D agency may seek the concurrence of the minor biological parent's parent(s), legal guardian, or attorney. In contested cases, the minor biological parent(s) may request the court to appoint a guardian ad litem. Any legal notices

or pleading prepared following the appointment of the guardian ad litem will be sent in accordance with the rules of civil procedure.

[8.50.107.9 NMAC - Rp/E, 8.50.107.9 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.11 LONG ARM STATUTE CASES:

A. The Title IV-D agency will use the long arm statute as appropriate to exercise jurisdiction over a non-custodial parent residing in another state pursuant to [~~NMSA-1978, Section 40-6A-201~~] Section 40-6A-201 et seq., NMSA 1978.

B. Genetic testing may be used in long arm statute cases in the establishment of parentage. New Mexico shall advance the costs associated with the testing in cases wherein the state initiated long arm statute actions. The Title IV-D agency shall seek reimbursement for the advancement of the costs pursuant to the genetic testing section below.

[8.50.107.11 NMAC - Rp/E, 8.50.107.11 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

8.50.107.12 GENETIC TESTING:

A. The Title IV-D agency provides genetic testing services, as appropriate. The Title IV-D agency will not provide genetic testing services when parentage is presumed by law or has already been adjudicated unless ordered by a court of competent jurisdiction to do so.

The Title IV-D agency will seek the admission into evidence, for purposes of establishing parentage, the results of a genetic test that are performed by a laboratory contracted with the Title IV-D agency to provide this specific service, unless the results are otherwise stipulated to by the parties. Any party to a Title IV-D case may seek genetic testing outside of the Title IV-D agency, at his or her own expense and obtain a genetic test and report in compliance with [~~NMSA-1978, Sections 40-11A-503 to 504~~] Sections 40-11A-503 to 504 et seq., NMSA 1978. The Title IV-D agency will not present or introduce into

evidence the results of a genetic test report obtained through a laboratory not contracted with the Title IV-D agency.

B. The Title IV-D agency may charge any individual who is not a recipient of state aid for the cost of genetic testing in accordance with the fee schedule in 8.50.125 NMAC. The Title IV-D agency may advance the cost of the fee if the IV-D agency is a party in a pending court case and is providing full services. If the Title IV-D agency is not a party in a pending court case and is not providing full services, the Title IV-D agency may require payment of the fee from any or all parties prior to scheduling the genetic testing. If a party paying any or all of the genetic testing fee wants reimbursement from the other party, he or she must seek a court order against that party.

C. The Title IV-D agency will charge a father for genetic testing when parentage is already presumed by law or has already been adjudicated, regardless of the results of the paternity test. The Title IV-D agency will charge an alleged father for genetic testing when parentage is not presumed by law or adjudicated and the results of the test show the alleged father to be the biological father. The Title IV-D agency will charge the mother for genetic testing when parentage is not presumed by law or adjudicated and the results of the test show the alleged father not to be the biological father.

[8.50.107.12 NMAC - Rp/E, 8.50.107.12 NMAC, 1/1/2010; A, 12/30/2010; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

This is an amendment to 8.50.108 NMAC, Sections 3 and 12, effective 1/1/2022.

8.50.108.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA-1978, Section 27-2-27~~]

Section 27-2-27 et seq., NMSA 1978.
The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.108.3 NMAC - Rp/E,
8.50.108.3 NMAC, 1/1/2010; A,
1/1/2022]

8.50.108.12 MODIFICATION OF CHILD SUPPORT ORDERS:

Either party may request the IV-D agency to provide the service of seeking the modification of a child support order. Applicable fees will be charged to the requesting party in compliance with 8.50.125.10 NMAC. The IV-D agency may seek a modification if the non-custodial parent will be incarcerated for more than 180 calendar days. The IV-D agency will not review a child support order for modification without request by a party, unless the custodial [parent] party is currently receiving public assistance. In accordance with federal and state laws, a modification of a support order is retroactive only to the time period that a petition or motion was filed with a court and was pending a decision.
[8.50.108.12 NMAC - Rp/E,
8.50.108.14 NMAC, 1/1/2010; A,
12/30/2010; A, 7/1/2021; A, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
CHILD SUPPORT
ENFORCEMENT DIVISION**

This is an amendment to 8.50.109 NMAC, Sections 2, 3, 6, 8, 10, 11, 12, 13, 14, 15, and 17, effective 1/1/2022.

8.50.109.2 SCOPE: To the general public. For use by the [enforcement officer] Title IV-D agency and recipient of Title IV-D services.
[8.50.109.2 NMAC - Rp 8 NMAC 5.CSE.000.2, 5/31/2001; A,
10/1/2003; A, 1/1/2022]

8.50.109.3 STATUTORY AUTHORITY: Public Assistance Act, Section 27-2-27 et seq., NMSA 1978. [~~Mandatory Medical Support Act, Section 40-4C-1 et seq., NMSA 1978. Support Enforcement Act, Section 40-4A-1, et seq., NMSA 1978.~~] The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.109.3 NMAC - Rp 8 NMAC 5.CSE.000.3, 5/31/2001; A,
10/1/2003; A, 1/1/2022]

8.50.109.6 OBJECTIVE: [~~To conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Child Support Performance and Incentive Act of 1998, and the Deficit Reduction Act of 2005. The regulations herein codify present practices in accordance with federal and state law and regulations.~~] To provide regulations in accordance with federal and state laws and regulations.
[8.50.109.6 NMAC - Rp 8 NMAC 5.CSE.000.6, 5/31/2001; A,
10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.8 ESTABLISHMENT OF MEDICAL SUPPORT: All orders obtained by the IV-D agency must include a provision for medical support for the children. For the purposes of the IV-D program reporting, medical support includes any one of the following: private health insurance, public health care coverage (health, dental, or vision), coverage through Indian health services (IHS), state children's health insurance program (medicaid), or the defense enrollment eligibility reporting services (DEERS), cash medical support, or a percentage split of uncovered medical expenses for the minor children. Determination of a reasonable cash medical support obligation is pursuant to 45 CFR §303.31(a)(3). If the children are covered by IHS, the IV-D agency will request that private

[health insurance] care coverage be provided by either or both [parents] parties, when available. If the non-custodial parent provides health care coverage and changes employment, and the new employer provides health care coverage, the IV-D agency must transfer notice of the provision to the new employer. The IV-D agency must request the inclusion of a medical support provision even when employment-related or other group health care coverage is not available or when children cannot be added at the time the order is entered. The IV-D agency shall request the provision of cash medical support only if the case is actively enrolled in Title XIX medicaid at the time medical support is established or modified. The cost of health care coverage is calculated by determining the amount charged to the medical support obligor for adding children to the existing coverage, or the difference between individual and family coverage. The reasonableness of the cost of the care coverage will be determined by stipulation of the parties or by the court. The IV-D agency may request the provision of health care coverage by either or both the custodial party and the non-custodial parent and that the parties should be responsible for any uncovered medical expenses in proportion to their incomes on the current child support worksheet. If the court does not enter an order for medical support, the IV-D case record must specify that a provision for medical support was requested but was not issued, in accordance with 45 CFR §303.31(b)(1-4).
[8.50.109.8 NMAC - Rp 8 NMAC 5.CSE.830, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 7/1/2021; A,
1/1/2022]

8.50.109.10 AVAILABILITY OF MEDICAL [INSURANCE] CARE COVERAGE: Medical support will be addressed in actions to establish, enforce, or modify a child support award for minor children. All support orders obtained or modified by the IV-D agency will include a provision requiring either or both

custodial party and the non-custodial parent to promptly inform the IV-D agency of the name and address of their current employers, whether either the custodial party or the non-custodial parent has access to health [insurance] care coverage and, if so, the health [insurance] care coverage policy information.

A. The non-custodial parent may be required to provide immediate health, dental, or vision [insurance] care coverage for the minor children if [insurance] health care coverage (not including Title XIX Medicaid) is not available to the custodial party at a more reasonable cost than to the non-custodial parent for coverage of the minor child; and it is available to the non-custodial parent through an employment-related or other group health insurance plan, regardless of service delivery mechanism, which may be a labor organization, union, non-profit organization or professional association.

B. If medical [insurance] care coverage is not available to the non-custodial parent through an employment-related or other group health [insurance] care coverage plan, and health [insurance] care coverage is not being provided by the custodial parent, the non-custodial party may be required to provide immediate health insurance coverage for the children when it becomes available through an employment-related or other group health insurance plan.

C. Failure by a non-custodial parent to provide medical support for the minor children, and to provide information concerning health [insurance] care coverage, will subject the non-custodial parent to legal proceedings requiring the non-custodial parent to show cause as to why the non-custodial parent should not be held in contempt of court for failure to fulfill the requirements of the court order. This will be true even if medical support is the only area in which the non-custodial parent is not in compliance with the terms of the order.

[8.50.109.10 NMAC - Rp 8 NMAC

5.CSE.832, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.11 PROVIDING CUSTODIAL PARENTS WITH MEDICAL [INSURANCE] CARE COVERAGE INFORMATION:

If the non-custodial parent is responsible for providing health [insurance] care coverage, the IV-D agency will provide the custodial party with available health [insurance] care coverage plan information when the non-custodial parent secures coverage for the dependent children. This includes any information available to the IV-D agency about the health [insurance] care coverage plan that would permit a claim to be filed or services to be provided. In cases enforced by the national medical support notice, the health [insurance] care coverage plan shall provide this information to the custodial party and the IV-D agency, as outlined on the notice.

[8.50.109.11 NMAC - Rp 8 NMAC 5.CSE.831, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.12 MONITORING AND ENFORCING COVERAGE:

In all cases in which there is a court order with no medical support ordered, the case will be reviewed pursuant to the IV-D agency's plan for automatic review of all IV-D cases every three years. Even if no other modification is expected, the IV-D agency must seek modification to include medical support, except in non-IV-A non-medicaid cases where the custodial party has not consented to the IV-D agency obtaining medical support. All remedies available for the collection and enforcement of child support apply to medical support. In cases where the non-custodial parent is required to provide health [insurance] care coverage through an employment-related or other group health [insurance] care coverage plan pursuant to a child support order, the IV-D agency shall use, where appropriate, the national medical support notice to enforce the provisions of health [insurance] care coverage for the children.

A. The IV-D agency must use the notice, when appropriate, to notify employers of the provision for health [insurance] care coverage of the children. The agency must transfer the notice to the employer within two business days after the date of entry of an employee who is an obligor in a IV-D case in the state directory of new hires.

B. Employers must transfer the notice to the appropriate group health [insurance] care coverage plan for which the children are eligible within twenty business days after the date of the notice.

C. Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the children and send any amount withheld directly to the health [insurance] care coverage plan. Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must proceed with withholding until such time as the employer receives notice from the IV-D agency that the contest is resolved.

D. Upon receipt of the national medical support notice, the health [insurance] care coverage plan shall enroll the obligor's children as eligible dependents. Except as specifically outlined on the notice, the health [insurance] care coverage plan shall not be required to provide benefits or eligibility for such benefits in addition to those provided under the terms of the plan immediately before receipt of the notice.

E. If the obligor is enrolled in a plan, the children shall be enrolled in the same plan in which the obligor is enrolled. If the obligor is not enrolled in a plan, the premiums charged for enrollment of the children only shall be the same as would be charged for enrollment of the obligor only. If the obligor is not enrolled in a plan and there is more than one plan option available for enrollment of the children, the plan shall notify the IV-D agency and the agency, in consultation with the custodial party, will select a plan option. If the

custodial party does not notify the agency of the selected plan option within the timeframe required by the agency, the children shall be enrolled in the plan's default option, which is defined as the least costly plan that conforms with the minimum health care protection as defined in the New Mexico Insurance Code, Section 59A-23B-1 et seq NMSA 1978.

F. The health [insurance] care coverage plan must notify the IV-D agency of the status of health [insurance] care coverage for the children, as outlined on the notice, within forty days after the date of the notice. The plan shall also promptly notify the custodial party of the plan coverage and effective date, as outlined on the notice.

G. Employers must notify the IV-D agency promptly whenever the obligor's employment is terminated, in the same manner as is required for income withholding cases.

H. The IV-D agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible. [8.50.109.12 NMAC - Rp 8 NMAC 5.CSE.832.2, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.13 MEDICAL SUPPORT PROVIDED BY THE CUSTODIAL PARTY: In cases where the custodial party has satisfactory medical [insurance] care coverage for the minor children other than medicaid, the amount expended by the custodial party for health [insurance] care coverage will be taken into account pursuant to the New Mexico child support guidelines worksheet that will be attached to the order. The IV-D agency will not enforce court ordered medical support against a custodial party. [8.50.109.13 NMAC - Rp 8 NMAC 5.CSE.832.3, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.14 COMMUNICATION WITH THE MEDICAL ASSISTANCE DIVISION: The IV-D agency

is required to relay information regarding private health, dental, or vision [insurance] care coverage to the medical assistance division. This information includes newly obtained coverage, changes in coverage, or coverage lapses. The IV-D agency must report to the medical assistance division any medical support payments made directly to the custodial party if there is an assignment of medical support pursuant to 42 CFR 433.146. The IV-D agency in cooperation with the medical assistance division will communicate to determine if there are any lapses in health [insurance] care coverage for medicaid applicant/recipient.

[8.50.109.14 NMAC - Rp 8 NMAC 5.CSE.832.4, 5/31/2001; A, 8/14/2009; A, 1/1/2022]

8.50.109.15 ORDERING SPECIFIC DOLLAR AMOUNTS FOR MEDICAL SUPPORT: The court order should include a set amount and specify that the amount is designated for cash medical support, when, for example, there is no private health [insurance] care coverage available. This amount should be in addition to and not in lieu of the non-custodial parent's obligation to pay a percentage of unreimbursed medical expenses. Either the custodial party or the non-custodial parent may request the court to order the provision of cash medical support. The IV-D agency will request the provision of cash medical support only if the children are actively enrolled in Title XIX medicaid at the time medical support is established or modified. The IV-D agency will enforce a provision for cash medical support established or modified by any party so long as the court order designates a specific dollar amount to be paid in regular, equal installments (i.e. monthly, bi-weekly, weekly). If the order does not designate a specific dollar amount for medical purposes, the agency is not required to collect the money. For example, if the non-custodial parent is ordered to pay for the child's orthodontia, but no dollar amount is ordered, the IV-D agency

will not enforce this component of the order. [8.50.109.15 NMAC - Rp 8 NMAC 5.CSE.832.5, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

8.50.109.17 FEES: In IV-D cases being enforced for medical support pursuant to the requirements of the national medical support notice, an employer may not assess a fee for withholding or for sending to the health [insurance] care coverage plan, the employee contributions necessary for health [insurance] care coverage of the children. [8.50.109.17 NMAC - N, 10/1/2003; A, 8/14/2009; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

This is an amendment to 8.50.110 NMAC, Sections 2, 3, 8, 9, 10, and adding 11, effective 1/1/2022.

8.50.110.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services. [8.50.110.2 NMAC - Rp, 8.50.110.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.). [8.50.110.3 NMAC - Rp, 8.50.110.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.8 INCOME WITHHOLDING: State and federal laws require the Title IV-D agency [to seek] to obtain an immediate income withholding in all Title IV-D cases.

A. The Title IV-D agency complies with 45 CFR § 303.100 [when it requests or initiates] by ensuring that payments for support,

including lump sum payments, are made by immediate income wage withholding.

B. Although the Support Enforcement Act provides for a good cause exemption to immediate wage withholding and a procedure to avoid immediate income withholding, the Title IV-D agency will not stipulate or agree to such provisions. The party requesting to avoid wage withholding bears the burden [or] of proof on this issue with the court.

(1) The Title IV-D agency will comply with any valid court or administrative order that prohibits wage withholding.

(2) If an obligor receives an exemption to wage withholding and later accrues a delinquency, the Title IV-D agency, in its discretion, may pursue wage withholding from the appropriate judicial or administrative authority.

(3) Wage withholding will commence immediately upon issuance of the notice of income withholding. The notice shall inform the obligor that he or she has 30 days from the date of the notice to contest or appeal the income withholding.
[8.50.110.8 NMAC - Rp, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

8.50.110.9 TERMINATION OF INCOME WITHHOLDING: The Title IV-D agency will not terminate an income withholding once instituted, unless:

- A.** the support obligation [ends] terminates and all arrears are paid off; or
- B.** the court orders that income withholding cease; or
- C.** the Title IV-D agency closes its case pursuant to 8.50.129 NMAC.
[8.50.110.9 NMAC - Rp, 8.50.110.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.10 WITHHOLDING OF UNEMPLOYMENT COMPENSATION: A cooperative endeavor exists between the Title IV-D agency and the New Mexico department of workforce solutions for the withholding of unemployment

[compensation and workman's-compensation] benefits in those cases with an income withholding order pursuant to federal and state laws.
[8.50.110.10 NMAC - Rp, 8.50.110.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.110.11 WITHHOLDING OF WORKMAN'S COMPENSATION: A cooperative endeavor exists between the Title IV-D agency and the New Mexico workers' compensation administration for the withholding of workman's compensation benefits in those cases with an income withholding order pursuant to federal and state laws.
[8.50.110.11 NMAC - N, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
CHILD SUPPORT
ENFORCEMENT DIVISION**

This is an amendment to 8.50.111 NMAC, Sections 2, 3, 8, 9, 10, 12, 13, 15, and 16, effective 1/1/2022.

8.50.111.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.
[8.50.111.2 NMAC - Rp, 8.50.111.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.3 STATUTORY AUTHORITY: Public Assistance Act, [NMSA 1978, Section 27-2-27] Section 27-2-27 et seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.111.3 NMAC - Rp, 8.50.111.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.8 GENERAL ENFORCEMENT OF SUPPORT OBLIGATIONS: The Title IV-D agency uses a variety of processes, both administrative and judicial, to enforce support obligations.
[8.50.111.8 NMAC - Rp, 8.50.111.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.9 PERSONS OWING OVERDUE SUPPORT: Pursuant to state and federal law, the Title IV-D agency may seek to obtain an order that requires the obligor to adhere to the support obligations or, if the person is not incapacitated, to participate in work activities. The Title IV-D agency does not charge a late fee for overdue support.
[8.50.111.9 NMAC - Rp, 8.50.111.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.10 INTEREST CALCULATIONS: The Title IV-D agency calculates interest in accordance with:

- A.** New Mexico law regarding the accrual of interest on support obligations is applied to New Mexico support orders; and
- B.** the interest rules of the issuing state (state that issued the order) apply when New Mexico registers a foreign support order; the initiating state (state requesting registration of a foreign support order) is responsible for providing an accurate audit to include interest, as appropriate.
[8.50.111.10 NMAC - Rp, 8.50.111.12 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.12 CONTEMPT PROCEEDINGS: The Title IV-D agency will pursue contempt provisions when the non-custodial parent has a delinquency of at least three months, and there is sufficient evidence that the non-custodial parent has an ability to pay or otherwise comply with the order. If an obligor is found by a court to be in contempt of court, the Title IV-D agency may request the court issue a bench warrant for the arrest of the obligor. Any bond requested by the Title IV-D agency in a bench warrant shall be a cash only bond to be paid to the Title IV-D agency and distributed in accordance with federal and state laws regarding distribution of support payments.

- A.** The Title IV-D agency will screen the case for information regarding the non-custodial parent's ability to pay or otherwise comply with the order.

B. The Title IV-D agency will provide the court with information regarding the non-custodial parent’s ability to pay or otherwise comply with the order.

C. The Title IV-D agency will provide clear notice to the non-custodial parent that ~~[his or her]~~ their ability to pay constitutes the critical question in the civil contempt action.

[8.50.111.12 NMAC - Rp, 8.50.111.16 NMAC, 12/30/2010; A, 1/1/2020; A, 1/1/2022]

8.50.111.13 GARNISHMENT:

The Title IV-D agency may pursue garnishment of an obligor’s wages to reduce his or her arrearage balance. A garnishment will not be pursued if there is currently a wage withholding in effect.

[8.50.111.13 NMAC - Rp, 8.50.111.17 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.15 POSTING OF BOND, GUARANTEE, OR OTHER SECURITY:

The Title IV-D agency may request the court to order an obligor to secure the support payment by bond, guarantee, surety or other security deemed appropriate by the court.

[8.50.111.15 NMAC - Rp, 8.50.111.19 NMAC, 12/30/2010; A, 1/1/2022]

8.50.111.16 STATE OR FEDERAL CRIMINAL PROSECUTIONS:

The Title IV-D agency will refer support obligors for state or federal criminal prosecution pursuant to state and federal law (See 18 USC 228 and ~~[NMSA 1978, Section 30-6-2]~~ Section 30-6-2 et seq., NMSA 1978). During the time a referral is being considered by or accepted by a state or federal agency for prosecution, the Title IV-D agency will suspend civil enforcement (court proceedings) unless otherwise instructed by the appropriate prosecutor’s office. The Title IV-D agency will continue to administratively enforce the obligation.

[8.50.111.16 NMAC - Rp, 8.50.111.20 NMAC, 12/30/2010; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

This is an amendment to 8.50.112 NMAC, Sections 2, 3, 8 through 16, effective 1/1/2022.

8.50.112.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.112.2 NMAC - Rp, 8.50.112.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.3 STATUTORY AUTHORITY: Public Assistance Act, ~~[NMSA 1978, Section 27-2-27]~~ Section 27-2-27 et. seq., NMSA 1978.

The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).

[8.50.112.3 NMAC - Rp, 8.50.112.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.8 PARENTAL RESPONSIBILITY ACT (LICENSE SUSPENSION):

The Title IV-D agency submits a certified list of support obligors who are 30 days or more delinquent on their monthly support obligation ~~[The certified list is submitted]~~ to the appropriate boards, commissions, courts, or agencies responsible for issuing drivers, professional, occupational, and recreational licenses as detailed in the Parental Responsibility Act, Sect. 40-5A-1 et seq., NMSA 1978.

A. Automated referral process: The Title IV-D agency provides a certified list of all obligors who meet the referral criteria to various state licensing boards. The licensing boards report back to the Title IV-D agency ~~[the]~~ what action the board has taken in connection with the Parental Responsibility Act. The Title IV-D automated system will refer cases that meet the following criteria:

(1) the obligor is delinquent 30 days or more in payment of court ordered support;

(2) a notice ~~[of potential submittal]~~ has been sent to the obligor’s last address of record with the Title IV-D agency notifying the obligor of the impending license suspension/revocation;

(3) there is no court order prohibiting the referral; and

(4) 30 calendar days have elapsed since the ~~[transmittal of the]~~ notice was sent to the obligor and no request for hearing was submitted by the obligors.

B. Administrative hearings are conducted by the licensing boards: If requested in writing by ~~[the hearing officer of]~~ the licensing board, the Title IV-D agency will make available a witness to testify on the Title IV-D agency’s behalf at an administrative hearing that may be held in connection with the Parental Responsibility Act.

C. Settlement:
(1) In all cases, the Title IV-D agency must make every effort to obtain lump sum payments to satisfy all arrearages, including prior judgments, current delinquency, and accrued interest.

(2) If an obligor has had his or her license suspended in multiple cases, the issuance of a certificate of compliance for one case will not release the license suspension(s) for obligor’s other case(s). The obligor will have to make satisfactory arrangements for each case in order to be eligible for license reinstatement.

D. Arrears only cases: In an arrears only case, the monthly payment must be calculated using the current child support guidelines at Section 40-4-11.1 et seq., NMSA 1978, or a schedule that will fully pay the arrearages plus accumulated interest in 72 months or less.

E. Withdrawal of referral: If the obligor does not meet the minimum criteria for referral ~~[at the time of the referral, the referral]~~ it will be withdrawn, and a certificate of compliance will be issued with a request to waive the reinstatement of fees.

F. Responsibilities of the obligor: The obligor must supply a valid mailing address for the processing of the certificate of compliance. The obligor may elect to have the certificate of compliance sent to his/her attorney of record, but must also provide the Title IV-D agency with a current, valid mailing address and physical address for the obligor. [8.50.112.8 NMAC - Rp, 8.50.112.8 NMAC, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

8.50.112.9 CONSUMER REPORTING AGENCIES (CREDIT BUREAUS):

A. The Title IV-D agency is required by federal and state law to report periodically to consumer reporting agencies the name of any obligor who is delinquent in the payment of support and the amount of the overdue support. The Title IV-D agency has procedures in place that ensure that overdue support is reported only:

(1) after the obligor has been afforded due process required under state law, including notice and a reasonable opportunity to contest the accuracy of such information;

(2) in cases where an appeal is made, after a determination by the administrative law judge that finds that the information is accurate and

(2) (3) the information is reported only to an entity that has furnished [evidence] satisfactory to the state that the entity is a legitimate consumer reporting agency.

B. At the request of a consumer reporting agency, and upon [thirty (30)] 30 day's advance notice to the obligor at the obligor's last known address of record with the Title IV-D agency, the department may release information regarding the delinquency of an obligor. The department may charge a reasonable fee to the consumer reporting agency, pursuant to [NMSA 1978, Sec. 40-4A-15] Section 40-4A-15 et seq., NMSA 1978.

[8.50.112.9 NMAC - Rp, 8.50.112.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.10 FULL COLLECTION SERVICES BY THE SECRETARY OF THE TREASURY: Cases may be referred for full collection services after reasonable efforts have been made to collect the support through available mechanisms and these efforts have failed. When referring a case for full collection services by the Secretary of the Treasury, the Title IV-D agency shall comply with the provisions of 45 CFR § 303.71. The obligor has 30 days from the date of mailing of the notification of a referral for federal full collection to notify the Title IV-D agency that he or she contests the referral.

[8.50.112.10 NMAC - N, 1/1/2022]

[8.50.112.10] 8.50.112.11 COLLECTION OF PAST DUE SUPPORT BY FEDERAL TAX REFUND OFFSET: Federal tax refund offset is utilized to pay support arrearages, including child support, medical support, and spousal support. Cases meeting specific criteria are referred to the U.S. department of treasury's financial management service. [A non-TANF custodial party who has applied for IV-D services is assessed fees for the federal income tax refund offset remedy. The fees are deducted from the tax refund when it is intercepted but are credited to the obligor's support payment. Custodial party consent is not required before submitting the case for offset in any IV-D case. In addition, cases may be submitted where there is past due support on behalf of a disabled adult who was determined to be disabled under Title II or XVI while he or she was still a minor and for whom a support order is still in effect.]

A. Criteria for federal income tax offset: A Title IV-D case may be referred for federal income tax offset, regardless of whether the child(ren) are emancipated, so long as there is a child support delinquency or arrearage [owed]. Title IV-D cases having spousal support delinquencies or arrearages will not be referred for

federal income tax offset [if] unless there is [not also] an ongoing child support obligation, delinquency, or arrearage. Title IV-D cases that are solely for processing payments will not be referred. Only Title IV-D cases that meet at least one of the criteria in 45 CFR § 303.72(a) are to be referred for federal income tax offset.

B. Periodic updates on referred obligors are sent by the Title IV-D agency to the treasury department. Those updates may result in modifications up or down on the balance due or deletions from the referral.

C. Joint return: The U. S. internal revenue service (IRS) will offset a refund from a joint income tax return to pay a past due support obligation if either tax filer is certified as being legally responsible for providing support. Complaints, questions, and forms (i.e., injured spouse claim and allocation) concerning joint refund cases can only be addressed by the IRS. If the obligor's spouse is not liable for the support debt, the IRS will issue a pro rata refund to the spouse (upon the filing of an IRS injured spouse claim and allocation form by the obligor's spouse) and the Title IV-D agency will be required to reimburse the IRS in the amount of the pro rata refund. The federal government will advise the Title IV-D agency of any adjustments to Title IV-D collections. The injured spouse may also agree to voluntarily release the claim [to] of his or her portion of the joint refund to have it applied towards the child support obligation. This will result in an immediate distribution of the refund amount to the Title IV-D case. An injured spouse may request the release form from the Title IV-D agency, or may provide a notarized letter authorizing the release. The notarized letter shall set forth the injured spouse's name, the name of the obligor, and the obligor's CSED case number(s).

D. Bankruptcy cases: The Title IV-D agency will review the non-custodial party's bankruptcy case to determine what action, if any, the Title IV-D agency [may]

~~should take [in regard to the non-custodial party's obligation to pay support. When the automatic stay, issued pursuant to Section 362 of the bankruptcy code, has been lifted or is no longer in effect with respect to the individual owing the obligation, and the obligation was not discharged by the bankruptcy proceeding, the case may be submitted for offset].~~

E. Notification of federal income tax offset:

(1) Written advance notice is sent to inform an obligor that the amount of his or her past due support will be referred to the secretary of the U.S. treasury for collection by federal tax refund offset and that any amounts collected will be applied towards the obligor's child support obligation. The notice shall be sent to the obligor's last address of record with the Title IV-D agency and shall inform the obligor:

(a) of the right to contest the department's determination that past due support is owed;

(b) of the right to contest the amount of past due support;

(c) of the right to request an administrative review;

(d) of the procedures and time frame for requesting an administrative review;

(e) notice will be provided to any individual who filed a joint return with the obligor, advising of the process for requesting the obligor's share of the refund; and

(f) that the U.S. treasury will notify the obligor's spouse at the time of offset regarding steps to take to protect the share of the refund that may be payable to that spouse.

(2) At the time the offset occurs, the secretary of the U.S. treasury will notify the obligor that the offset has been made. ~~[In addition, notice will be provided to any individual who filed a joint return with the obligor, advising him or her of the steps to be taken in order to secure a proper share of the refund.]~~

F. Contesting referral for federal offset: The obligor has ~~[thirty (30)]~~ 30 days from the date of mailing of the notification of a referral for federal tax intercept to notify the Title IV-D agency that he or she contests the referral. The notification issued by the Title IV-D agency provides the obligor with the address and telephone number ~~[to be contacted in order for the obligor]~~ to request a hearing to contest the referral.

(1) Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and sent to the obligor and the Title IV-D agency.

(2) The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC.

(3) If the appeal request concerns a joint tax refund that has not yet been intercepted, the obligor is informed that the secretary of the U.S. treasury will notify the obligor's spouse at the time of offset regarding steps to take to secure his or her proper share of the refund.

(4) If the appeal concerns a joint tax refund which has already been offset, the obligor will be referred to the secretary of the U.S. treasury to address the refund due to the obligor's spouse.

(5) If the hearing decision results in a deletion or decrease in the amount referred for offset, the federal office of child support enforcement will be notified.

(6) If an amount which has already been offset is found to have exceeded the amount of past due support owed, steps to refund the excess amount to the obligor will be promptly taken.

G. Interstate cases: The following applies to the New Mexico Title IV-D agency when it is the state that submits a case for federal income tax offset. The obligor shall request an administrative review be conducted by the New Mexico Title IV-D agency. If the underlying

order upon which the referral for federal income tax offset is based has not been issued by a New Mexico district court, within ~~[ten (10)]~~ 10 days of the receipt of the obligor's request for administrative review, the New Mexico Title IV-D agency must notify the Title IV-D agency in the state that referred the case to New Mexico of the obligor's request for administrative review. Within ~~[forty-five (45)]~~ 45 days of receipt of the request for administrative review from the New Mexico Title IV-D agency, the Title IV-D agency in the state that referred the case to New Mexico should:

(1) ~~[send]~~ Send notice to all appropriate parties setting forth the time and place of the administrative review; and

(2) ~~[conduct]~~ Conduct the review and render a decision. If the administrative review conducted by the Title IV-D agency in the other state results in a reduction or elimination of the amount referred for offset, the Title IV-D agency that conducted the administrative review should inform the New Mexico Title IV-D agency and the OCSE of the decision. The New Mexico Title IV-D agency shall be bound by the determination of the Title IV-D agency in the state that conducted the review.

H. Distribution of collections from federal income tax offset: Single filer federal tax refund offsets will be placed on hold for 30 days and joint filer federal tax refund offsets will be split in half and the obligor's portion will be placed on hold for 30 days and the injured spouse's portion will be placed on hold for six months. Past-due support amounts collected as a result of the federal income tax refund offset shall be distributed pursuant to 8.50.125.12 NMAC after the appropriate holds have elapsed. The obligor shall receive full credit for the entire amount of tax intercept that is applied to his or her case(s), including fees. Distribution of tax intercept money for obligors with multiple Title IV-D cases shall be in accordance with

federal and state laws. If an offset is made to satisfy non-TANF past due support from a refund based upon a joint return, the Title IV-D agency may delay distribution until notified that the injured spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is shorter.

I. Fees: A non-TANF custodial party who has applied for Title IV-D services is assessed fees for the federal income tax refund. The fees are deducted from the tax refund when it is intercepted but are credited to the obligor's support payment. [8.50.112.11 NMAC - Rp, 8.50.112.10 NMAC, 12/30/2010; Rn & A, 1/1/2022]

~~[8.50.112.11]~~ **8.50.112.12 COLLECTION OF PAST DUE SUPPORT BY NEW MEXICO TAXATION AND REVENUE DEPARTMENT BY STATE TAX REFUND OFFSET:** New Mexico law allows for the interception (offset) of an obligor's tax refund to pay child support.

A. Criteria for state income tax offset: Cases submitted for tax refund offset to the New Mexico taxation and revenue department (TRD) must meet federal tax refund offset criteria. In interstate cases, if New Mexico is the responding state, obligors are referred to TRD only, not to IRS.

B. Pre-offset notices/ final notices: Within ~~[ten (10)]~~ 10 days after receiving notification of an offset from TRD, the Title IV-D agency will send a notice to the obligor at his or her last known address of record with the Title IV-D agency. The notice will include:

- (1) a statement that an offset will be made and that the Title IV-D agency intends to apply the amount of the offset against a claimed debt;
- (2) the amount of the debt asserted;
- (3) the name, address, and telephone number of the Title IV-D agency to request a hearing;

(4) the amount of refund to be offset against the debt asserted;

(5) a statement that the obligor has ~~[thirty (30)]~~ 30 days from the date indicated on the notice to contest the offset and request [by applying to the IV-D agency for] a hearing [with respect to the validity of the debt asserted by the IV-D agency]; and

(6) a statement that failure of the obligor to ~~[apply for]~~ request a hearing within ~~[thirty (30)]~~ 30 days will be deemed a waiver of the opportunity to contest the offset ~~[and to a hearing]~~.

C. If the refund against which a debt is intended to be offset results from a joint return, within ~~[ten (10)]~~ 10 days after receiving the notification from TRD, the Title IV-D agency will send a notice to the obligor's spouse (injured spouse) as identified on the return, to the obligor's last known address of record with the Title IV-D agency ~~[for the injured spouse named on the return]~~. The notice to the injured spouse will contain the following information:

(1) a statement that an offset ~~[with]~~ may be made and the Title IV-D agency intends to apply the amount of the offset against a claimed debt;

(2) the total amount of the refund and the amount of each claimed debt;

(3) the name, address, and telephone number of the Title IV-D agency;

(4) a statement that no debt is claimed against the injured spouse and that the he or she may be entitled to receive all or part of the refund, regardless of the claimed debt against the obligor;

(5) a statement that to assert a claim to all or part of the refund, the injured spouse must notify the Title IV-D agency within ~~[thirty (30)]~~ 30 days from the date indicated on the notice of the injured spouse's intention to seek his or her portion of the refund; and

(6) a statement that failure of the injured spouse to notify the Title IV-D agency regarding

his or her claim to all or part of the refund within ~~[thirty (30)]~~ 30 days may be deemed a waiver of any claim ~~[of the injured spouse with respect to the refund]~~.

D. Upon the transfer of money from TRD to the Title IV-D account, the Title IV-D agency will notify the obligor of the final determination of the offset. The notice includes:

(1) the amount of the TRD refund to which the obligor was entitled prior to intercept;

(2) the offset amount and balance, if any, of the debt still due; and

(3) the amount of refund in excess of the debt due and owed to the obligor, if any.

E. Contesting referral for state tax offset: The appeal procedures are the same as for federal tax refund offset with some exceptions.

(1) When the injured spouse ~~[who has filed jointly]~~ contacts the Title IV-D agency within the time required, no tax intercept hearing is held. Upon verification, the injured spouse's portion will be refunded as soon as the TRD money is posted to the case, and the obligor will not be given credit for the injured spouse's portion of the payment that is refunded.

(2) If the obligor's spouse files "married, but separated" the state taxation and revenue department does not honor this filing status for offset purposes and will offset the obligor's spouse's refund. In this instance, the injured spouse may contact the Title IV-D agency. Upon notification, the Title IV-D tax intercept unit will contact TRD to obtain verification and, upon obtaining verification, the Title IV-D agency will refund the spouse's portion of the offset to the injured spouse.

(3) If the injured spouse determines that he or she is entitled to more than one-half of the offset, he or she must notify the Title IV-D agency within ~~[thirty (30)]~~ 30 days of the date of mailing of the notice of offset that he or she wants an

administrative hearing regarding the claim to a larger portion of the offset.

F. Distribution of collections from state income tax offset: State income tax offset collections will be placed on hold for [thirty (30)] 30 days. After the [thirty (30)] 30 day hold, the state income tax offset monies will be applied as a regular payment and distributed as outlined in 8.50.125.11 NMAC. The obligor shall receive full credit for the entire amount of tax intercept that is applied to his or her case(s) including fees. Distribution of tax intercept money for obligors with multiple Title IV-D cases shall be in accordance with federal and state laws. If an offset is made to satisfy non-TANF past due support from a refund based upon a joint return, the Title IV-D agency may delay distribution of the injured spouse's share until notified that [the injured spouse's proper share of] the refund has been paid because of the injured spouse signed a release, or for a period not to exceed six [(6)] months from notification of offset, whichever is shorter.
[8.50.112.12 NMAC - Rp,
8.50.112.11 NMAC, 12/30/2010; Rn & A, 1/1/2022]

~~[8.50.112.12 — FULL COLLECTION SERVICES BY THE SECRETARY OF THE TREASURY: Cases may be referred for full collection services after reasonable efforts have been made to collect the support through available mechanisms and these efforts have failed. When referring a case for full collection services by the secretary of the treasury, the IV-D agency shall comply with the provision of 45 CFR 303.71.
[8.50.112.12 NMAC - Rp,
8.50.112.12 NMAC, 12/30/2010]~~

8.50.112.13 DENIAL OF PASSPORTS FOR NONPAYMENT OF CHILD SUPPORT:

A. Referral for passport denial: The Title IV-D agency [certifies] submits the names of obligors who owe support arrears in excess of \$2,500 for inclusion in the OCSE database which is then

sent to the U.S. department of state. The U. S. department of state denies passports to individuals whose name appears on the certified OCSE database of the OSCE as owing more than \$2,500 in arrears. Once the department of state identifies a passport applicant as owing money for child support, the applicant will be notified by letter that the issuance or renewal of the passport has been denied, pending satisfactory payment of money owed to the Title IV-D agency. After the applicant makes satisfactory payment arrangements with the Title IV-D agency, the IV-D agency shall request that OCSE remove the applicant's name from its database. The Title IV-D agency makes every effort in its negotiations to obtain a lump sum payment sufficient to satisfy the entire delinquency and arrears balances, including accrued interest.

B. Contesting referral for passport denial: The obligor has [thirty (30)] 30 days from the date of the notification of a referral for passport denial to notify the Title IV-D agency that he or she contests the referral. The notification sent to the obligor provides the address and telephone number for the obligor to contact the Title IV-D agency to request a hearing to appeal the referral.

(1) Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and sent to the obligor and the Title IV-D agency.

(2) The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC.

(3) If the case is a non-IV-A case, the Title IV-D agency shall send a copy of the notice to the custodial party.
[8.50.112.13 NMAC - Rp,
8.50.112.13 NMAC, 12/30/2010; A,
1/1/2022]

8.50.112.14 LOTTERY: The Title IV-D agency and the lottery commission work cooperatively to intercept lottery winnings for debts collected by the Title IV-D agency.

A. State law authorizes the Title IV-D agency to place a lien on lottery winnings owed [to] by delinquent child support obligors. Lists of delinquent obligors are provided by the Title IV-D agency to the lottery commission who then compares the list with lottery winners claiming prizes of more than \$600. The lottery commission then notifies the Title IV-D agency of any matches. The Title IV-D agency must provide the lottery commission with verification of the support lien [must be notified by the IV-D agency] within five [(5)] business days [with verification of the support lien]. The verification of the support lien will include a notice of administrative lien requesting the lottery commission [to] retain the funds for [ninety (90)] 90 days or until such time the administrative process is completed, so long as the process is completed within [ninety (90)] 90 days. If no delinquency exists, the notification will be a release of lien.

B. If the lottery winner is verified by the Title IV-D agency as owing a debt collected by the agency, the Title IV-D agency has [ninety (90)] 90 days to initiate an administrative action against the winner. The Title IV-D agency will notify the winner by mailing a copy of the notice of administrative lien to the obligor at [their] the last known address of record with the Title IV-D agency via registered mail. The notice of administrative lien will notify the obligor that he or she has [fifteen (15)] 15 days from the date of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number for the obligor to contact the Title IV-D agency to request a hearing to appeal the referral. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds to the Title IV-D agency is mailed to the lottery commission instructing it to forward the lottery winnings to the Title IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing,

an administrative hearing will be conducted in accordance with 8.50.130 NMAC.

C. If an administrative seizure proceeding is not initiated with the 90-day period, the Lottery Commission shall release the prize payment to the winner. Section 6-24-22 et seq., NMSA 1978.

[8.50.112.14 NMAC - Rp, 8.50.112.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.15 GAMING: The Title IV-D agency and the gaming board work cooperatively to intercept racetrack and/or gaming machine payouts for debts collected by the Title IV-D agency.

A. State law authorizes the Title IV-D agency to place a lien on delinquent obligor's gaming machine payouts [owed to delinquent obligors]. Lists of delinquent obligors are provided by the Title IV-D agency to the gaming control board on a monthly basis. The racetrack licensees research the names of winners of \$1,200 or more per payout against the list provided to the gaming control board by the Title IV-D agency. The racetrack licensee then notifies the Title IV-D agency of any matches. The Title IV-D agency must notify the racetrack licensee [must be notified by the IV-D agency] within seven [(7)] business days (excluding weekends and state holidays) and provide [with] verification of the support lien. If no delinquency exists, the Title IV-D agency will notify the racetrack licensee with a release of lien. If a delinquency exists, the verification of the support lien shall include a notice of administrative lien requesting the racetrack licensee to retain the gaming machine payout for [ninety days (90)] 90 days or until such time as the administrative process is completed, so long as the process is completed within [ninety (90)] 90 days. [If no delinquency exists, the notification will be a release of lien.]

B. If the gaming machine winner is an obligor verified by the Title IV-D agency as owing a debt to or collected by the Title IV-D

agency, the Title IV-D agency has [ninety (90)] 90 days to complete an administrative action against the winner, unless the winner agrees to an extension of the time [limitations] or the administrative law judge extends the time. The Title IV-D agency shall notify the winner by mailing a copy of the notice of administrative lien to the obligor at [his or her] the last known address of record with the Title IV-D agency via registered mail. The notice of administrative lien shall notify the obligor that [he or she] obligor has [fifteen (15)] 15 days from the date of the receipt of the notice to contest or appeal the administrative lien. The notification sent to the obligor provides the address and telephone number [of the obligor] to contact the Title IV-D agency to request [a] an appeal [hearing to appeal the referral]. If the obligor does not contest the notice of administrative lien within the required timeframe, a notice for release of funds [to the IV-D agency] is mailed to the racetrack licensee within five [(5)] [working] business days after the expiration of the obligor's deadline to request a timely hearing, instructing the racetrack licensee to forward the gaming machine payout to the Title IV-D agency. If the obligor contests the notice of administrative lien and timely requests a hearing, an administrative hearing will be conducted in accordance with 8.50.130 NMAC. The Title IV-D agency shall notify the racetrack licensee within five [(5)] [working] business days of the ruling of any hearing held in accordance with this section.

[8.50.112.15 NMAC - Rp, 8.50.112.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.112.16 ADMINISTRATIVE OFFSET BY THE SECRETARY OF THE TREASURY:

A. Referral for administrative offset: federal administrative offset is utilized [to pay] for payment of support arrearages, including child support, medical support, and if appropriate, spousal support. Cases meeting

specific criteria are referred to the U.S. department of treasury's financial management service. When referring a case for administrative offset by the secretary of the treasury, the Title IV-D agency shall comply with the provisions of 31 CFR § 285.1.

B. Notification of administrative offset: Prior to submitting a referral, written advance notice is sent to the obligor to inform [an] the obligor that due to the amount of [his or her] the obligor's past due support the obligor will be referred to the secretary of the U.S. treasury for collection by administrative offset. The notice shall be sent to the obligor's last address of record with the Title IV-D agency. The Title IV-D agency shall inform the obligor:

- (1) of the right to contest the department's determination that past due support is owed;
- (2) of the right to contest the amount of the past due support;
- (3) of the right to request an administrative review 30 days from the date of the notification; and
- (4) of the procedures [and time frame] for requesting an administrative review.

C. Contesting referral for administrative offset: The obligor has 30 days from the date of notification of a referral for administrative offset to notify the IV-D agency that he or she contests the referral. The notification issued by the IV-D agency shall [provides] provide the address and telephone number [to be contacted in order] for the obligor to request a hearing to contest the referral.

(1) Upon receipt of an appeal request from the obligor, a notice is generated by the administrative law judge and sent to the obligor and the Title IV-D agency.

(2) The notice shall set forth the time and place of the administrative hearing. The hearing is conducted in accordance with 8.50.130 NMAC.

[8.50.112.16 NMAC - N, 7/1/2019; A, 1/1/2022]

**HUMAN SERVICES
DEPARTMENT
CHILD SUPPORT
ENFORCEMENT DIVISION**

This is an amendment to 8.50.114 NMAC, Sections 2, 3, 8, 9, 10, 12, and 13, effective 1/1/2022.

8.50.114.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.
[8.50.114.2 NMAC - Rp, 8.50.114.2 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.114.3 NMAC - Rp, 8.50.114.3 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.8 AGREEMENTS WITH FINANCIAL INSTITUTIONS: The department, through the Title IV-D agency, has developed procedures and forms by which it enters into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system for the purpose of identifying and seizing assets to satisfy past-due support. All references to the Title IV-D agency below are on behalf of the department.

A. Data match agreements: The Title IV-D agency has agreements with financial institutions for data match using a standard Title IV-D agency form. The institutions may elect to report through an agent.

B. Election of reporting methods: Financial institutions shall elect their method of reporting using forms provided by the Title IV-D agency and return reporting agreements to the Title IV-D agency within [~~thirty (30)~~] 30 days

of notification of required reporting. Acceptable methods of reporting are contained in the federal office of child support enforcement's data match specification handbook (DMSH). The financial institution may elect to report through an agent authorized and identified to the Title IV-D agency by the financial institution.

C. Quarterly matches: Financial institutions shall [~~quarterly~~] conduct quarterly matches of their accounts against the names and social security numbers provided by the Title IV-D agency and report all accounts matched, or may elect to provide a quarterly list of all accounts in a format acceptable to the Title IV-D agency. Each calendar year, information matches shall be furnished no later than:

- (1) March 31
(first quarter);
- (2) June 30
(second quarter);
- (3) September 30
(third quarter); and
- (4) December 31
(fourth quarter).

D. Failure to report: Financial institutions failing to perform a quarterly match, return the reporting election forms, or furnish account information are subject to the penalties in 8.50.131 NMAC. If the financial institution is unable to perform a quarterly match due to circumstances outside of its control, it should immediately notify the Title IV-D agency to request an extension of time. If the Title IV-D agency grants an extension, a penalty shall not be assessed against the financial institution.

E. False statements: If false statements are used to obtain a release, penalties will be assessed as set forth in 8.50.131 NMAC.
[8.50.114.8 NMAC - Rp, 8.50.114.8 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.9 FREEZE ORDER:
A. An obligor who has been on wage withholding for at least six months or who has made all payments (voluntary) for the last 12 months is exempt from this process.

~~[A.]~~ **B.** Issuance and effect: When a match occurs showing the existence of an obligor's assets in an amount of more than \$2,000 [held by a support obligor], the Title IV-D agency may issue an administrative freeze order to the financial institution. Account funds shall not be released by the financial institution during the pendency of proceedings involving a freeze order. The financial institution shall [~~mail~~] send a copy of the [~~administrative freeze order~~] notice of lien to the obligor and to all persons listed on the account by certified mail within three business days after the notice of lien is received by the financial institution. [~~The IV-D agency will mail a copy of the administrative order to the obligor's most current address on file with the IV-D agency.~~] The institution shall reply within [~~ten (10)~~] 10 days on the form provided by the Title IV-D agency.

~~[B.]~~ **C.** Right to appeal: [~~The administrative freeze order will inform the aggrieved party of the right to appeal the administrative order by mailing the appeal by certified mail to the address indicated on the form provided by the IV-D agency within fifteen (15) calendar days.~~] The notice of lien shall notify the obligor that the obligor has 15 days from the date of the notice to contest or appeal the freeze.
[8.50.114.9 NMAC - Rp, 8.50.114.9 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.10 SEIZE ORDER:
A. Seizure: If no written appeal is received within the time frame for appeal, or if an appeal is not upheld, a seize order will be issued by the Title IV-D agency. The financial institution must transfer the assets to the Title IV-D agency within three [(3)] working days of the receipt of the seize order.

B. Appeals: If an appeal is received, it will be processed in accordance with the appeals process set forth in 8.50.130 NMAC.
[8.50.114.10 NMAC - Rp, 8.50.114.10 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.12 SEIZED ASSETS:
 Assets seized from accounts will be distributed according to the Title IV-D agency distribution rules.
 [8.50.114.12 NMAC - Rp, 8.50.114.12 NMAC, 12/30/10; A, 1/1/2022]

8.50.114.13 DISTRIBUTION OF FIDM COLLECTIONS IN MULTIPLE CASES: FIDM collections will always be prorated to all open Title IV-D cases for an obligor based on the arrearage owed in each case. By operation of law, arrearages include all adjudicated arrears and delinquency on current support, plus accrued interest. [~~FIDM collections are not distributed to payment processing only cases unless there is a TANF/AFDC arrearage owed to the state.~~]
 [8.50.114.13 NMAC - Rp, 8.50.114.13 NMAC, 12/30/10; A, 1/1/2022]

**HUMAN SERVICES
 DEPARTMENT
 CHILD SUPPORT
 ENFORCEMENT DIVISION**

This is an amendment to 8.50.125 NMAC, Sections 2, 3, 8 through 11, 14, 15, 16, 18, and 19, effective 1/1/2022.

8.50.125.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.
 [8.50.125.2 NMAC - Rp, 8.50.125.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.3 STATUTORY AUTHORITY: Public Assistance Act, [NMSA 1978, Section 27-2-27] Section 27-2-27 et seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
 [8.50.125.3 NMAC - Rp, 8.50.125.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.8 CHILD SUPPORT PAYMENTS:

A. The Title IV-D agency has in effect procedures for the payment of support through the Title IV-D agency upon the request of either the non-custodial party or the custodial party, regardless of whether arrearages exist or withholding procedures have been instituted. The Title IV-D agency is designated to administer the state’s withholding system. The Title IV-D agency monitors all amounts paid and the dates of payments and records them on an individual payment record. As a condition of receiving Title IV-D services and cooperating with the Title IV-D agency, recipients must submit to the Title IV-D agency child support received directly from the non-custodial party. If the recipient of title XIX (medicaid) services elects to receive medical support services only, the recipient of title XIX (medicaid) services may keep child support payments received directly from the payor.

B. All support payments disbursed by the Title IV-D agency shall be through electronic funds transfer (EFT). The custodial party must elect to receive the payments via direct deposit or a pre-paid debit card authorized by the Title IV-D agency. If a custodial party receiving support payments fails to choose either option at the time of application or when requested by the Title IV-D agency, he or she will automatically be enrolled in the Title IV-D authorized pre-paid debit card program. Exceptions to disbursements via EFT may be granted for exceptional circumstances. Those wishing to request an exemption should request an “EFT exemption form” from the Title IV-D agency. The form must be fully completed to include an explanation of the exceptional circumstances requiring an exemption from EFT. The Title IV-D agency will respond in writing either granting or denying the request for an exemption.
 [8.50.125.8 NMAC - Rp, 8.50.125.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.9 STATE DISBURSEMENT UNIT: The state Title IV-D agency has established and operates a state disbursement unit (SDU) for the collection and disbursement of payments in all Title IV-D cases pursuant to 42 USC 654(a).
 [8.50.125.9 NMAC - Rp, 8.50.125.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.10 COLLECTION OF FEES/RECOUPMENTS: New Mexico is a cost recovery state, and other states’ Title IV-D agencies have been notified of this fact. All fees charged to the custodial party are deducted from payments the Title IV-D agency distributes to the custodial party. The amount the Title IV-D agency deducts from each payment will not exceed ten percent of the total amount of the distribution. Once the percentage for the fee is deducted, the balance of the distribution is sent to the custodial party. Title IV-A, Title IV-E and medicaid-only (Title XIX) recipients are not charged any fees; federal regulations will not allow cost recovery on these cases.

- A.** Fee types and amounts:
- (1) non-IV-D wage withholding payment processing only: \$25 (annually);
 - (2) non-IV-A full service IRS collection: applicable federal fee;
 - (3) paternity genetic testing: as charged by lab;
 - (4) non-IV-A/IV-E case processing: actual cost;
 - (5) filing fee: actual cost;
 - (6) witness fee: actual cost;
 - (7) service of process: actual cost;
 - (8) expert witness fee: actual cost;
 - (9) court costs: as assessed;
 - (10) establishment of support obligation and paternity (if necessary): \$250;
 - (11) modification: \$150;

(12) enforcement: \$250;
 (13) tax intercept related: as determined by federal regulations;
 (14) IRS tax intercept service: \$25;
 (15) TRD tax intercept service: \$20;
 (16) administrative offset: applicable federal fee.

B. Refund of fees:
 Fees are to be refunded only under the following conditions:

- (1) fees have been charged in error or overcharged;
- (2) the court orders a refund.

C. Fees are assessed to the custodial or non-custodial party requesting an action or service (i.e. establishment of paternity, modification or enforcement of support obligation) in a Title IV-D case in accordance with the fee schedule above. There will be a one-time establishment of support obligation fee and a one-time enforcement fee per case if a party requests these types of action. The IV-D agency will be responsible for the fee if the Title IV-D agency completes an enforcement action on behalf of solely the Title IV-D agency.

D. Genetic testing fees:
 See 8.50.107.12 NMAC in addition to the fee schedule listed above.

E. Recoupment:
 The IV-D agency will recoup from the custodial party for any over-distribution of funds and for any funds collected from the non-custodial party that are returned for insufficient funds. If the recoupment is pursuant to an over-distribution of funds, the recoupment amount shall not exceed twenty-five percent of any future distribution to the custodial party until paid in full. If the recoupment is pursuant to insufficient funds received from the non-custodial party's payment, the recoupment amount shall be one hundred percent of any future distribution to the custodial party until paid in full.

[8.50.125.10 NMAC - Rp, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

8.50.125.11 DISTRIBUTION OF COLLECTIONS (EXCEPT FOR FEDERAL INCOME TAX REFUND OFFSETS): Specific terms used in this section are derived from 42 USC 657 and 45 CFR § 300 through 303.

A. In accordance with federal regulations, for purposes of distribution in a Title IV-D case, amounts collected, except for amounts collected through federal income tax refund offset, must be distributed as follows:

- (1) current support (monthly payment ordered for current support);
- (2) past due support (monthly payment on judgment);
- (3) current support arrears;
- (4) past due support arrears;

(5) in each of the categories above, the payment is prioritized in the following order: child support, medical support, spousal support; any payment that is insufficient to meet the entire obligation will be applied in the order stated above.

B. The requirement to apply collections first to satisfy the current support obligation is critical in all Title IV-D cases to ensure that payment records are consistent in interstate cases, regardless of whether the amount applied to current support is paid to the family (as in a former assistance case) or retained by the state to recover unreimbursed assistance in a current assistance case.

C. Current assistance cases: The state will (not exceeding the cumulative amount of unreimbursed assistance paid to the family):

- (1) pay to the federal government the federal share of the entire amount collected;
- (2) retain the state share of the amount collected; and

(3) reduce the cumulative amount of unreimbursed assistance by the total amount collected and disbursed

under Paragraphs (1) and (2) of this section, and distribute collections exceeding the cumulative amount of unreimbursed assistance to the family.

D. Federal statute does not specify the order in which collections are applied to satisfy assigned arrearages in current assistance cases. The state of New Mexico has selected the following option:

- (1) collections will be first applied to temporarily assigned arrearages; and
- (2) additional collections will be applied to permanently assigned arrearages.

E. Pass through payment: At the discretion of the New Mexico legislature, the Title IV-D agency may disburse a maximum amount determined on a monthly basis (refer to disregard for child support payments in 8.102.520.9 NMAC for maximum amount), to the Title IV-A service recipient from collections on current support. Under no circumstances is a current or former IV-A recipient entitled to receive said amount as part of the arrearages owed to him or her. The disbursement to the custodial party, up to the maximum amount, shall only be made if the recipient is currently receiving TANF and the Title IV-D agency collects a payment from the non-custodial party. If the non-custodial party pays less than the maximum amount allowed to pass through, the custodial party shall only receive the amount of the payment collected. Neither the Title IV-D agency nor the Title IV-A agency will pay the difference to the custodial party between the maximum pass through amount and the amount paid by the non-custodial party. If the custodial party has more than one Title IV-D case, he or she will only receive the lower of the amount of the maximum disregard or the current monthly collection received on all cases. A pass through payment is in addition to, not in lieu of, the monthly TANF payment.

F. Former assistance cases: For collections made prior to October 1, 1998 (other than through

federal income tax refund offset), the state shall:

(1) first, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) second, distribute any amount above the current monthly support obligation to arrearages owed to the family or assigned to the state; the federal statute does not specify the order in which collections are applied to satisfy arrearages; the state must have procedures that specify the order in which assigned arrearages will be satisfied; if the state distributes any amount to assigned arrearages, the state must pay to the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected, with one exception; the state may retain or pay to the family the state share of collections applied to arrearages that accrued while the family was receiving assistance after October 1, 1996.

G. For collections made on or after October 1, 1998, or earlier at state option (other than collections through federal income tax refund offset), the state shall:

(1) distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) distribute any amount above the current monthly support obligation to satisfy never-assigned arrearages and pay that amount to the family;

(3) distribute any amount above amounts distributed in Paragraphs (1) and (2) of this section to satisfy unassigned pre-assistance arrearages and conditionally-assigned arrearages and pay that amount to the family;

(4) distribute any amount above amounts distributed in Paragraphs (1), (2) and (3) of this section to satisfy permanently-assigned arrearages; the state must pay the federal government the federal share of the amount so collected; the state must

retain the state share of the amount so collected with one exception; the state may retain or pay to the family the state share of collections applied to arrearages that accrued while the family was receiving assistance after October 1, 1996;

(5) reduce the cumulative amount of unreimbursed assistance by the total amount distributed under four, distribute collections exceeding the cumulative amount of unreimbursed assistance to satisfy unassigned during-assistance arrearages and pay those amounts to the family.

H. Never-assistance cases: All support collections in never-assistance cases must be paid (less any applicable fees) to the family.

I. Collected funds will be distributed to the resident parent, legal guardian, caretaker relative having custody of or responsibility for the child or children, judicially-appointed conservator with a legal and fiduciary duty to the custodial parent and the child, or alternate caretaker designated in a record by the custodial parent. An alternate caretaker is a nonrelative caretaker who is designated in a record by the custodial parent to take care of the children for a temporary time period.

J. When the non-custodial parent has multiple cases with the Title IV-D agency, payments received from the non-custodial parent through wage withholding shall be distributed among all active cases on a pro-rata basis determined by the total amount of all monthly support obligations. Payments received through administrative enforcement mechanisms shall be distributed among multiple cases on a pro-rata split based on the total amount of arrearages owed at the time of the referral for administrative enforcement, except for reinstatement of license(s). Payments received for the reinstatement of licenses will be applied to the specific case(s) rather than split among multiple cases. Any other direct payments made by the non-custodial parent will be divided among all active cases involving the

non-custodial parent in amounts as directed by the non-custodial parent.

[8.50.125.12 NMAC - Rp, 12/30/2010; A, 7/1/2019; A, 1/1/2022]

8.50.125.14 ASSIGNED MEDICAL SUPPORT

COLLECTIONS: Any amounts collected by the Title IV-D agency that represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the state will be forwarded to the medicaid agency for distribution. When a family ceases receiving assistance under the state's Title XIX (medicaid) plan, the assignment of medical support rights under section 1912 of the act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The Title IV-D agency will attempt to collect any unpaid specific dollar amounts designated in the support order for medical support purposes. Under this requirement, any medical support collection made by the Title IV-D agency will be forwarded to the medicaid agency for distribution.

[8.50.125.14 NMAC - Rp, 8.50.125.14 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.15 CHILD LEVEL ACCOUNTING:

An application for public assistance by any person constitutes an assignment by operation of law of any support rights the person is entitled to from any other person, whether the support rights are owed to the applicant or to any family member for whom the applicant is applying for or receiving assistance. Therefore, in current or former assistance cases, the Title IV-D agency may not use child-level accounting by splitting or pro-rating the family grant amount on a per-child basis when the child is (or was) included in the family unit and must continue to apply collections to the cumulative amount of unreimbursed assistance balances based on the total monthly family grant amount.

[8.50.125.15 NMAC - Rp, 8.50.125.15 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.16 CHILD SUPPORT

RECEIVED DIRECTLY FROM PAYORS: As a condition of receiving Title IV-D services, all recipients must submit to the Title IV-D agency all court ordered, voluntary agreement and voluntary contribution child support directly received from the non-custodial party. Failure to cooperate with this requirement may constitute cause for closing the Title IV-D case for non-cooperation. If the recipient of Title IV-D services elects to receive medical support services only, the recipient of Title IV-D services may keep child support payments received directly from the payor.

[8.50.125.16 NMAC - Rp, 8.50.125.16 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.18 CHILD SUPPORT

CASE SERVICES: The Title IV-D agency provides two types of case services: full service and payment processing only.

A. Full services cases: Recipients of IV-A services are automatically enrolled for full services and recipients of [title] Title XIX may elect to receive full services for all support or solely for medical support. Full services cases include all services listed below as specific services may not be selected. Applicants not receiving any type of public assistance may also request full services that include:

- (1) establishment of paternity;
- (2) establishment of a child support, medical support order, or both;
- (3) enforcement of a child support orders, spousal support orders (so long as there is a current order for child support), and medical support orders;
- (4) administrative enforcement of orders, including referrals for tax intercepts, passport denial, license revocation, and financial institution data match;
- (5) issuance of wage withholding against a non-custodial party's earnings/wages for support obligations; and

(6)

modification of child support orders, if appropriate.

B. Payment processing only cases: A custodial party currently receiving full services from the Title IV-D agency or opening a new case with the Title IV-D agency may elect to receive payment processing only services so long as he/she is not currently receiving public assistance (Title IV-A or Title XIX) and does not have an outstanding balance of arrears owed to the state for prior public assistance. Payment processing only services are charged an annual fee as stated in section 10, above. In order to receive payment processing only services, the custodial party must produce a valid court order (either issued by or registered by a court in New Mexico) for a support obligation that contains an income withholding provision or a copy of an income withholding order indicating that payments are to be sent to the Title IV-D agency.

(1) The Title IV-D agency is not responsible for:

- (a) establishing, modifying, or enforcing the support obligation;
- (b) establishing, modifying, enforcing, sending, or terminating the income withholding order;

(c) calculating or determining the appropriate amount of support, payment toward arrears, delinquencies, and arrearages;

(d) appearing in court for any issues involving the establishment, modification, enforcement or termination of the support obligations.

(2) The Title IV-D agency will provide either the custodial party or the non-custodial party a printout of the payments received by the Title IV-D agency after receiving a written request.

(3) The Title IV-D agency may terminate the payment processing only services if no payments are received for a period of two (2) months.

[8.50.125.18 NMAC - Rp,

8.50.125.18 NMAC, 12/30/2010; A, 1/1/2022]

8.50.125.19 ISSUANCE OF REPLACEMENT WARRANTS:

If a custodial party or non-custodial parent claims that a warrant issued to him or her has not been received, a replacement warrant shall be issued only if the original warrant has not been redeemed or at the discretion of the Title IV-D agency. If the Title IV-D agency determines that a replacement warrant will be issued, any warrants that were fraudulently redeemed shall be reported by the intended recipient to the proper authorities as a pre-condition for the issuance of a replacement warrant. An unredeemed warrant is subject to the undistributed collections process, see 8.50.132 NMAC. The Title IV-D agency will replace a warrant that it can confirm was not redeemed and has not escheated to the Title IV-D agency through the undistributed collections process. If the Title IV-D agency is unable to confirm that a warrant has been redeemed due to the length of time that has passed since the warrant was issued, the Title IV-D agency will deny the request for a replacement warrant.

[8.50.125.19 NMAC - N, 12/30/2010; A, 1/1/2022]

HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

This is an amendment to 8.50.130 NMAC, Sections 2, 3, 8 through 12 and 14 through 25, effective 1/1/2022.

8.50.130.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of Title IV-D services.

[8.50.130.2 NMAC - Rp, 8.50.130.2 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.3 STATUTORY AUTHORITY: Public Assistance Act, [~~NMSA 1978, Section 27-2-27~~] Section 27-2-27 et seq., NMSA 1978.

The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.). [8.50.130.3 NMAC - Rp, 8.50.130.3 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.8

ADMINISTRATIVE HEARINGS: Administrative hearings will be provided by [The] the Title IV-D agency [will provide for administrative hearings for] in the following situations:

A. an obligor [~~requesting~~] requests a review pertaining to income withholding, consumer reporting, an adverse administrative order, [or] referral for federal tax intercept, referral for state tax intercept, referral for passport denial, referral for administrative offset, lien on lottery winnings, lien on gaming winnings, or [the FIDM-program] a FIDM referral;

B. any IV-A recipient or former IV-A recipient who believes [~~he or she~~] the recipient is entitled to [~~receive~~] part or all of a support payment that was [~~received by~~] made to the Title IV-D agency but not disbursed to the recipient;

C. an obligor's spouse who requests the refund of more [~~that~~] than one-half of a state tax intercept; and

D. an owner as defined in 8.50.132.7 NMAC who is claiming an interest in undistributed collections. [8.50.130.8 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.9 IN GENERAL:

A. The hearing process provides the appellant notice and an opportunity to assert the appellant's claim.

B. Hearing appellant: A hearing "appellant" for the purpose of these regulations is any obligor, obligor's spouse (only in cases involving a state tax intercept), or obligee requesting and entitled to a review.

C. Appellant's rights: the right to a hearing includes the right:

(1) to be advised of the nature and availability of a hearing;

(2) to safeguards of the appellant's opportunity to present a case;

(3) to have prompt notice and implementation of the decision based upon the hearing results; and

(4) to be advised that if the appellant is not in agreement with the administrative hearing result, a judicial review may be invoked to the extent such review is available under state law.

[8.50.130.9 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.10 NOTICE OF ADMINISTRATIVE ENFORCEMENT ACTION:

A. Notices to obligor of referral to tax-offset program: The IV-D agency or federal office of child support enforcement sends written notice to inform an obligor that due to the amount of [~~his or her~~] the obligor's past-due support the obligor will be referred for a tax refund offset. One or more of the following notices is sent:

(1) FMS pre-offset notice (obligor);

(2) taxation and revenue department pre-offset notice (obligor);

(3) taxation and revenue department pre-offset notice (injured spouse);

(4) IRS notice of offset; and

(5) taxation and revenue department final distribution notice.

B. Notice to obligor of FIDM freeze order: The Title IV-D agency will mail a [~~copy of the freeze order~~] notice of lien to the obligor at the last known address on file with the IV-D agency. [~~The freeze order will inform the aggrieved party of the right to appeal the order by mailing a request for appeal within fifteen (15) calendar days by certified mail~~

~~to the address indicated on the form provided by the IV-D agency.]~~

C. Notice to obligor of administrative lien on lottery and gaming winnings: The Title IV-D agency will mail a copy of the notice of administrative lien to the obligor at the last known address on file with the Title IV-D agency.

D. Notice to obligor for passport referral: Notice regarding the referral for passport denial is included in the FMS offset notice and is sent to the obligor at the last known address on file with the Title IV-D agency.

E. Notice to owner of an undistributed collection: The Title IV-D agency will mail a copy of the notice of undistributed collection to the owner at the last known address on file with the Title IV-D agency.

F. Notice to obligor for administrative offset referral: The Title IV-D agency will mail notice regarding the referral for administrative offset is included in the FMS offset notice and is sent to the obligor at the last known address on file with the Title IV-D agency.

G. All notices will include the process and timeframes for requesting an appeal. [8.50.130.10 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.11 TIME FRAMES FOR REQUESTING AN ADMINISTRATIVE HEARING:

In all cases where a time frame is not specifically provided, the appellant has [~~fifteen (15)~~] 15 calendar days following the date of mailing of notice by the Title IV-D agency to submit a written request for an administrative hearing. The appellant has [~~thirty (30)~~] 30 days from the date on the pre-offset notice to request a hearing. In order to be considered timely, the request for a hearing on a pre-offset notice must be received by the Title IV-D agency no later than the close of business on the [~~thirtieth (30th)~~] 30th day, or the next business day if the [~~thirtieth (30th)~~] 30th day is a [~~Sunday~~] weekend or federally recognized holiday.

[8.50.130.11 NMAC - Rp, 8.50.130.8 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.12 CONTESTING TAX REFUND INTERCEPT IN INTERSTATE CASES:

A. If an appellant requests an administrative hearing [in writing, a tax hearing request form is completed by the appellant or the IV-D staff and is submitted within ten (10) days to the administrative law judge. The] the administrative law judge [sends] will send a notice of acknowledgment to the appellant and to the respective Title IV-D agency worker. The notice and acknowledgement shall include a statement regarding the timeliness of the request for hearing. In non-Title IV-A cases, the Title IV-D agency [notifies] shall notify the custodial party of the time and place of the administrative hearing. The Title IV-D agency worker [should] shall be available to testify at the administrative hearing.

B. If the appeal concerns an IRS joint tax refund that has not yet been intercepted, the appellant is informed that the IRS will notify the injured spouse at the time of intercept regarding the steps to take to secure his or her proper share of the refund. If the appeal concerns a joint tax refund that has already been intercepted, the injured spouse is referred to the IRS to seek resolution. [8.50.130.12 NMAC - Rp, 8.50.130.9 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.14 CONTESTING THE DENIAL OF PAYMENT OF AN UNDISTRIBUTED COLLECTION:

[If an appellant requests an administrative hearing, an undistributed collections hearing request form is completed by the appellant or the IV-D staff and is submitted within ten (10) days to the administrative law judge. The administrative law judge sends a notice of acknowledgement to the appellant and to the respective Title IV-D agency worker to include a statement regarding the timeliness of the request for hearing.] An owner who is claiming an interest in an undistributed collection has 30 calendar days following the date that the Title IV-D agency denied payment

of the undistributed collection to submit a written request for an administrative hearing. [8.50.130.14 NMAC - N, 12/30/2010; A, 1/1/2022]

8.50.130.15 INITIATION OF HEARING PROCESS:

A. A request for hearing must be made in writing.

B. [Receipt] The administrative law judge shall acknowledge, in writing, the receipt of a written hearing request [shall be acknowledged in writing to the appellant by the administrative law judge], and shall provide the appellant with written acknowledgment of the receipt.

C. Upon the request of the appellant, the Title IV-D staff shall assist in the preparation of a notice of hearing. The notice of hearing will be signed by the appellant. [8.50.130.15 NMAC - N, 12/30/2010; A, 1/1/2022]

8.50.130.16 DENIAL/ DISMISSAL OF REQUEST FOR HEARING:

A. The administrative law judge may deny or dismiss a request for hearing when:

(1) the request is not received within the specified time period;

(2) the situation has been resolved;

(3) the request is not made in writing; or

(4) a written withdrawal of request for hearing is received from the appellant, or a written agreement settling all issues is approved by all parties and is submitted to the administrative law judge.

B. A request for a hearing is considered abandoned and therefore dismissed if neither the appellant nor his or her representative appears at the time and place of the hearing, and if, within [ten (10)] 10 days after a notice of abandonment is mailed by the administrative law judge, the appellant has not presented good cause for failing to appear. Good cause includes verification of

a death in the family, doctor's note verifying a disabling personal illness, or other significant emergencies. At the discretion of the administrative law judge, a showing of exceptional circumstances is considered good cause.

[8.50.130.16 NMAC - Rp, 8.50.130.13 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.17 NOTICE OF HEARING:

As early as possible and not less than [ten (10)] 15 days prior to the hearing, written notice is sent by the administrative law judge to all parties involved in the hearing. The notice shall set forth the time, date and place of the hearing. Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant, as long as the appellant provides at least [ten (10)] 10 days advance notice to the administrative law judge of the need for reasonable accommodations. The notice of hearing includes an explanation of the hearing process and limitation of the scope of the hearing, the procedures to be followed during the hearing, and notification that the appellant should be ready to produce any required witnesses at the hearing or secure legal counsel prior to the hearing. The appellant is told that neither the department nor the Title IV-D agency will pay for any representation or legal counsel for appellant or for any hearing costs. The issuance of a notice of hearing by the administrative law judge shall act to stay the administrative action, pending the issuance of a ruling [on the, merits of the hearing].

[8.50.130.17 NMAC - Rp, 8.50.130.12 NMAC, 12/30/2010; A, 1/1/2022]

8.50.130.18 APPELLANT'S RIGHTS:

The appellant is given adequate opportunity to review and present evidence that is within the scope of the hearing.

A. The appellant may examine all documents to be used at the hearing prior to the date of the hearing, as well as during the hearing. If requested, the Title IV-D staff will

provide copies of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records that the appellant will not otherwise have an opportunity to challenge will not be introduced at the hearing or affect the administrative law judge's decision.

B. The appellant may present his or her case or have it presented by a representative.

C. The appellant may bring witnesses [~~he or she wants~~] to present information that he or she believes is [~~important~~] relevant to [~~his or her~~] the case.

D. The appellant may advance relevant arguments without undue interference.

E. The appellant may [~~question or overcome any testimony or evidence, including an opportunity to~~] confront and cross-examine adverse witnesses.

F. The appellant may submit relevant evidence to support pertinent facts and defenses in the case.
[8.50.130.18 NMAC - Rp,
8.50.130.14 NMAC, 12/30/2010; A,
1/1/2022]

8.50.130.19 TITLE IV-D AGENCY RESPONSIBILITY: To ensure an appellant's rights during the hearing process, the Title IV-D agency shall:

A. make available, in a timely manner, without charge, the case documents (excluding any privileged, safeguarded or confidential information) necessary for an appellant or representative to determine whether a hearing should be requested or to prepare for a hearing;

B. provide [~~a translator~~] an interpreter if the appellant [~~is not proficient in English~~] requests one;

C. provide reasonable accommodations, if requested in advance; and

[~~E~~] **D.** prepare a summary of evidence to include all documents to be presented by the Title IV-D agency at the hearing and all

documents should be provided to the appellant, or his or her representative, by the Title IV-D agency at least [~~ten (10)~~] 10 days prior to the hearing.
[8.50.130.19 NMAC - Rp,
8.50.130.15 NMAC, 12/30/2010; A,
1/1/2022]

8.50.130.20 PRE-HEARING ACTIVITY:

A. Preliminary conference: A preliminary conference may be scheduled prior to the hearing to discuss the issues concerning the hearing. The preliminary conference is held between the Title IV-D agency worker, the appellant, the Title IV-D attorney if an attorney is representing the appellant and the appellant's representative, as applicable. The administrative law judge is not involved and will not participate in the preliminary conference. This conference may provide an opportunity to resolve the dispute. A preliminary conference may lead to an informal resolution of the dispute. However, a hearing shall still be held unless the appellant makes a written withdrawal of his or her request for a hearing. If a written withdrawal is received by the Title IV-D agency worker, it must be forwarded to the administrative law judge. Appellants are advised that the preliminary conference is optional and that it will not delay or replace the hearing process.

B. The purposes of the pre-hearing conference include, but are not limited to:

- (1) clarification, formulation and simplification of issues;
- (2) resolution of some or all issues;
- (3) exchange of documents and information;
- (4) review of any audit findings; and
- (5) discussion of other matters that might help dispose of any of the pending issues.

C. Matters left unresolved: If all matters in controversy are not resolved at the preliminary conference, a hearing is held.

[~~D.~~] ~~—Tax hearing request form: If the dispute cannot be resolved, within [ten (10)] 10 days of the receipt of the request for administrative hearing, a tax hearing request form is sent to the child support enforcement division, administrative support bureau.~~
[8.50.130.20 NMAC - Rp,
8.50.130.16 NMAC, 12/30/2010; A,
1/1/2022]

8.50.130.21 CONDUCT OF HEARING:

A. Conduct of a hearing is as follows:

- (1) all hearings are conducted telephonically;
- (2) the hearing is not open to the public;
- (3) the administrative law judge identifies for the record all persons present at the hearing; and
- (4) the administrative law judge takes administrative notice of those matters the same as state courts take judicial notice of, including the Title IV-D agency's policies and procedures.

B. Record: A hearing is electronically recorded. The recording is placed on file at the hearings unit and is available for examination by the appellant or representative for [~~thirty (30)~~] 30 days following the hearing. If a decision is appealed, an index log of the tape is prepared by the Title IV-D agency and a copy of the index log is supplied to the appellant free of charge.

C. Admission of evidence: Formal rules of evidence and civil procedure do not apply. The administrative law judge may allow hearsay testimony if it is deemed relevant to the decision. The rules of privilege will be effective to the extent that they are recognized in civil actions in the New Mexico district courts.

D. Case records: An appellant or representative is allowed to examine the entire hearing case record before, during and after the proceedings. The appellant or representative must request the hearing record and the Title IV-D

agency will provide the record within a reasonable period of time.
[8.50.130.21 NMAC - Rp,
8.50.130.17 NMAC, 12/30/2010; A,
1/1/2022]

8.50.130.22 DECISION MAKING:

A. Authority: The hearing decision is based only on the evidence introduced and admitted by the administrative law judge during the hearing. This includes the record of the testimony, all reports, documents, forms, etc., made available at the hearing, provided that the appellant was given an opportunity to examine them as part of the hearing process.

B. Written decision: The administrative law judge will issue a written [hearing] decision [notice] within [twenty-(20)] 20 business days after the hearing. [The decision will clearly state whether the administrative law judge is finding in favor of the appellant of the Title IV-D agency and shall include reference to the admitted evidence that supports the decision.]
[8.50.130.22 NMAC - Rp,
8.50.130.18 NMAC, 12/30/2010; A,
1/1/2022]

8.50.130.23 IMPLEMENTATION OF DECISIONS:

The administrative law judge’s decision is final and binding on all issues within the scope of a hearing and that have been the subject of a hearing, unless stayed by an appeal or a district court order.

A. Decision favorable to appellant regarding offsets:

(1) If the administrative hearing results in a deletion of, or decrease in, the amount referred for tax intercept, the tax intercept unit notifies the OCSE within [ten-(10)] 10 business days of the administrative hearing.

(2) If, as a result of the administrative hearing, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the Title IV-D agency refunds the excess amount to the obligor promptly, and

reports the refund to the OCSE. In joint return cases, the refund check is made payable to both parties.

B. Decisions regarding liens on lottery, gaming, or FIDM:

The Title IV-D agency will take appropriate action in accordance with the decision of the administrative law judge. If the administrative law judge rules in favor of the appellant, the Title IV-D agency will take action to fully or partially release a freeze order or administrative lien, as appropriate. If the administrative law judge rules in the agency’s favor, the Title IV-D agency will proceed to have the funds routed [to the Title IV-D agency] for distribution to the obligor’s case(s) or held [with] by the Title IV-D agency until all appeals relevant to the action have been exhausted [or foreclosed due to deadlines].

[8.50.130.23 NMAC - Rp,
8.50.130.19 NMAC, 12/30/2010; A,
1/1/2022]

8.50.130.24 RIGHT OF APPEAL:

Either party has the right to judicial review of the [hearing] administrative law judge’s decision or a denial of a hearing issued pursuant to 8.50.130.15 NMAC, unless [other than for] a written withdrawal of request for hearing was signed by the appellant. If a hearing decision is in favor of the Title IV-D agency, appellant is notified of the right to pursue judicial review [of the decision] at the time of the decision.

A. Timeframes for appealing decision: Within [thirty-(30)] 30 days after the date on the [hearing] administrative law judge’s decision [notice], an appellant or the Title IV-D agency may appeal [a decision] by filing an appropriate action for judicial review with the clerk of the appropriate district court, and filing a copy with the Title IV-D administrative law judge.

B. Record sent to district court: All appeals to the district court are on the record made at the hearing. The administrative law judge files one [(+)] copy of the hearing record with the clerk of the appropriate district court and furnishes one copy to the appellant

within [twenty-(20)] 20 days after receipt of the notice of appeal.

C. Stay pending appeal: An appeal to the state district court shall act as a stay of the underlying administrative action, pending the court’s ruling.

[8.50.130.24 NMAC - Rp,
8.50.130.20 NMAC, 12/30/2010; A,
1/1/2022]

8.50.130.25 STATE DIRECTORY OF NEW HIRES PENALTY ASSESSMENT

HEARINGS: The human services department, Title IV-D agency, has established a hearing process that provides for impartial review of New Mexico state directory of new hires claims against non-complying employers. (45 USC 653(d)). For purposes of these regulations, an employer requesting a hearing is referred to as an appellant.

A. Appellant eligibility: The Title IV-D agency established a hearing process for any individual who meets the following criteria:

(1) any employer who believes he or she has been erroneously assessed penalties; and

(2) who has been unable to resolve this issue with the New Mexico state directory of new hires representative at a preliminary conference.

B. Hearing appellant: A hearing appellant for the purposes of these regulations is any employer requesting review. [The right to file a request for a hearing is not to be limited or interfered with in any way by the IV-D agency as long as the request is made in a timely manner.]

C. Appellant’s rights: The right to a hearing includes the right:

(1) to be advised of the nature and availability of a hearing and the process to request a hearing;

(2) to be represented at the hearing by counsel or other person of the appellant’s choice;

(3) to have a hearing that safeguards the appellant’s opportunity to present a case;

(4) to have prompt notice and implementation of the administrative law judge’s decision ~~[on the hearing,]~~ and

(5) to be advised that the appellant may request judicial review ~~[may be invoked]~~ to the extent such review is available under state law, and that the Title IV-D agency does not pay for the cost of such proceedings ~~[; the requirements of due process apply to hearing proceedings].~~

D. Penalty assessment notice: The New Mexico state directory of new hires sends written notice to inform an employer that penalties have been assessed. Each penalty assessment notice will:

(1) cite the statutory authority ~~(NMSA 1978, Section 50-13-4)~~ Section 50-13-4 et seq., NMSA 1978 for the assessment of the penalty;

(2) include the name and last four digits of the social security number for each party not reported;

(3) list the total amount of penalties assessed;

(4) inform the employer that failure to report is the basis for penalty and does not require a knowing or deliberate act on the part of the employer;

(5) inform the employer that conspiracy can be established by circumstantial evidence;

(6) list requirements for employers to request a hearing if they disagree with the assessment;

(7) provide the name and business telephone number of a Title IV-D agency contact to provide additional information or answer questions relating to the assessment of penalties and to request a hearing.

E. Time frames for requesting hearing: The appellant has ~~[thirty (30)]~~ 30 days from the date on the penalties assessment notice to submit a written request for

a hearing. In order to be considered timely, the request must be received by the administrative law judge no later than the close of business on the ~~[thirtieth (30th)]~~ 30th day.

When a timely request for hearing is received by the administrative law judge, the administrative law judge notifies the new hires directory, state project manager immediately so that a preliminary conference can be scheduled.

F. Notice of hearing: Upon receipt of a timely request for hearing, written notice is sent by the administrative law judge to all parties involved in the hearing regarding the time, date and place of the hearing.

Arrangements will be made to ensure that the hearing process is accessible to and accommodates the appellant.

In the hearing notice, appellants are also given an explanation of the hearing process, the procedures to be followed for the hearing, and enough time to secure witnesses or legal counsel. The appellant shall be informed that neither the department nor the Title IV-D agency pays for representation or legal counsel for appellant or for any hearings costs, and are provided the name and business telephone number of a contact who can provide additional information relating to the assessment of penalties. A hearing may be continued or rescheduled with the consent of all parties.

G. State directory of new hires responsibility: To ensure an appellant’s rights during the hearing process, the state directory of new hires staff will:

(1) upon request, make available in a timely manner the documents necessary for an appellant or representative to determine whether to request a hearing or to prepare for a hearing;

(2) upon request, help appellant submit a written hearing request.

H. Effect of issuance of notice of hearing: All provisions contained in sections 8.50.130.15, 8.50.130.17, 8.50.130.19, 8.50.130.20 and 8.50.130.22 NMAC apply when a notice of hearing is issued pursuant to

Subsection F above.

[8.50.130.25 NMAC - Rp, 8.50.130.21 NMAC, 12/30/2010; A, 1/1/2022]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 9/28/2021 hearing, to repeal and replace 6.64.11 NMAC, TESOL Competencies, filed 9/29/2000, with 6.64.11 NMAC, TESOL Competencies, adopted on 12/1/2021 and effective 7/1/2022.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 64 SCHOOL PERSONNEL - COMPETENCIES FOR LICENSURE
PART 11 TESOL COMPETENCIES**

6.64.11.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.64.11.1 NMAC - Rp 6.64.11.1 NMAC, 7/1/2022]

6.64.11.2 SCOPE: All persons seeking a licensure endorsement in teaching English to speakers of other languages (TESOL).

[6.64.11.2 NMAC - Rp 6.64.11.2 NMAC, 7/1/2022]

6.64.11.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, and 22-10A-3 NMSA 1978.

[6.64.11.3 NMAC - Rp 6.64.11.3 NMAC, 7/1/2022]

6.64.11.4 DURATION: Permanent.

[6.64.11.4 NMAC - Rp 6.64.11.4 NMAC, 7/1/2022]

6.64.11.5 EFFECTIVE DATE: July 1, 2022, unless a later date is cited in the history note at the end of a section.

[6.64.11.5 NMAC - Rp 6.64.11.5 NMAC, 7/1/2022]

6.64.11.6 OBJECTIVE:
To establish the requirements and key competencies for licensure endorsements in TESOL.

[6.64.11.6 NMAC - Rp 6.64.11.6 NMAC, 7/1/2022]

6.64.11.7 DEFINITIONS:

A. "Content knowledge assessment" means the collection of department-adopted assessments taken to demonstrate competency in a particular endorsement area by individuals seeking to add an endorsement to an initial or existing license.

B. "English language proficiency examination" means a department-approved assessment for evaluating a teacher's proficiency in English.

C. "Key competencies" means the set of knowledge and skills defined in 6.64.11.9 NMAC.

[6.64.11.7 NMAC - Rp 6.64.11.7 NMAC, 7/1/2022]

6.64.11.8 TESTING AND COURSEWORK REQUIREMENTS:

A. Teacher candidates seeking to add a TESOL endorsement to an initial level 1 license shall meet the following requirements:

(1) pass the content knowledge assessment in TESOL or a department-approved licensure test in TESOL from another state; and

(2) complete a minimum of 24 hours in TESOL coursework in alignment with the key competencies defined in 6.64.11.9 NMAC:

(a) Six hours shall be in one language other than English or any combination of coursework in applied linguistics, second language acquisition, or second language teaching methodology.

(b) 12 hours shall be upper division or post-baccalaureate credits in alignment

with the key competencies defined in 6.64.11.9 NMAC.

B. Teachers seeking to add a TESOL endorsement to an existing license shall meet either the requirements of Paragraph (1) of Subsection B of 6.64.11.8 NMAC or the requirements of Paragraph (2) of Subsection B of 6.64.11.8 NMAC.

(1) The first option shall include the following:

(a) pass the content knowledge assessment in TESOL, a department-approved licensure test in TESOL from another state, or a predecessor New Mexico teacher licensure examination in TESOL; and

(b) earn 12 semester hours of credit in TESOL.

(i) Six hours shall be in one language other than English or any combination of coursework in applied linguistics, second language acquisition, or second/foreign language teaching methodology.

(ii) Six hours shall be upper division or post-baccalaureate credits in alignment with the key competencies defined in 6.64.11.9 NMAC.

(2) The second option shall include the following: earn a minimum of 24 semester hours of credit in TESOL in alignment with the key competencies defined in 6.64.11.9 NMAC.

(a) Six hours shall be in one language other than English or any combination of coursework in applied linguistics, second language acquisition, or second/foreign language teaching methodology.

(b) 12 hours shall be upper division or post-baccalaureate credits in alignment with the key competencies defined in 6.64.11.9 NMAC.

C. Licensed teachers with TESOL certification from the national board for professional learning standards shall pass the content knowledge assessment in TESOL or a department-approved licensure test in TESOL from another state.

D. Teachers with a reciprocal license from a country outside the United States shall meet the following testing and coursework requirements:

(1) pass the content knowledge assessment in TESOL;

(2) earn a minimum of 24 semester hours of credit in TESOL; and

(3) pass an English language proficiency examination.

E. Teacher candidates seeking to waive credit hours in one language other than English shall provide documentation that the candidate:

(1) has passed the language proficiency examination(s) for bilingual education in Spanish; or

(2) has passed the language proficiency examination for any language other than English; or

(3) holds a Native American language and culture certification pursuant to 6.63.14 NMAC; or

(4) holds a New Mexico diploma of excellence with the state seal of bilingualism-biliteracy in a language other than English or its equivalent from another state; or

(5) holds either a bachelor of arts or science degree, master of arts or science degree, or doctorate degree in a language other than English from an accredited college or university outside the United States.

[6.64.11.8 NMAC - Rp 6.64.11.8 NMAC, 7/1/2022]

6.64.11.9 COMPETENCIES FOR ENTRY-LEVEL TESOL TEACHERS:

A. New Mexico TESOL teachers shall draw on their knowledge of human development as mediated by language and culture and their relationships with students to understand their students' knowledge, skills, interests, aspirations, and values.

(1) The teacher shall recognize and accept the student's primary or home language as a valid system of communication.

(2) The teacher shall know the effects of cultural and social variables on the students' general level of development and socialization.

(3) The teacher shall understand the cultural, linguistic, and societal factors that contribute to the lifestyles of various peoples which determine both their uniqueness and their interrelationships in a pluralistic society.

(4) The teacher shall know about differentiation of learning and be able to access resources and facilitate inclusive learning for all students, including English language learners.

B. New Mexico
TESOL teachers shall draw on their knowledge of language acquisition and language development to understand the process by which students learn both their first and second languages and additional languages.

(1) The teacher shall have knowledge of first and second language acquisition and language development, including:

(a) developmental stages;

(b) variability in learners' language;

(c) the role of input and attitudes;

(d) learning styles and strategies;

(e) language transfer; and

(f) the differences between academic, social, and instructional language.

(2) The teacher shall demonstrate knowledge of receptive and expressive language through the four domains of language: speaking, listening, reading, and writing.

(3) The teacher shall have knowledge of language universals and shall be able to apply knowledge of phonology,

morphology, syntax, semantics, and pragmatics.

(4) The teacher shall understand the integrated nature of cognitive and affective language development.

(5) The teacher shall respect vernaculars, including social and regional varieties of English.

(6) The teacher shall respect the students they are serving.

C. New Mexico
TESOL teachers shall be knowledgeable about and sensitive to the dynamics of culture in general, and to their students' cultures in particular. This shall enable the teacher to structure a successful academic experience for students using culturally and linguistically responsive instruction.

(1) The teacher shall recognize the funds of knowledge students bring to the classroom and regards the linguistic, cultural, experiential, and social-emotional experiences of each student as assets.

(2) The teacher shall recognize and respect the culture, history, and contributions of each student's ancestry.

(3) The teacher shall model the value of cultural diversity and validate the contemporary life styles of diverse cultural groups.

D. New Mexico
TESOL teachers shall be models of language proficiency and draw on comprehensive command of subject matter, of language(s) of instruction and their relationship to each other to establish goals, design curricula and instruction, and facilitate student learning.

(1) The teacher shall demonstrate proficiency in English literacy at a level commensurate with the teacher's role as a language model.

(2) The teacher shall have knowledge of the nature of the English language and demonstrate knowledge of English phonology, morphology, syntax, semantics, and pragmatics.

(3) The teacher shall have knowledge of the department-approved English language development standards and be able to use them in instruction.

(4) The teacher shall understand and apply second language acquisition theories and methods for teaching speaking, listening, reading and writing.

(5) The teacher shall know how to set expectations for language use based on students' developing English proficiency levels.

(6) The teacher shall use a variety of strategies to help students listen, read, comprehend, and produce oral and written output in English.

(7) The teacher shall demonstrate knowledge of the English language development instructional component of bilingual education.

E. New Mexico
TESOL teachers shall use a variety of approaches that allow students to confront, explore, and understand important and challenging concepts, topics, and issues in meaningful ways. The teacher shall provide multiple paths to help students develop language proficiency and strengthen understanding of the pertinent disciplines. The teacher shall effectively use the English language to enhance subject-matter learning.

(1) The teacher shall develop a large repertoire of active teaching and learning strategies appropriate to distinct learning styles and developmental levels of students, including English language learners.

(2) The teacher shall develop a knowledge base and teaching strategies related to the basic elements and methodologies appropriate to the development of literacy and content area knowledge.

(3) The teacher shall demonstrate an ability to utilize innovative, communicative-based teaching techniques to enhance the language acquisition process.

(4) The teacher shall select, adapt, create, and

use rich and varied age-appropriate instructional resources that meet the development needs of students.

(5) The teacher shall know procedures for identifying biases and deficiencies in existing curriculum and strategies to modify it to address student linguistic, cultural, and developmental needs.

(6) The teacher shall know strategies to develop, acquire, adapt, and evaluate materials appropriate to the English language program.

(7) The teacher shall explore, evaluate, and use technology including applications, tools, educational software, and assorted documentation for culturally and linguistically diverse students.

(8) The teacher shall create a secure learning environment that establishes a caring, inclusive, safe, and linguistically and culturally rich community of learners where students take intellectual risks and work both independently and collaboratively.

(9) The teacher shall demonstrate knowledge of and apply culturally and linguistically responsive management techniques appropriate to classrooms.

(10) The teacher shall create a climate of high expectations for all students, including English language learners.

(11) The teacher shall create a secure learning atmosphere that leads to a low affective filter in order to facilitate a risk-taking environment.

(12) The teacher shall create meaningful curricula with materials and activities that foster critical thinking skills.

F. New Mexico
TESOL teachers shall employ a variety of assessment methods to obtain useful information about student learning and development to inform instruction and to assist students in reflecting on their own progress.

(1) The teacher shall understand the principles and theories of second language assessment.

(2) The teacher shall be able to administer language assessments, interpret results, and incorporate them into instruction.

(3) The teacher shall recognize potential linguistic and cultural biases in assessment instruments including standardized tests.

(4) The teacher shall utilize alternative assessment measures including portfolio and authentic assessments.

G. New Mexico
TESOL teachers shall regularly analyze, evaluate, and strengthen the effectiveness and quality of their practice.

(1) The teacher shall develop the ability to self-monitor and self-reflect on teaching strategies, value systems, and beliefs as they relate to students and seeks opportunities to strengthen these skills.

(2) The teacher shall continuously assesses and adjust his or her own language usage in the classroom in order to maximize student comprehension and verbal participation.

H. New Mexico
TESOL teachers shall create partnerships with families that enhance the educational experience of students.

(1) The teacher shall demonstrate the ability to guide families to be active participants in their child's education.

(2) The teacher shall develop the ability to identify and utilize available community resources.

(3) The teacher shall demonstrate the ability to involve families within the school environment.

I. New Mexico
TESOL teachers shall contribute to the growth and development of their colleagues, their school, and the advancement of knowledge in their field.

(1) The teacher shall demonstrate awareness of the need to actively seek and participate in professional growth

activities for English language learners (e.g. workshops, coursework, and research).

(2) The teacher shall demonstrate knowledge of the legal obligations concerning the education of identified English language learners in New Mexico and in the United States.

(3) The teacher shall demonstrate knowledge of the different theories and philosophies related to English language learner programs.

(4) The teacher shall demonstrate knowledge of the history of English language learner programs in New Mexico and the United States.

(5) The teacher shall demonstrate knowledge of the importance of advocating for English language learner programs with parents, families, community members, teachers, support staff, and administrators.

(6) The teacher shall demonstrate knowledge of current trends related to the education of culturally and linguistically diverse students.

(7) The teacher shall demonstrate knowledge of the ability to collaborate with all other education professionals.
[6.64.11.9 NMAC - Rp 6.64.11.9 NMAC, 7/1/2022]

6.64.11.10

IMPLEMENTATION: Institutions of higher education that prepare teachers shall deliver the key competencies in a department-approved endorsement program within a range of 24 to 36 semester hours of credit. For persons with secondary and pre K-12 licenses, a minimum of 12 semester hours must be upper division credit.
[6.64.11.10 NMAC - Rp 6.64.11.10 NMAC, 7/1/2022]

HISTORY OF 6.64.11 NMAC:

6.64.11 NMAC, TESOL Competencies, filed 9/29/2000, was repealed and replaced by 6.64.11 NMAC, TESOL Competencies, effective 7/1/2022.

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

The New Mexico Athletic Trainers Practice Board approved, at the November 5, 2021 hearing, to repeal the rule 16.3.9 NMAC, Disciplinary Proceedings, filed 8/16/2001, and replace it with 16.3.9 NMAC, Disciplinary Proceedings, effective 12/24/2021.

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 3 ATHLETIC TRAINERS
PART 9 DISCIPLINARY PROCEEDINGS**

16.3.9.1 ISSUING AGENCY: Regulation and Licensing Department New Mexico Athletic Trainers Practice Board Post Office Box 25101 Santa Fe, New Mexico 87504.
[16.3.9.1 NMAC - Rp, 16.3.9.1 NMAC, 12/24/2021]

16.3.9.2 SCOPE: Outlines the disciplinary process taken if a violation of the athletic act or regulation occurs while licensed as an athletic trainer in the state of New Mexico.
[16.3.9.2 NMAC - Rp, 16.3.9.2 NMAC, 12/24/2021]

16.3.9.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.
[16.3.9.3 NMAC - Rp, 16.3.9.3 NMAC, 12/24/2021]

16.3.9.4 DURATION: Permanent.
[16.3.9.4 NMAC - Rp, 16.3.9.4 NMAC, 12/24/2021]

16.3.9.5 EFFECTIVE DATE: December 24, 2021, unless a later date is cited at the end of a section.
[16.3.9.5 NMAC - Rp, 16.3.9.5 NMAC, 12/24/2021]

16.3.9.6 OBJECTIVE: Outlines and details the process and procedures for disciplinary action against an athletic trainer found in violations of act or regulations.
[16.3.9.6 NMAC - Rp, 16.3.9.6 NMAC, 12/24/2021]

16.3.9.7 DEFINITIONS: [RESERVED]

16.3.9.8 DISCIPLINARY PROCEEDINGS:
A. Disciplinary proceedings may be initiated by the board upon the receipt of a sworn complaint of any person, including any member of the board.

B. Upon receipt of a sworn complaint, the board staff, with the concurrence of the board's attorney or a member of the board, shall determine if the allegation may involve a violation of the statute or regulations. Upon determination of a potential violation the staff will initiate an investigation of the allegations.

C. In accordance with the provisions of the Uniform Licensing Act, the board may take action against the licensee.

D. In addition the board may offer the licensee an informal type of discipline, including but not limited to, a letter of reprimand, in lieu of initiating formal proceedings. In these instances, the board shall notify the licensee of the following:

(1) that a letter of reprimand has been officially proposed;

(2) that the licensee has an opportunity to review the contents of the letter of reprimand and provide comments and accepts the form of discipline thereto;

(3) that a copy of the letter of reprimand will remain in the files of the board for a specified

period of time and the fact thereof shall be admissible in evidence, if relevant, during the course of any subsequent formal proceeding conducted pursuant to the Uniform Licensing Act.

E. A letter of reprimand issued pursuant to this rule shall be signed by the board chair and served upon the licensee by certified mail. Copies of the reprimand shall be furnished to the members of the board and board counsel.

F. The fact that a licensee has received a letter of reprimand shall be a matter of public record. The complainant shall be informed that the practitioner has been reprimanded.

G. Neither the action or inaction of the board on any complaint shall preclude the initiation of any private cause of action by the complainant.
[16.3.9.8 NMAC - Rp, 16.3.9.8 NMAC, 12/24/2021]

HISTORY OF 16.3.9 NMAC: PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives Under: HED 84-4 (HSD), Regulations Governing The Athletic Trainers Act, filed 7/11/1984; AT-01-88, Regulations Governing The Athletic Trainers Act, filed 9-19-88; AT-01-89, Regulations Governing The Athletic Trainers Act, filed 7/11/1989; Rule 91-11, Refusal, Suspension Or Revocation Of License, filed 8/30/1991; Rule 9, Disciplinary Proceedings, filed 2/3/1994

HISTORY OF REPEALED MATERIAL: 16.3.9 NMAC – Disciplinary Proceedings filed 8/16/2001 was repealed and replaced by 16.3.9 NMAC – Disciplinary Proceedings, effective 12/24/2021.

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

This is an amendment to 16.3.1 NMAC, Sections 5, 7, and 8, effective 12/24/2021.

16.3.1.5 EFFECTIVE DATE: January 16, 2000, unless a later date is cited at the end of a section. [or paragraph] [1/16/2000; 16.3.1.5 NMAC - Rn, 16 NMAC 3.1.5, 8/16/2001; A, 12/24/2021]

16.3.1.7 DEFINITIONS:
As used in these regulations:

A. “act” means the Athletic Trainers Practice Act, Sections 61-14D-1 through 61-14D-20, NMSA 1978;

B. “licensed physician” means a licensed physician who assumes responsibility for providing medical consultative support to the athletic trainer’s practice, whether on a regular or temporary basis; the term may include a school or team physician provided a written acknowledgement by the physician is made part of the school or team records;

~~**[C.] “approved internship program”** means a board approved college or university program of education and clinical supervision by an NATABOC or its successor organization’s certified athletic trainer;~~

~~**[D.] C. “licensing year”** means the period from September 1 of any year through August 31 of the following year;~~

~~**[E.] D. “NATA”** means the national athletic trainers association;~~

~~**[F.] E. “[NATA] BOC”** means the [national athletic trainers association] board of certification for the athletic trainer;~~

~~**[G.] E. “current CPR certification”** means completion within the preceding twelve months of a course in cardio pulmonary resuscitation approved by the American red cross or American heart association; the code of ethics~~

adopted shall be the current code of ethics of the national athletic trainers association or its successor organization;

~~**[H.] G. “athlete’s surgeon”** means the physician or surgeon who is rendering services for the athlete and who prescribes therapeutic treatment and care for the athlete’s post-surgical condition.~~

~~**H. “Disqualifying criminal conviction”** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978. [1/16/2000; 16.3.1.7 NMAC - Rn & A, 16 NMAC 3.1.7, 8/16/2001; A, 12/24/2021]~~

16.3.1.8 BOARD OPERATIONS

A. License display.
A valid license must be displayed and must be visible to the public in the primary place of employment or business of the athletic trainer. A licensee must practice athletic training under the name inscribed on the license.

B. Board elections.
At the first board meeting of each calendar year the board shall elect, by majority vote of the members present, a chairman and vice chairman. Officers will serve a one-year term of office. A vacancy, which occurs in any office, shall be filled, by a majority vote of the board members present, at the first board meeting following the vacancy.

C. Quorum. A quorum of the board is three members. A quorum is necessary to conduct official business.

D. Telephone or video conferences, or virtual means. If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through a telephone or video conference, or virtual means. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

E. Board meetings.
The board shall meet at least annually. Additional meetings shall be held as necessary to conduct the business of the board. Meetings may be convened at the call of the chair, or upon written request of three board members.

F. Member attendance at meetings. Board members are required to attend board meetings as scheduled by the board. Any member failing to attend three consecutive meetings shall be deemed to have resigned and shall be recommended to the governor for removal, unless the absences are excused by the board chair.

G. Excused absences.
Board members may be excused from attending meetings for any of the following reasons: illness, family emergency, military service, death in the immediate family, or for any other reason deemed appropriate by the board chair.

H. Open meeting resolution. The board shall review the Open Meetings Act and adopt an open meeting resolution at the first meeting in each calendar year.

I. Public records.
Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record as of the time of filing with the board.

J. Inspection of public records. The board operates in compliance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-16 NMSA 1978. The board administrator is the custodian of the board’s records. Individuals may make oral or written request to inspect the public records of the board. If the request is made in writing it must include the name, address and phone number of the individual seeking access. Requests for access to public records will be processed in a timely manner. If the inspection is not permitted within 3 business days, the custodian will notify the individual requesting access to the records in writing and explain when the records will be made available. The board may provide copies of public records

upon request and upon payment of a reasonable copying fee, except as may be ordered by a court of competent jurisdiction. No person shall remove original board documents from the board office. The board maintains files for all individuals. Information in an individual's file is a matter of public record except for the following:

- (1) letters of reference;
- (2) test scores;
- (3) medical reports and/or records of chemical dependency, physical or mental examinations or treatment.

K. Parental Responsibility Act Compliance: The Parental Responsibility Compliance Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, is incorporated in full into these rules. [1/16/2000; 16.3.1.8 NMAC - Rn, 16 NMAC 3.1.8, 8/16/200; A, 12/24/2021]

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

This is an amendment to 16.3.2 NMAC Section 8, effective date 12/24/2021.

16.3.2.8 SCOPE OF PRACTICE: The practice of athletic training includes preventive services, emergency care, clinical assessment, therapeutic intervention and rehabilitation of injuries and medical conditions of athletes. Athletic trainers act as allied medical providers through collaboration with licensed physicians, pursuant to the written prescription, standing order or protocol of a licensed physician. In the absence of specific direction in the act or these regulations as to standards of practice, the standards of practice established by the national athletic trainers association, the BOC and the New Mexico athletic trainers association shall serve as guidelines.

A. The current competencies in athletic training

issued by the NATA, the BOC or its successor organization are adopted as establishing the standard of practice and the authorized use of exercise and physical modalities by persons licensed under these regulations. Information for obtaining a copy of the competencies in athletic training may be obtained by calling or writing the board office.

B. The athletic trainer shall maintain the name and address of the licensed physician and standing orders or protocols which are currently established for the athletic trainer's practice. These records must be provided upon the request of the board or their designee.

C. The athletic trainer shall maintain records which shall include:

- (1) documentation in accordance with Subsection B or 16.3.2.8 NMAC;
- ~~(2) prescription for treatment of post-surgical conditions from the athlete's surgeon; and~~
- ~~(3) consent for athlete's participation and for services in the event of illness or injury.~~
- ~~(4)~~ (2) athlete's case records which shall be confidential and consistent with the NATA's or its successor organization's current code of ethics. [1/16/2000; 16.3.2.8 NMAC - Rn & A, 16 NMAC 3.2.8, 8/16/2001; A, 12/24/2021]

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

This an amendment to 16.3.4 NMAC Section 8 and added Section 9, effective 12/24/2021.

16.3.4.8 APPLICANTS FOR LICENSURE: As an athletic trainer must possess the following qualifications and provide the required documentation with the application.

A. Application for licensure shall be made on forms prescribed by the board.

(1) Completed application signed and dated [~~and notarized~~].

(2) Applications must be accompanied by the required fee, which shall be non-refundable.

(3) Education requirements: holds a baccalaureate degree.

(4) Current [~~NATA~~] BOC certification. [~~or show proof of three part exam registration through NATABOC~~].

(5) Current competence in cardiopulmonary resuscitation (CPR) and; use of automated electrical defibrillator units (AED).

B. Documentation required for licensure:

(1) completed application;

(2) one hundred twenty-five (\$125.00) application fee (non-refundable);

(4) proof of current [~~NATA~~] BOC certification;

(5) proof of current competence in CPR and; use of AED;

(6) demonstrates professional competence by satisfactorily passing the New Mexico jurisprudence examination; and

(7) demonstrates professional competency by satisfactorily passing the [~~NATA~~] BOC examination; and

~~(8) proof of disqualifying criminal convictions as provided in 16.3.4.9 NMAC, if applicable.~~

~~[C. — Applicants who are not NATA-certified shall apply to take the NATABOC or its successor organization's exam or other exams offered by the board as demonstration of professional competence. Successful completion of either exam is a requirement for licensure.]~~

~~(D) C.~~ Each applicant must, in addition to the other requirements, pass an examination on the New Mexico laws and regulations pertaining to the practice of athletic training before an initial

license may be issued (jurisprudence examination).
 [1/16/2000; 16.3.4.8 NMAC - Rn & A, 16 NMAC 3.4.8, 8/16/2001; A, 11/23/2006; A, 12/24/2021]

16.3.4.9 CRIMINAL CONVICTIONS:

A. Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or a licensee from retaining a license issued by the board:

(1) homicide or manslaughter;

(2) trafficking, or trafficking in controlled substances;

(3) kidnapping, false imprisonment, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect or financial exploitation;

(6) crimes involving child abuse, neglect or abandonment;

(7) crimes involving robbery, larceny, extortion, burglary, bribery, fraud, forgery, embezzlement, credit card fraud, commercial gambling or receiving stolen property;

(8) practicing medicine without a license;

(9) failure to comply with a proclamation of the governor;

(10) harboring or aiding a felon, tampering with evidence, or tampering with public documents;

(11) possession of a controlled substance, violations of the administrative provisions of the Controlled Substance Act, or engaging in other acts prohibited by the Controlled Substance Act;

(12) delivering drug paraphernalia to a person under

eighteen years of age and who is at least three years the person's junior;

(13) intentionally selling an imitation controlled substance to a person under the age of eighteen years;

(14) manufacturing, distributing or possessing with intent to distribute an imitation controlled substance;

(15) falsification of documents in connection with the Medicaid Fraud Act, failure to retain records in connection with the Medicaid Fraud Act, or obstruction of investigation in connection with the Medicaid Fraud Act;

(16) willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(17) willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(18) selling or giving alcoholic beverages to minors;

(19) giving false testimony or information as to any matter material to an examination by the superintendent of insurance; or

(20) an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure or licensure renewal unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this section.

C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this section.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such

conduct violated the Athletic Trainer Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this section.

E. In connection with an application for licensure or licensure renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this section.
 [16.3.4.9 NMAC – N, 12/24/2021]

REGULATION AND LICENSING DEPARTMENT ATHLETIC TRAINERS PRACTICE BOARD

This is an amendment to 16.3.6 NMAC to Section 8, effective 12/24/2021.

16.3.6.8 EXAMINATIONS:

A. The board will accept the following examinations as proof of professional competence:

(1) [the national athletic trainers association] the board of certification for athletic trainers examination; and

(2) New Mexico jurisprudence exam (seventy percent passing score).

B. Candidate who wishes to appeal failure on an examination must notify the board in writing within ten days of receipt of examination results.

C. An ADA covered applicant who requests special accommodation (particularly when the request involves assistance

in taking the examination) must make the request in writing; must support the request with a medical statement confirming the need for the accommodation and the board will either grant or deny the request. Requests must be submitted with the application. The board will consider each request on a case-by case basis.

D. Applicants who fail to obtain the minimum required passing score must submit a new application, including the application fee and all documentation. Applicant must pay the examination fee for each administration of examination. [1/16/2000; 16.3.6.8 NMAC - Rn & A, 16 NMAC 3.6.8, 8/16/2001; A, 11/23/2006; A,12/24/2021]

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

This is an amendment to 16.3.7 NMAC Sections 8, 9, and 10, Effective 12/24/2021.

16.3.7.8 ANNUAL RENEWAL OF LICENSES:

- A.** All licenses expire annually on August 31st.
- B.** Licensees shall be responsible for filing a current mailing address and name change with the board.
- C.** Each person licensed under the act shall renew his/her license annually on or before the expiration date by submitting a renewal application, the renewal fee, proof of current CPR certification, AED certification and proof of current [NATA] BOC certification.
- D.** Failure to submit the required documents and fees by August 31st shall cause the license to lapse and the license holder must refrain from practicing.
- E.** The licensee may renew within a 30 day grace period, by submitting payment of the renewal fee of \$165.00, late fee of \$75.00 and compliance with all renewal requirements. Failure to renew a license within the thirty-day grace

period shall cause the license to automatically expire.

F. A license that has not renewed within the 30 days of expiration is automatically expired and the applicant must reapply as a new applicant. [1/16/2000; 16.3.7.8 NMAC - Rn, 16 NMAC 3.7.8, 8/16/2001; A, 11/23/2006; A, 12/24/2021]

16.3.7.9 CONTINUING EDUCATION REQUIREMENTS:

- ~~**A.** Each licensee shall be required to [earn 75 continuing education units (contact hours), during each three year reporting period. The reporting period will correspond to the NATA or its successor organization's reporting period of every three years. Subsequent reporting periods will be for a period of three years and reporting 75 continuing education units.] maintain good standing with BOC CEU requirements.~~
- ~~**B.** CEU's may be earned by completing CPR/AED certification, completing continuing education courses approved by the NATA-BOC or its successor organization, or by completing course work taken at an accredited college or university which falls within one of the performance domains identified in the current NATA'S-BOC (or its successor organization) role delineation study. 10 CEU's are awarded for each credit hour earned in an applicable course taken at any accredited college or university.~~
- ~~**C.** Each licensee shall report CEU's earned during a reporting period at the next license renewal period. Reporting of CEU's may be by either submitting a copy of the status card which indicates that certified athletic trainer in good status with the NATA or its successor organization, by a letter from the NATA or its successor organization indicating completion of CEU's, or by submitting the actual documentation of completion of CEU courses.]~~ [16.3.7.9 NMAC - N, 8/16/2001; A, 11/23/2006; A, 12/24/2021]

16.3.7.10 INACTIVE STATUS:

- A.** A licensed person may request inactive status by notifying the board in writing before the expiration of current license.
- ~~**B.** An inactive status license may be restored, upon receiving the request for reinstatement; board staff shall send a reinstatement renewal notice.~~
- ~~**C.** Along with the completed reinstatement renewal application, must include renewal fee, reinstatement fee, proof of completing a current CPR/AED unit certification.]~~
- B.** A licensed person whose license has been placed on inactive status may not provide the services authorized by an active license.
- C.** A licensed person who practices with an inactive license is subject to disciplinary action by the board.
- D.** The inactive status period shall last two years from the date the license was placed on inactive status.
- F.** An inactive status license may be reactivated upon the board receiving the request for reactivation; board staff shall send a reactivation of license notice.
- G.** Along with the complete reactivation application, the licensee must include renewal fee, reactivation fee, and proof of current BOC Certification.
- H.** The activation application and required enclosures must be postmarked or hand-delivered to the board office no later than two years from the December 30 of the year in which the license or registration was placed on inactive status. Failure to do so will cause the license to expire, lapse, and become null and void. Reactivation applications received with a postmark date or hand-delivered after December 30 will be returned to the expired licensee because the license may no longer be activated. [16.3.7.10 NMAC - N, 11/23/2006, A; 12/24/2021]

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

This is an amendment to 16.3.10 NMAC, Section 8, effective 12/24/2021.

16.3.10.8 APPLICATION FOR EMERGENCY LICENSURE AS AN ATHLETIC TRAINER:

A. An applicant affected in a federal disaster currently licensed as an athletic trainer in another jurisdiction and is in good standing and otherwise meets the requirements for New Mexico licensure may be licensed in New Mexico during the four months following the declared federal disaster at no cost upon satisfying the following requirements:

- (1) a completed application, signed, dated [and notarized]
- (2) proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;
- (3) sworn affidavit statement that because of circumstance arising out of a declared area the applicant is unable to obtain proof documentation otherwise required by rules by the board;
- (4) refer to 16.3.4 NMAC, athletic trainers, initial licensing requirements;
- (5) verification of current licensure or certification (no access to national data base, board staff will verify).

B. The board may waive submission of the specific forms only if the applicant is unable to obtain the required document from an affected federally declared disaster area:

- (1) verification [NATA] BOC certification;
- (2) official university transcripts;
- (3) proof of CPR/AED certification;
- (4) New Mexico laws and regulation

examination (jurisprudence examination).

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.3.4 NMAC, 16.3.5 NMAC, and 16.3.6 NMAC.

D. Emergency licensure shall expire on August 31, unless renewed by the board. Application for renewal shall consist of the following:

- (1) completed application, signed by the applicant, [and notarized];
- (2) a 2 inch by 2 inch photograph of the applicant;
- (3) an application fee of \$125.00 as provided in 16.3.8 NMAC;
- (4) other documentation required in 16.3.4 NMAC through 16.3.9 NMAC;
- (5) official transcripts in a sealed envelope;
- (6) proof of current [NATA] BOC certification;
- (7) proof of current cardiopulmonary resuscitation (CPR); and automated electrical defibrillator unit (AED);

(8) demonstrates professional competence by satisfactorily passing the New Mexico jurisprudence examination. [16.3.10.8 NMAC - N, 11/23/2006; A, 12/24/2021]

**REGULATION AND LICENSING DEPARTMENT
ATHLETIC TRAINERS
PRACTICE BOARD**

This is an amendment to 16.3.11 NMAC, Sections 6, 7, 8, and 9, effective 12/24/2021.

16.3.11.6 OBJECTIVE:

The purpose of this part is to expedite licensure for military service members, their spouses, their dependent children and for veterans pursuant to Section 61-1-34 NMSA 1978.

[16.3.11.6 NMAC - N, 7/23/2015; A, 12/24/2021]

16.3.11.7 DEFINITIONS:

A. [~~“Military service member”~~] means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard. “License” has the same meaning as defined in Paragraph (1) of Subsection F of Section 61-1-34 NMSA 1978.

B. [~~“Recent veteran”~~] means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section. “Licensing Fee” has the same meaning as defined in Paragraph (2) of Subsection F of Section 61-1-34 NMSA 1978.

C. “Military service member” has the same meaning as defined in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

D. “Substantially equivalent” means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Athletic Trainers Practice Act.

E. “Veteran” has the same meaning as defined in Paragraph (4) of Subsection F of Section 61-1-34 NMSA 1978.

[16.3.11.7 NMAC - N, 7/23/2015; A, 12/24/2021]

16.3.11.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the [board.] athletic trainers practice board.

B. The applicant shall provide a completed application that includes the following information:

- (1) ~~[a completed application and corresponding fee pursuant to 16.3.11.8 NMAC;]~~ Applicant’s full name;

(2) [satisfactory evidence that the applicant is currently licensed in another jurisdiction, including a branch of the United States armed forces, and holds a current license in good standing; the applicant further must provide satisfactory evidence that the applicant has met the minimal licensing requirements in that jurisdiction and that they are substantially equivalent to the licensing requirements for New Mexico licensees in counseling; and current mailing address;

(3) [proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status;] current electronic mail address, if any;

(4) date of birth;

(5) current CPR/AED certification;

(6) Current BOC certification;

(7) proof as described in Subsection C below.

C. [Electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through 14-16-19 NMSA 1978:] The applicant shall provide the following satisfactory evidence as follows:

(1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;

(2) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(3) the following documentation:

(a) for military service member: copy of military orders;

(b) for spouse of military service members: copy of military service member's military order, and copy if marriage license;

(c) for spouse of deceased military service members: copy of decedent's DD214 and copy of marriage license;

(d) for dependent children of military service members: copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: copy of birth certificate, military service member federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): copy of DD214 showing proof of honorable discharge.

D. The license or registration shall be issued by the board/commissions as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for license, and any required fees.

E. Military service members and veterans shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this section shall be valid for the time period that is specified in the Athletic Trainer Practice Act. [16.3.11.8 NMAC - N, 7/23/2015; A, 12/24/2021]

16.3.11.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance of a license set forth in [16.3.4 NMAC and for the renewal of a license set forth in 16.3.7 NMAC.] 16.3.7 NMAC pursuant to Chapter 61, Article 14D NMSA 1978.

B. [A license issued pursuant to this section shall be valid for one year or until the next renewal cycle.] As a courtesy, the board/commission, will send via

electronic mail license renewal notification to licensees or registrants before the license expiration date to the last known email address on file with the Athletic Trainers Practice Board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

[C. — The board office mails license renewal notifications to licensees before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.]

[D.] C. The renewal application will be available online at the board's website and in paper copy if requested from the board office and must be received at the board office on or before August 31.

[E.] D. To renew a license, the licensee must submit the following documentation on or before August 31: a completed license renewal application, proof of current cardio pulmonary resuscitation (CPR) certification, automated electronic defibrillator units (AED) certification, proof of current [national athletic trainers association] board of certification [(NATA) BOC] certification and the applicable renewal fee at the time of renewal.

[F. — A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance specified in 16.3.4 NMAC and for the renewal of a license specified in 16.3.7 NMAC pursuant to Chapter 61, Articles 2 through 30 NMSA 1978.]

[16.3.11.9 NMAC - N, 7/23/2015; A, 12/24/2021]

HISTORY OF 16.3.11 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 6 HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES**

16.8.6.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.6.1 NMAC – N/E, 12/02/2021]

16.8.6.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.6.2 NMAC - N/E, 12/02/2021]

16.8.6.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.6.3 NMAC - N/E, 12/02/2021]

16.8.6.4 DURATION: Permanent.
[16.8.6.4 NMAC - N/E, 12/02/2021]

16.8.6.5 EFFECTIVE DATE: 12/02/2021, unless a later date is cited at the end of a section.
[16.8.6.5 NMAC - N/E, 12/02/2021]

16.8.6.6 OBJECTIVE: The objective of Part 6 is to set forth standards related to health and safety, food and product safety, environmental impacts, and natural resources to ensure public health, safety, and well-being. Part 6 is not applicable to personal use of cannabis pursuant to the Cannabis

Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.6.6 NMAC - N/E, 12/02/2021]

16.8.6.7 PREREQUISITE AND RESPONSIBILITY FOR OPERATION:

A. Prior to the submission of a license application for a class II, III, or IV cannabis manufacture license, each applicant or licensee engaged in the manufacturing of edible or topical cannabis products or edible or topical cannabis finished products shall provide to NMED a certification that:

(1) the facility where the cannabis manufacturer operates, and the manufacturing equipment used will be constructed and maintained in accordance with the requirements of this part; and

(2) edible and topical cannabis products and edible and topical finished products will be stored, manufactured, packaged, repackaged, labeled, relabeled, tested, reworked, or wasted in accordance with the requirements of this part.

B. A certification shall include information specified in Subparagraphs (a) through (i) of Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

C. Any person signing a certification pursuant to this section shall include the following signed statement: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information.”

D. NMED shall provide confirmation of receipt

to each applicant or licensee that provides a certification.

E. Each applicant or licensee shall provide the NMED confirmation to RLD as specified in Paragraph (1) of Subsection A of 16.8.2.30 NMAC.
[16.8.6.7 NMAC - N/E, 12/02/2021]

16.8.6.8 OPERATIONAL PLANS:

(1) A licensee shall prepare a written operational plan containing the following information, as applicable, for each edible or topical cannabis product or edible or topical cannabis finished product to be manufactured, labeled, relabeled, packaged, or repackaged:

(a) planned source of cannabis products and ingredients;

(b) names of the ingredient(s);

(c) the final product pH;

(d) the final product water activity (Aw);

(e) names of preservative(s);

(f) the type of packaging to be used that complies with all requirements of section 16.8.3.13 of this part and whether the packaging is integral to product stability;

(g) the intended distribution of the product;

(h) if the product is to be distributed at ambient, refrigerated or frozen temperature;

(i) the expected shelf life during distribution, retail storage, and in the hands of the end user;

(j) how the product should be prepared for consumption;

(k) what mishandling of the product might occur in the merchandising channels or in the hands of the end user;

(l) the proposed recall plan, meeting the requirements of 16.8.2.11 NMAC;

- (m) the complete operational procedure for product formulation, including:
 including method of infusion;
 (i) a written, detailed description of the intended manufacturing process,
 (ii) a flow chart illustrating the manufacturing process; and
 (iii) identification of critical control points.
 (n) written good manufacturing practices (GMPs);
 (o) other policies and procedures related to the safe and sanitary operation of the
 cannabis manufacturer;
 (p) proposed product labels that comply with all requirements of section 16.8.3.14 of
 this part;
 (q) proposed record keeping and chain of custody systems;
 (r) a description of the batch/lot ID coding system;
 (s) proposed pest control plan; and
 (t) procedures for remedial measures to bring cannabis products into compliance with
 division standards; destruction, wastage, or disposal of a tested batch of cannabis products if the testing samples from the
 tested batch indicate noncompliance with applicable health and safety standards; and destruction, wastage, and disposal
 of recalled cannabis products.
- (2) Prior to adding new edible or topical cannabis products or edible or topical cannabis finished
 products, or changing the stated process for any existing product in the product line, a licensee shall:
 (a) for a new product, prepare a written operational plan as specified in Section 9 of this
 part; and
 (b) for an existing product for which a change will be made in the manufacturing
 process, update the existing operational plan.
- (3) A licensee shall have an edible cannabis finished product operational procedure approved by a
 process authority to verify all critical factors of public health significance are addressed when the product is determined
 to require a product assessment as determined by table A or table B as follows:

Table A. Interaction of pH and A_w for control of spores in FOOD heat-treated to destroy vegetative cells and subsequently packaged

A_w values	pH: 4.6 or less	pH: > 4.6 - 5.6	pH: > 5.6
<0.92	non-TCS food*	non-TCS food	non-TCS food
> 0.92 - 0.95	non-TCS food	non-TCS food	PA**
> 0.95	non-TCS food	PA	PA

* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY FOOD

** PA means Product Assessment required

Table B. Interaction of pH and A_w for control of vegetative cells and spores in FOOD not heat-treated or heat-treated but not PACKAGED

A_w values	pH: < 4.2	pH: 4.2 - 4.6	pH: > 4.6 - 5.0	pH: > 5.0
< 0.88	non-TCS food*	Non-TCS food	non-TCS food	non-TCS food
0.88 – 0.90	non-TCS food	non-TCS food	non-TCS food	PA**
> 0.90 – 0.92	non-TCS food	non-TCS food	PA	PA
> 0.92	non-TCS food	PA	PA	PA

* TCS FOOD means TIME/TEMPERATURE CONTROL FOR SAFETY FOOD

** PA means Product Assessment required

- (4) The licensee shall maintain current operational plans on the licensed premises during all hours
 of operation and shall, upon request, make them available for review by the division.

16.8.6.9 MANAGEMENT AND PERSONNEL:

A. Adoption of food code parts 2-1, 2-3 and 2-4 and section 2-103.11. Except as otherwise provided, parts 2-1, 2-3 and 2-4 and section 2-103.11 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

B. A licensee shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the edible cannabis manufacturing facility. The procedures shall be maintained onsite and address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

C. Except as otherwise provided, the licensee shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the cannabis manufacturer facility during all hours of operation.

D. If edible or topical cannabis products or edible or topical cannabis finished products are manufactured as part of a vertically integrated cannabis establishment or integrated cannabis microbusiness that is the legal responsibility of the same licensee and that are located on the same licensed premises, the licensee may designate a single person in charge who is present on the licensed premises during all hours of operation.

E. The person in charge shall have the education, training, or experience necessary to supervise the production of clean and safe edible or topical cannabis products or edible or topical cannabis finished products and ensure the cannabis manufacturer remains in compliance with this part, division rules, and the act at all times.

F. Personal care items on the premises shall be stored in a manner to protect edible and topical cannabis products, edible and topical

cannabis finished products, other ingredients, equipment, and utensils from contamination at all times.

G. A licensee shall:
(a)

immediately contact the division to report an illness of an employee or conditional employee as specified under Subsection A of this section;

(b) immediately discontinue operations and notify the division if an imminent health hazard may exist as specified in 16.8.3.17 NMAC;
[16.8.6.9 NMAC - N/E, 12/02/2021]

16.8.6.10 EDIBLE AND TOPICAL CANNABIS MANUFACTURER REQUIREMENTS:

A. Adoption of 21 CFR 117. Except as otherwise provided, Subpart F and the sections, specified in paragraphs 1-7 of this subsection, of Subparts A and B of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety:

- (1)** 117.3 Definitions;
- (2)** 117.20 Plant and grounds;
- (3)** 117.35 Sanitary operations;
- (4)** 117.37 Sanitary facilities and controls;
- (5)** 117.40 Equipment and utensils;
- (6)** 117.80 Processes and controls; and
- (7)** 117.110 Defect action levels and Subpart F.

B. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

- (1)** 117.301: All records required by this part are subject to all requirements of this subpart;
- (2)** 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite

if they are accessible from an onsite location; and
(3) 117.320:

All records required by this part must be made promptly available to the division for official review and copying upon oral or written request.

C. Omissions. Except as otherwise provided, the following omissions are made to the incorporated subparts of 21 CFR 117:

- (1)** 117.310;
- (2)** 117.315(d);
- (3)** 117.325;
- (4)** 117.335;

and
(5) The following terms are omitted from section 117.3 Definitions:

- (a)** Allergen;
- (b)** Food;
- (c)** Food-contact surfaces;
- (d)** Lot;
- (e)** Manufacturing/processing; and
- (f)** Packing.

D. Adoption of food code parts 4-5, 4-6 and 4-7. Except as otherwise provided, parts 4-5, 4-6, and 4-7 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

E. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of the 2017 United States food and drug administration model food code:

- (1)** 4-603.12 Precleaning.
(a) Food or cannabis product debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(b) If necessary, for effective cleaning, utensils and equipment shall be pre-flushed, presoaked, or scrubbed with

abrasives. Ethyl alcohol (ethanol) or isopropyl alcohol (isopropanol) are acceptable for pre-flushing or presoaking.

F. Omissions.

Except as otherwise provided, the following omissions are made to the incorporated subparts of the 2017 United States food and drug administration model food code:

- (1) 4-502.12;
- (2) 4-502.13(B);
- (3) 4-502.14;
- (4) 4-602.11(A)(1);
- (5) 4-602.11(B);
- (6) 4-602.11(D)(3); and
- (7) 4-602.11(E)(2)-(3).

G. Cannabis Product Ingredient Source.

(1) Ingredients shall be received from sources as specified in 7.6.2 NMAC.

(2) Cannabis products, ingredients, and edible or topical cannabis finished products intended for human consumption shall be transported under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of the cannabis products, ingredients, and cannabis finished products, as well as against deterioration of the cannabis products, ingredients, and cannabis finished products and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

H. The current 21 CFR 111 and United States federal food, drug, and cosmetic act, title 21, chapter 9 and 7.6.2 NMAC are hereby adopted as a technical reference and interpretation guide.
[16.8.6.10 NMAC – N/E, 12/02/2021]

16.8.6.11 WATER SUPPLY:

A. Drinking water shall be obtained from an approved source that is:

- (1) a public water system; or

(2) a non-public water system that is constructed, maintained, and operated according to law.

B. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

C. Except as specified under Subsection D of this section:

(1) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and

(2) Water from a non-public water system shall meet:

(a) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and

(b) the drinking water source setback requirements as specified in 20.7.3 NMAC.

D. A non-drinking water supply shall be used only if its use is approved and shall be used only for nonculinary purposes such as air conditioning, non-cannabis equipment cooling, and fire protection.

E. Except when used as specified in Subsection D of this section, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

F. The most recent sample report for the non-public water system shall be retained on file in the cannabis manufacturer facility or the report shall be maintained as specified by state water quality regulations.

G. Water shall be received from the source through the use of:

- (1) an approved public water main; or
- (2) one or more of the following that shall be constructed, maintained, and operated according to law:

(a) Non-public water main, water pumps, pipes, hoses, connections, and other appurtenances;

(b) Water transport vehicles; or

(c) Water containers.
[16.8.6.11 NMAC - N/E, 12/02/2021]

16.8.6.12 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING:

A. Edible and topical cannabis finished products shall meet the requirements specified in division rules related to testing prior to being transported or transferred from the licensed premises, distributed, sold or otherwise made available to consumers.

B. Edible and topical cannabis finished products that do not meet the requirements of Subsection A of this section shall:

- (1) be segregated;
- (2) reworked, remediated or reconditioned as specified in division rules related to testing; or
- (3) destroyed, wasted, and disposed of in accordance with the wastage requirements of the division.

[16.8.6.12 NMAC – N/E, 12/02/2021]

16.8.6.13 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING LABORATORIES:

Testing required by the division shall be conducted by a division-approved cannabis testing laboratory that has no direct ownership or financial interest in the facility for which the testing is being conducted.

[16.8.6.13 NMAC - N/E, 12/02/2021]

16.8.6.14 CEASING OPERATIONS AND REPORTING:

A. Except as specified in Subsections B and C of this section, a licensee shall immediately discontinue operations if an imminent health hazard may exist because of an emergency such as a fire, flood,

extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne or cannabis-borne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, employees, or the environment.

B. A licensee need not discontinue operations in an area of a cannabis manufacturer facility that is unaffected by the imminent health hazard.

C. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the division may allow the licensee to continue operations in the event of an extended interruption of electrical or water service if:

(1) a written emergency operating plan has been approved by the division;

(2) immediate corrective action is taken by the licensee to eliminate, prevent, or control any food safety risk and imminent health hazard associated with the electrical or water service interruption; and

(3) the division is informed upon implementation of the written emergency operating plan.

D. If operations are discontinued as specified in Subsection A of this section or otherwise according to law, the licensee shall obtain approval from the division before resuming operations.

[16.8.6.14 NMAC - N/E, 12/02/2021]

16.8.6.15 SEVERABILITY:

If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.6.16 NMAC – N/E, 12/02/2021]

**History of 16.8.6 NMAC:
[RESERVED]**

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.1 NMAC amending Section 7, effective 12/02/2021.

16.8.1.7 DEFINITIONS:

Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

A. Definitions beginning with “A”:

(1) “Act” means the Cannabis Regulation Act, Sections 26-2C-1 to 42, NMSA 1978.

[(+)] (2) “Advisory committee” means the cannabis regulatory advisory committee.

(3) “Adulterated” has the meaning stated in the New Mexico Food Act, Section 25-2-10, NMSA 1978.

(4) “Allergen” (“Major Food Allergen”) means:

(a) milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(b) a food ingredient that contains protein derived from a food, as specified in Paragraph (1) of this Subsection.

(c) “Major food allergen” does not include:

(i) any highly refined oil derived from a food specified in paragraph 1 of this Subsection and any ingredient derived from such highly refined oil; or

(ii) any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

[(-)] (5) “Applicant” means any person who is seeking to become

licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

(6) “Approved” means acceptable to the division based on the division’s determination of conformity with principles, practices, industry standards, and generally recognized standards that protect public health and compliance with the requirements of this part and the act.

B. Definitions beginning with “B”: “Batch” means, with regard to cannabis, an identified quantity of cannabis no greater than 15 pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which the same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

C. Definitions beginning with “C”:
(1) “Cannabis finished product” means a cannabis product that is packaged and labeled for retail sale.

[(+)] (2) “Cannabis Regulation Act” means the Cannabis Regulation Act, as enacted in Chapter 4, Sections 1 through 42 of New Mexico Laws of 2021, and as may be amended thereafter.

[(-)] (3) “Cannabis Waste” means all parts of the plant genus Cannabis which may or may not contain a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination which has been designated as no longer usable cannabis.

(4)

“Certificate of analysis” means an official certificate issued by a cannabis testing laboratory signed by an authorized official of the cannabis testing laboratory that guarantees the results of the laboratory’s testing of a sample.

(3) (5)

“Concentrated cannabis product (“concentrate”) means a cannabis product that is manufactured by a division approved mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains or that is intended to contain at the time of sale or distribution, no less than thirty-percent THC by weight.

(6)

“Conditional employee” means a potential edible/topical cannabis manufacturing facility employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential employees who may be suffering from a disease that may be transmitted through edible or topical cannabis products or edible or topical cannabis finished products and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

D. Definitions

beginning with “D”:

(1) **“Division”**

means the cannabis control division.

(2)

“Diversion” means the unlawful transfer of a cannabis plant, plant material, or cannabis product.

(3) **“Dried cannabis”**

means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

(4)

“Drinking water” means water that meets criteria as specified in 20.7.10 NMAC. Drinking water is traditionally known as “potable water” and includes the term “water” except where the term used connotes that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “wastewater,” and “non-drinking” water.

E. Definitions

beginning with “E”:

[RESERVED]

(1) **“Edible cannabis finished product”**

means a cannabis product that is packaged and labeled for retail sale and is intended for human ingestion.

(2)

“Employee” means the licensee, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in an edible/topical cannabis manufacturing facility.

F. Definitions

beginning with “F”:

[RESERVED]

(1) **“Food”**

“ingredient” means an edible substance used or intended for use in whole or in part in the formulation of an edible cannabis finished product, and is not cannabis or cannabis product.

(2) **“Food-**

contact surface” means:

(a)

A surface of equipment or a utensil with which food or edible cannabis products normally comes into contact;

or

(b)

A surface of equipment or a utensil from which food or edible cannabis products may drain, drip, or splash;

(i)

Into a food or edible cannabis products, or

(ii)

Onto a surface normally in contact with food or edible cannabis products.

(3) **“Food**

employee” means an individual

working with:

(a)

unpackaged edible or topical cannabis products;

(b)

unpackaged ingredients; or

(c)

equipment, utensils, or surfaces that contact unpackaged cannabis products and ingredients used to manufacture edible or topical cannabis products, or edible or topical cannabis finished products.

G. Definitions

beginning with “G”:

[RESERVED] **“Good**

manufacturing practices” (GMPs) means the minimum sanitary and processing requirements related to the production methods, equipment, facilities, and other controls that a cannabis processing facility must meet to assure that cannabis products and cannabis finished products are safe and wholesome.

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”: [RESERVED]

(1)

“Imminent health hazard” means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

(a)

the number of potential injuries; and

(b)

the nature, severity, and duration of the anticipated injury.

(2)

“Ingredient” means:

(a)

food;

(b)

additives;

(c)

non-food ingredients used in topical cannabis products; and

(d)

“ingredient” does not include cannabis or cannabis product.

J. Definitions

beginning with “J”: [RESERVED]

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

L. Definitions
beginning with “L”:

(1) “Label”
 (“Labeling”) means any display of written, printed, or graphic matter printed on or affixed to any container and includes product inserts and other promotional materials including digital communications.

(2) “Law”
 means applicable local, state, and federal statutes, regulations, and ordinances.

(3) “Licensee”
 means any person who holds a license issued by the Division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

(4) “Limited-access area”
 means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device.

(5) “Lot”
 means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

(6) “Lynn and Erin Compassionate Use Act”
 means the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

M. Definitions
beginning with “M”:

(1) “Minor”
 means an individual who is less than 18 years of age.

(2) “Misbranded”
 has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA 1978.

N. Definitions
beginning with “N”:
~~[(RESERVED)]~~ **“NMED”** means the New Mexico environment department.

O. Definitions
beginning with “O”:
~~[(RESERVED)]~~ **“Operational plan”**
 means a written plan outlining the product formulation, production steps, safety requirements, distribution, labeling, and recall procedures that will be implemented by a cannabis manufacturer when processing edible or topical cannabis products or edible or topical cannabis finished products.

P. Definitions
beginning with “P”:
~~(1) —~~
“Pesticide” means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978.

~~(2) —~~ **“Plant”**
 means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.

~~(3) —~~ **“Policy”**
 means a written statement of principles that guides and determines present and future decisions and actions of the licensed person.

~~(4) —~~ **“POS”**
 means point of sale system.

~~(5) —~~ **“Person”**
 means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

~~(6) —~~ **“Produce”**
 means to engage in any activity related to the planting or cultivation of cannabis.]

(1) “Packaged” (“Packaging”)
 means the act of placing edible or topical product or edible or topical finished product into a container.

(2) “Person”
 means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

(3) “Person in charge”
 means the individual present at a cannabis manufacturing facility

who is responsible for the operation at the time of inspection.

(4) “Personal care items”
 means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person’s health, hygiene, or appearance, and includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

(5) “Pesticide”
 means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978.

(6) “pH”
 means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

(7) “Plant”
 means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.

(8) “Poisonous or toxic materials”
 means substances that are not intended for ingestion and are included in four categories:

(a)
 Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b)
 Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(c)
 Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(d)
 Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(9) “Policy”
 means a written statement of principles that guides and determines

present and future decisions and actions of the licensed person.

(10) "POS"
means point of sale system.

(11) "Process authority" means an approved expert in the processes for controlling pathogenic microorganisms in food and/or cannabis products, and as such, is qualified by education, training and experience to evaluate all of the aspects of pathogen control measures and determine if such control measures, when properly implemented, will control pathogens effectively.

(12) "Produce"
means to engage in any activity related to the planting or cultivation of cannabis.

(13) "Public water system" has the meaning stated in 20.7.10 NMAC.

Q. Definitions
beginning with "Q": [RESERVED]

R. Definitions
beginning with "R"

(1) "Recall"
means [to request the return of a product after the discovery of a safety issue or product defect] a return of cannabis products, including edible or topical cannabis products and edible or topical cannabis finished products that are either known or suspected to be adulterated, misbranded, defective, or otherwise unsafe for human consumption, to the cannabis manufacturer, or that are destroyed, wasted, and disposed of in accordance with division rules related to wastage.

(2) "Rework"
means clean, unadulterated food or edible or topical cannabis product or edible or topical finished product that has been removed from processing for reasons other than insanitary conditions or that has been successfully reconditioned by reprocessing and that is suitable for use as food or edible or topical cannabis finished product.

(2) (3) "RLD"
means the regulation and licensing department.

S. Definitions
beginning with "S":

(1) "Security alarm system" means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

(2) "Segregate" means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis products in order to first determine its suitability for use through testing by an approved laboratory.

(3) "Sewage"
means liquid waste containing organic matter in suspension or solution and may include liquids containing chemicals in solution.

(4) "Smooth"
means:

(a) A
food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;

(b) a
nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(c) a
floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

T. Definitions
beginning with "T":

(1) "THC"
means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

(2) "Testing"
means testing of cannabis and cannabis products using analytical analysis consistent with division rules.

(3) "Time/temperature control for safety food" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(4) "Topical cannabis finished product" means a cannabis product that is packaged and labeled for retail sale and is intended to be applied externally to the skin and not intended to be ingested or inhaled.

(5) "Total THC" means the sum of the percentage by weight of THCA multiplied by 0.877 plus the percentage by weight of THC i.e.,
Total THC = (%THCA x 0.877) + % THC.

(3) (6) "Track and trace system" means the electronic system designated by the division to track and trace the production, transportation, sale, and wastage of cannabis and cannabis products.

U. Definitions
beginning with "U": [RESERVED]

V. Definitions
beginning with "V":
"Vault"
means a limited access storage room that is within a licensed cannabis establishment and is outfitted with adequate security features for the purposes of storing cannabis, cannabis products, or cash.

W. Definitions
beginning with "W":

(1) "Waste" or "wastage" means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

(2) "Water activity" (A_w) means the measure of the free moisture in an edible cannabis finished product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

X. Definitions
beginning with "X": [RESERVED]

Y. Definitions
beginning with "Y": [RESERVED]

Z. Definitions
beginning with "Z": [RESERVED]
[16.8.1.7 NMAC - N 08/22/2021, A/E 12/02/2021]

REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

This is an emergency amendment to 16.8.2 NMAC, amending Sections 27 and 30, effective 12/2/2021.

16.8.2.27 MINIMUM REQUIREMENTS FOR THE PRODUCTION OF CANNABIS:

A. General requirements: Licensees shall ensure the following:

(1) all production activities are done on premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Acts;

(2) the licensee’s right to use the quantity of water sufficient to meet the production facility’s needs remains in good standing;

(3) plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility, including sufficient quantities of water to properly convey sewage and liquid disposable waste from the facility; and

(4) all weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture.

B. Cultivation plan: Licensees shall create and maintain a cultivation plan, which shall include all of the following:

(1) a detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet.

(2) square foot measurement of mature cannabis plant cultivation area(s), including aggregate square footage if the mature cannabis plant cultivation areas are noncontiguous;

(3) area(s) outside of the mature cannabis plant cultivation areas where only immature plants shall be maintained, if applicable;

(4) designated pesticide and other agricultural chemical storage area(s);

(5) designated processing area(s) if the licensee will process on site;

(6) designated packaging area(s) if the licensee will package products on site;

(7) designated composting area(s) if the licensee will compost plant or cannabis waste on site;

(8) designated secured area(s) for cannabis waste if different than composting area(s);

(9) designated area(s) for harvested cannabis storage;

(10) designated seed production area(s) which may contain mature plants for nursery purposes only.

C. Lighting: For indoor and mixed-light cultivation, a licensee shall create and maintain a lighting diagram, which shall include the following:

(1) location of all lights in the cannabis plant cultivation area(s); and

(2) maximum wattage, or wattage equivalent, of each light.

D. Pest management: Licensees shall create and maintain a pest management plan, which shall include product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth. Licensees are encouraged to create and implement integrated pest management protocols, including chemical, biological, and cultural methods to control or prevent the introduction of pests on the cultivation site.

E. Cannabis waste: Licensees shall create and maintain cannabis waste procedures meeting the requirements set forth in 16.8.2.22 NMAC.

F. Safety and health requirements: Licensees shall ensure the following:

(1) all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis and meet sanitation and safety standards required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and any other state or federal laws;

(2) production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(3) any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

(4) hand-washing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

(5) all persons involved in preparing or handling cannabis conform to hygienic practices while on duty, including:

(a) maintaining adequate personal cleanliness;

(b) wearing gloves while handling processed cannabis or unpackaged but processed cannabis products;

(c) possessing a valid food handler card issued by an ANSI/ASTM e2659-09 accredited Food Handler Training Certificate Program approved by the New Mexico environment department if handling processed cannabis or

unpackaged but processed cannabis products; and

(d) washing hands thoroughly in an adequate hand-washing facility before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves, if the person is handling processed cannabis or unpackaged but processed cannabis products;

(6) operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;

(7) water damage is properly and timely treated to protect health and safety of employees and the public, and that fiberglass and other insulation material is not exposed;

(8) adequate safety-type lighting in all areas where cannabis is produced or stored, if applicable, and where equipment is cleaned;

(9) rubbish is disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;

(10) premises, fixtures, and physical facilities where cannabis or cannabis products are produced are maintained to ensure the health and safety of employee and the public;

(11) contact surfaces, including utensils and equipment used for preparation of cannabis or cannabis products, are cleaned and sanitized as frequently as necessary to protect against contamination;

(12) only environmental protection agency (EPA) registered sanitizing agents are used in production operations and that they are used in accordance with labeled instructions;

(13) toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored

in a manner that protects against contamination of cannabis or cannabis products and that otherwise satisfies the requirements of this rule;

(14) storage and transportation of cannabis and cannabis products is accomplished under conditions that will maintain security and protect the cannabis or cannabis products against physical, chemical, and microbial contamination, as well as against deterioration of the cannabis or cannabis products and the container; and

(15) that there is sufficient space for placement of equipment and storage of material as is necessary for the maintenance of sanitary operations for production of cannabis.

[16.8.2.27 NMAC - N, 08/24/2021; A/E, 12/2/2021]

16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:

A. An initial application or renewal for cannabis manufacturer licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

(a) applicant’s full legal name;

(b) applicant’s mailing address;

(c) applicant’s contact telephone number;

(d) applicant’s contact email address;

(e) applicant’s business physical address and mailing address, if different;

(f) applicant’s business legal name, including a DBA name if applicable;

(g) applicant’s business web address, if applicable;

(h) applicant’s business hours of operation;

(i) name and contact information for each controlling person;

(j) demographic data pursuant to the Cannabis Regulation Act; and

(k) license type sought (Class I, Class II, Class III, or Class IV);

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) legible and accurate diagram containing information required by Subsection 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(4) fully executed and dated documentation of the applicant’s ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider’s rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(6) a copy of a current business license, fire inspection report, and zoning approval;

(7) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(8) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(9) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(10) a list of the types of products that will be manufactured, packaged, or labeled;

(11) a complete written description of good manufacturing practices (GMPs).

(12) a complete written description of the means that the manufacturer shall employ to safely manufacture cannabis products, including hygiene standards consistent with the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to manufacturing;

(13) A detailed description of the licensee's proposed plan for obtaining cannabis from

a licensed cannabis producer or cannabis microproducer.

(14) legible electronic images of the labeling and packaging of the cannabis or cannabis products that the manufacturer shall utilize, which satisfies the labeling and packaging requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;

(15) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;

(16) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;

(17) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(18) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(19) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(20) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(21) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment,

including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(22) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(23) certification the applicant is not licensed under the Liquor Control Act.

(24) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(25) an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer;

(26) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation

of these rules may result in denial of the license application or revocation of a license issued; and

(27) for a class IV license, a signed attestation from a licensed engineer stating the chemical extraction equipment is a closed loop system, is being utilized for its intended use and meets requirements of subsection I of 16.8.2.34 NMAC;

(28) for class II, III, and IV licenses, evidence that the applicant has completed the self-certification required for the production of edibles and topicals from the New Mexico environment department and [~~that such permits are valid~~] provide confirmation from the New Mexico environment department at the time the license application is submitted; and

(29) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

C. Trade secrets: Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as “confidential” on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant’s good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7,

NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act. [16.8.2.30 NMAC – N/E, 09/08/2021; A/E, 12/2/2021]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

The Superintendent of Insurance, after a rule hearing conducted on October 18, 2021, has approved a repeal of its rule 13.21.1 NMAC, General Provisions. A replacement rule, 13.21.1 NMAC, General Provisions, was adopted on December 2, 2021 and is effective January 1, 2022.

The Superintendent of Insurance, after a rule hearing conducted on October 18, 2021, has approved a repeal of its rule 13.21.2 NMAC, Qualifications and Admissions. A replacement rule, 13.21.2 NMAC, Qualifications and Admissions, was adopted on December 2, 2021 and is effective January 1, 2022.

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

**TITLE 13 INSURANCE
CHAPTER 21 PATIENT’S
COMPENSATION FUND
PART 1 GENERAL
PROVISIONS**

13.21.1.1 ISSUING AGENCY: New Mexico Superintendent of Insurance (the superintendent). [13.21.1.1 NMAC –Rp, 13.21.1.1 NMAC, 01/01/2022]

13.21.1.2 SCOPE: The rules of Chapter 21 provide for and govern the organization, administration, and defense of the New Mexico Patient’s Compensation Fund (the fund). [13.21.1.2 NMAC –Rp, 13.21.1.2 NMAC, 01/01/2022]

13.21.1.3 STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978; [13.21.1.3 NMAC –Rp, 13.21.1.3 NMAC, 01/01/2022]

13.21.1.4 DURATION: Permanent. [13.21.1.4 NMAC –Rp, 13.21.1.4 NMAC, 01/01/2022]

13.21.1.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section. [13.21.1.5 NMAC –Rp, 13.21.1.5 NMAC, 01/01/2022]

13.21.1.6 OBJECTIVE: The rules of Chapter 21 are adopted and promulgated to ensure that the *Patient’s Compensation Fund* is organized, administered, and operated on a financially and actuarially sound basis so as to achieve the purpose for which it was established. The rules adopted in Chapter 21 shall be construed, interpreted, and applied to achieve the purposes and objectives for which the fund was established. [13.21.1.6 NMAC –Rp, 13.21.1.6 NMAC, 01/01/2022]

13.21.1.7 DEFINITIONS: This chapter adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1, NMSA 1978, and in 1.24.1.7 NMAC. In addition:

A. “Base coverage” means the medical malpractice liability coverage, as required by the MMA or as determined by the superintendent for a hospital or outpatient health care facility, that must be provided by an insurance policy issued to a health care provider;

B. “Insured” means a health care provider insured under

a medical malpractice liability insurance policy;

C. “MMA” means the New Mexico Medical Malpractice Act, Sections 41-5-1 through 41-5-29 NMSA 1978;

D. “Occurrence coverage” means malpractice liability insurance for medical malpractice that occurs during the policy term, regardless of when the claim was reported;

E. “Qualified health care provider” or “QHP” means a health care provider, as defined in Subsection A of Section 41-5-1 NMSA 1978, who is admitted to the fund pursuant to these rules;

F. “Self-insured” means a person who satisfies, or seeks to satisfy, the requirements for becoming a “qualified health care provider” by depositing funds with the superintendent;

G. “Slot coverage” means prohibited coverage for more than one part-time health care provider on a “full-time equivalency” (FTE) basis calculated on how many hours, collectively, the part-time health care providers would be working during the period of coverage and calculating the premium as comparable to the one full-time health care provider’s premium; and

H. “Third-party administrator” or “TPA” means the third-party administrator identified in Section 41-5-25 NMSA 1978. [13.21.1.7 NMAC –Rp, 13.21.1.7 NMAC, 01/01/2022]

13.21.1.8 RESPONSIBILITIES OF THE THIRD-PARTY ADMINISTRATOR:

The third-party administrator shall demonstrate its qualifications through prior experience fulfilling responsibilities similar to those set forth herein and have the responsibility to

A. receive and process health care provider requests for admission to the fund;

B. determine whether applicants for admission satisfy the standards of financial responsibility and possess the other qualifications for admission specified by these rules;

C. timely collect surcharges from, or paid by insurers on behalf of, health care providers;

D. certify periods of admission of qualified health care providers;

E. process claims against qualified health care providers or the fund in accordance with the MMA and these rules;

F. collect and maintain claims experience and surcharge data;

G. purchase insurance for the fund and its obligations;

H. retain actuarial, legal and claim adjusting services for the fund;

I. negotiate reasonable and appropriate compromises and settlements of the fund’s liability respecting any claim against the fund and obtain approval from the superintendent or the superintendent’s designee before entering into an agreement involving PCF funds;

J. pay judgments, settlements, arbitration awards, and medical expenses for which the fund is responsible;

K. at the direction of the superintendent, develop and maintain a website linked to the office of superintendent of insurance website;

L. provide an annual audit of the fund to the superintendent;

M. subject to approval from the superintendent, develop methodology for allocating liability for any fund deficit among health care providers; and

N. discharge and perform such other duties, responsibilities, functions, and activities as are expressly or impliedly imposed on the TPA by the MMA, as directed by the superintendent or as specified by these rules.

[13.21.1.8 NMAC –Rp, 13.21.1.8 NMAC, 01/01/2022]

13.21.1.9 EXPENSES OF ADMINISTRATION

AND DEFENSE: All expenses incurred for, by, or on behalf of the superintendent or the TPA in the administration, operation, and defense

of the fund shall be borne by the fund. [13.21.1.9 NMAC –Rp, 13.21.1.9 NMAC, 01/01/2022]

13.21.1.10 REFERENCE TO OTHER DOCUMENTS:

When a rule issued by the superintendent relating to the MMA or the fund refers to another rule, regulation, statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute, or document.

[13.21.1.10 NMAC –Rp, 13.21.1.10 NMAC, 01/01/2022]

13.21.1.11 INTERPRETATION OF TERMS:

Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular;

B. Gender. Words used in the neuter gender include the masculine and the feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.

[13.21.1.11 NMAC –Rp, 13.21.1.11 NMAC, 01/01/2022]

13.21.1.12 USE OF PRESCRIBED FORMS:

The TPA may prescribe forms to carry out certain requirements of Chapter 21 of these rules. Prescribed forms must be used when a form exists for the purpose, unless these rules state otherwise or the TPA waives this requirement. The TPA shall accept filings made on photocopies of prescribed forms, provided they are legible.

[13.21.1.12 NMAC –Rp, 13.21.1.12 NMAC, 01/01/2022]

13.21.1.13 ADDRESS FOR FILING DOCUMENTS:

The TPA shall post filing and contact information on the Patient’s Compensation Fund website.

[13.21.1.13 NMAC –Rp, 13.21.1.13 NMAC, 01/01/2022]

13.21.1.14 SEVERABILITY:
 If any provision of Chapter 21 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 21 these rules which can be given effect without the invalid provisions or applications, and to this end the several provisions of Chapter 21 of these rules are hereby declared severable.
 [13.21.1.14 NMAC –Rp, 13.21.1.14 NMAC, 01/01/2022]

History of 13.21.1 NMAC:
 13.21.1 NMAC – General Provisions, filed 4/30/2019, was repealed and replaced by 13.21.1 NMAC – General Provisions, effective 01/01/2022.

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

**TITLE 13 INSURANCE
 CHAPTER 21 PATIENT’S COMPENSATION FUND
 PART 2 QUALIFICATIONS AND ADMISSIONS**

13.21.2.1 ISSUING AGENCY: The New Mexico Superintendent of Insurance.
 [13.21.2.1 NMAC –Rp, 13.21.2.1 NMAC, 01/01/2022]

13.21.2.2 SCOPE: The rules in this part govern the qualification and admission of health care providers to the Patient’s Compensation Fund (the fund).
 [13.21.2.2 NMAC – Rp,13.21.2.2 NMAC, 01/01/2022]

13.21.2.3 STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978.
 [13.21.2.3 NMAC – Rp,13.21.2.3 NMAC, 01/01/2022]

13.21.2.4 DURATION: Permanent.
 [13.21.2.4 NMAC – Rp,13.21.2.4 NMAC, 01/01/2022]

13.21.2.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.
 [13.21.2.5 NMAC – Rp,13.21.2.5 NMAC, 01/01/2022]

13.21.2.6 OBJECTIVE:
 The rules in this part are intended to ensure that health care providers are qualified for and admitted to the fund on a financially and actuarially sound basis.
 [13.21.2.6 NMAC – Rp,13.21.2.6 NMAC, 01/01/2022]

13.21.2.7 DEFINITIONS:
 This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC.
 [13.21.2.7 NMAC – Rp,13.21.2.7 NMAC, 01/01/2022]

13.21.2.8 BASIC QUALIFICATIONS FOR ADMISSION TO THE FUND:

A. To be eligible for admission to the fund, a person shall:

(1) be a health care provider, as defined by the MMA or by these rules, who is engaged in the provision of health care services within the state of New Mexico, and is not organized solely or primarily for the purpose of qualifying for admission to the fund;

(2) demonstrate and maintain, to the satisfaction of and in the manner specified by the superintendent and in accordance with the standards prescribed by these rules, or as otherwise provided by law, financial responsibility for, and with respect to, malpractice or professional liability claims asserted against the person or institution;

(3) apply for admission pursuant to these rules; and

(4) pay the applicable surcharges and assessments to the fund.

B. Part-time health care providers and locum tenens may be enrolled individually in the fund, paying their class surcharge on a pro rata basis.

C. An independent provider that is a business entity, including solo corporations:

(1) must have at least one qualified health care provider as a member or employee of the entity;

(2) must have all qualifiable health care provider members or employees admitted to the fund to have the business entity eligible for fund coverage; and

(3) shall pay an applicable business entity surcharge to the fund.

D. Slot coverage is not permitted.

E. A health care provider who is a natural person may be qualified as a member or employee of more than one business entity, with the appropriate surcharges paid pro rata. The underlying medical malpractice liability insurance may be provided by different insurers.
 [13.21.2.8 NMAC – Rp,13.21.2.8 NMAC, 01/01/2022]

13.21.2.9 FINANCIAL RESPONSIBILITY -- INSURANCE:

A. To establish and maintain financial responsibility using insurance, the health care provider, or authorized representative of the health care provider, shall submit proof that the health care provider is or will be insured under a policy of malpractice liability insurance with indemnity limits of \$250,000 per occurrence.

B. To be acceptable as evidence of malpractice liability insurance, an insurance policy:

(1) shall be issued by an insurer licensed and admitted in New Mexico by the superintendent or by a licensed risk retention group;

(2) shall, except for a hospital or outpatient health care facility, be on an occurrence coverage form approved by the superintendent;

(3) if on a claims made form issued to a hospital or outpatient health care facility, shall be on a claims made form approved by the superintendent and

must include an extended reporting endorsement or equivalent tail to maintain indefinite coverage;

(4) shall provide for the insurer’s assumption of the defense of any covered claim, without limitation on the insurer’s maximum obligation respecting the cost of defense;

(5) shall, for an independent provider, provide coverage for not more than three separate occurrences; and

(6) shall be nonassessable.

C. Admitted carriers and risk retention groups desiring to provide malpractice liability insurance policies for the qualification of health care providers under the MMA must apply for approval from the superintendent by submitting a copy of the proposed policy forms and proposed rates to the superintendent.

D. The proof required by Subsection A of this section shall be issued and executed by an officer or authorized agent of the applicant health care provider’s insurer and shall specifically identify the policyholder, the named insureds under such policy, the policy period, and the limits of coverage. Upon request by the superintendent or the TPA, such certification shall be accompanied by a certified true copy of the policy, or identification of the SERFF numbers of the specific policy form(s) previously filed with and approved by the superintendent.

E. The occurrence coverage required by this rule to demonstrate the requisite financial responsibility for qualification with the fund shall be deemed to be continuing without a lapse in coverage by the fund, provided that the health care provider meets the premium payment conditions of the underlying coverage and timely meets the surcharge payment conditions of these rules, as applicable.

[13.21.2.9 NMAC – Rp, 13.21.2.9 NMAC, 01/01/2022]

13.21.2.10 FINANCIAL RESPONSIBILITY -- SELF-INSURANCE: An independent

provider may qualify for admission to the fund by having continuously on deposit the sum of \$750,000 in cash, as long as the following conditions are met:

A. The deposit shall be conditioned only for, dedicated exclusively to, and held in trust for the benefit and protection of and as security for the prompt payment of all medical malpractice claims arising or asserted against the health care provider.

B. A self-insured health care provider shall be required to execute a pledge agreement for the money on deposit prescribed and supplied by the superintendent.

C. Sums on deposit with the superintendent pursuant to this rule shall not be assigned, transferred, mortgaged, pledged, hypothecated, or otherwise encumbered by the health care provider nor shall any such deposit be subject to writ of attachment, sequestration, or execution except pursuant to a final judgment or court-approved settlement issued or made in connection with and arising out of a malpractice claim against the health care provider.

D. To maintain financial responsibility for continuing qualification with the fund, a self-insured health care provider shall at all times maintain the sum on deposit provided for by this rule at not less than \$750,000. The value of the health care provider’s deposit shall be deemed impaired when any portion is seized or released pursuant to judicial process.

E. In the event that a self-insured health care provider’s deposit provided for by this rule becomes impaired, the superintendent shall give written notice of such impairment to the self-insured health care provider, and the self-insured health care provider shall, unless a longer period is provided for by the superintendent, have five days from receipt of such notice to make such additional deposit as will restore the minimum deposit value prescribed by this rule. A self-insured health care provider’s qualification with the fund

shall terminate on and as of the later of the last day set by these rules or, if applicable, by the superintendent, if the self-insured health care provider has not on or prior to such date restored the minimum deposit value prescribed by this rule. In the case of multiple self-insured health care providers approved by the superintendent to post one deposit, as set forth in Subsection B of this section, the admission to the fund of each member of the group or each related entity shall terminate on and as of the last day set by these rules or, if applicable, by the superintendent, if the self-insured health care provider has not on or prior to such date restored the minimum deposit value prescribed by this rule.

F. A self-insured health care provider shall, within 120 days of receiving notice of a request for review of a malpractice claim, submit a report to the superintendent and the TPA of the anticipated exposure to the fund and the self-insured health care provider and containing sufficient details supporting the anticipated exposure. In addition, said self-insured health care provider shall provide updates to the superintendent and the TPA when significant changes in anticipated exposure occur.

G. A self-insured health care provider who has evidenced financial responsibility pursuant to this rule may withdraw the deposit prescribed by this rule upon authorization of the superintendent. All money shall remain on deposit and pledged to the fund during the term of the health care provider’s admission as a self-insured health care provider with the fund and for the longer of a three-year period following termination of such admission or as long as any medical malpractice claim is pending, whether with the medical review commission or in a court of competent jurisdiction. After this time period, authorization may be given when the health care provider files with the superintendent and the TPA, not less than 30 days prior to the date such withdrawal is to be effected, a certificate signed by the health care provider, certifying:

(1) the date the health care provider terminated admission to the fund as a self-insured health care provider;

(2) that there are no medical malpractice claims pending with the medical review commission or in a court of competent jurisdiction;

(3) that there are no unpaid final judgments or settlements against or made by the health care provider in connection with or arising out of a malpractice claim; and

(4) that there are no unasserted medical malpractice claims which are probable of assertion against the health care provider.

H. Effective as of the date on which a self-insured health care provider's deposit is withdrawn pursuant to this rule, the health care provider's admission to and qualification with the fund shall be terminated.

I. The deposit with the superintendent shall provide coverage for not more than three separate occurrences, and the limit that shall be paid from the deposit for each occurrence is \$250,000.

J. The acceptance by the superintendent of the self-insurance deposit described in this rule does not create in the superintendent, the TPA, or the fund a duty to defend any health care provider making a deposit under this rule.

[13.21.2.10 NMAC – Rp,13.21.2.10 NMAC, 01/01/2022]

13.21.2.11 ADDITIONAL QUALIFICATIONS FOR HOSPITALS AND OUTPATIENT HEALTH CARE FACILITIES:

A. The superintendent shall perform a risk assessment for each applicant hospital or outpatient health care facility. If the hospital or outpatient care facility will establish and maintain financial responsibility with medical malpractice liability insurance, the superintendent may consider as the risk assessment the information and documents that the applicant submitted to its insurer,

all of which shall be provided to the superintendent by, or on behalf of, the applicant, along with all other information that the superintendent has or requests of the applicant. If the hospital or outpatient care facility will be self-insured, the risk assessment shall be based on information requested by the superintendent upon forms prescribed and supplied by the superintendent. The superintendent may request and consider any additional information pertinent to a risk assessment.

B. The superintendent shall arrange for an actuarial study before determining base coverage or deposit and surcharges. If the data available for a hospital or outpatient health care facility is insufficient for actuarial analysis, due to sample size or similar inadequacies, the actuarial study may aggregate data among similar hospitals or outpatient health care facilities to achieve actuarial significance.

C. Based on the risk assessment and actuarial study the superintendent shall determine each hospital's or outpatient health care facility's base coverage and coverage terms, or, if self-insured, the required deposit, pursuant to the procedures of this section.

D. The risk assessment and actuarial study for each hospital or outpatient health care facility shall be required when the hospital or outpatient health care facility applies the first time for admission to the fund, and may be required at any other time the superintendent deems it necessary or advisable.

E. A hospital or outpatient health care facility seeking admission to the fund must apply by April 1 of the year prior to their first admission to the fund.

[13.21.2.11 NMAC – Rp,13.21.2.11 NMAC, 01/01/2022]

13.21.2.12 CONFIDENTIAL INFORMATION: Information from any health care provider who seeks qualification and admission to the fund shall be kept confidential pursuant to the requirements of Subsection D of Section 41-5-25 NMSA 1978.

[13.21.2.12 NMAC – Rp,13.21.2.12 NMAC, 01/01/2022]

13.21.2.13 ADMISSION PROCEDURE:

A. An application for admission to the fund shall be made to the third-party administrator through the patient's compensation fund website, which shall require the applicant to provide a legal name; professional license, certification, or registration number; information relating to the nature and scope of the applicant's practice sufficient to identify the class or category of the practitioner; information on malpractice claims previously concluded or then pending against the applicant; and such other information as the superintendent or the TPA may require.

B. The application shall be accompanied by evidence of financial responsibility in the form prescribed by these rules and the applicable surcharge as determined by the superintendent with the advice of the advisory board.

C. The advisory board will provide advice to the superintendent and carry out its additional obligations as set forth in Paragraph E of Section 41-5-25.1 NMSA 1978.

D. If the third-party administrator determines that an applicant does not meet the qualifications for admission to the fund set forth in the MMA and these rules, the third-party administrator shall issue a notice to that effect and notify the applicant within 15 days of receipt of the completed application. The applicant may within 15 days of receipt of the notice, appeal the determination to the superintendent by delivering a notice of appeal to the superintendent. The provisions of 13.21.4 NMAC shall apply to the appeal.

[13.21.2.13 NMAC – Rp,13.21.2.13 NMAC, 01/01/2022]

13.21.2.14 ORDER OF ADMISSION:

A. Periodically, after health care providers have

been approved for admission into the fund, the TPA shall notify the superintendent, who shall issue an order of admission to the fund, which shall:

- (1) identify the health care providers who have been admitted;
- (2) state that the health care providers have qualified for admission to the fund pursuant to Section 41-5-5 NMSA 1978;
- (3) specify the effective date and term of each admission; and
- (4) for a hospital or outpatient health care facility for whom a base coverage or surcharge has been set, the amount of the base coverage or surcharge.

B. Duplicate or additional orders of admission shall be available to and upon the request of a qualified health care provider or the qualified health care provider's attorney, or professional liability insurance underwriter, when such certification is required to evidence admission to or qualification with the fund in connection with an actual or proposed malpractice claim against the health care provider.

C. A copy of each order of admission shall be available for public inspection at the main office of the superintendent on the day it is issued, and a copy of the order shall be posted on the patient's compensation fund website as soon as practicable. Posting the order on the patient's compensation fund website shall constitute delivery to the health care provider and any other interested person. Any person aggrieved by the admission of any qualified health care provider to the fund or by the conditions of the health care provider's admission may, within 15 days of issuance of the order, appeal the admission to the superintendent by delivering a notice of appeal to the superintendent. The filing of an appeal shall not operate to stay the order of admission or suspend the conditions of admission. The provisions of 13.21.4 NMAC shall apply to the appeal.

[13.21.2.14 NMAC – Rp,13.21.2.14 NMAC, 01/01/2022]

13.21.2.15 EXPIRATION OF ADMISSION AND RENEWAL OF ADMISSION:

A. Admission to the fund expires:

- (1) as to a health care provider evidencing financial responsibility other than by self-insurance, on and as of:
 - (a) the effective date and time of termination or cancellation of the policy of the health care provider's malpractice liability coverage; or
 - (b) the last day of the applicable period for which the prior annual surcharge applied in the event that the annual surcharge for renewal coverage is not paid by the health care provider to the insurer on or before 30 days following the expiration of the prior admission period.

(2) as to a self-insured health care provider on and as of:

- (a) the effective date and time of termination, cancellation or impairment of the health care provider's financial responsibility; or
- (b) the last day of the applicable period for which the prior surcharge applied in the event that the surcharge for renewal coverage is not paid by the health care provider to the superintendent on or before 30 days following the expiration of the prior admission period.

B. Admission to the fund must be renewed by each qualified health care provider on or before expiration of the admission period in accordance with these rules. [13.21.2.15 NMAC – Rp,13.21.2.15 NMAC, 01/01/2022]

13.21.2.16 TERMINATION OF ADMISSION:

A. A health care provider's admission to the fund shall terminate:

- (1) as to a health care provider evidencing

financial responsibility by proof of insurance pursuant to these rules, on and as of the effective date of cancellation of the health care provider's insurance coverage;

(2) as to a self-insured health care provider on and as of any date on which:

(a) the health care provider ceases to maintain financial responsibility in the amount and form prescribed by these rules; or

(b) the health care provider fails, within the allowed time after notice by the TPA, to provide additional security for financial responsibility when existing financial responsibility security is impaired as provided in these rules.

(3) on any date that the health care provider's professional or institutional license, certification, or registration is suspended or revoked or that the health care provider ceases to be a health care provider as defined by the MMA or these rules or otherwise ceases to be eligible for admission to the fund.

B. Upon written notice to a health care provider, or such provider's authorized representative, the TPA may terminate a health care provider's admission to the fund, effective 30 days following the mailing by registered or certified mail, return receipt requested, or giving of such notice in the event that a qualified health care provider has failed or refused to timely provide any reports or submit any information or data required to be reported or submitted by these rules. If, within 30 days of receipt of such a notice, a health care provider furnishes to the TPA any and all delinquent reports, information, and data, as specified by such notice, the health care provider's admission to the fund may be continued in effect, provided that the health care provider remains otherwise qualified for admission to the fund.

C. If the TPA terminates a health care provider's admission to the fund, the TPA shall

notify the provider within 15 days of receipt of the cancellation or termination. The health care provider may, within 15 days of receipt of the notice, appeal the determination by delivering a notice of appeal to the superintendent. The provisions of 13.21.4 NMAC shall apply to the appeal.

[13.21.2.16 NMAC – Rp,13.21.2.16 NMAC, 01/01/2022]

13.21.2.17 PATIENT'S COMPENSATION FUND ACTUARY:

A. In accordance with the provisions of law applicable to contracting for personal, professional, or consulting services, the superintendent, in consultation with the advisory board, may employ or hire one or more qualified and competent actuaries to advise and consult the superintendent, the advisory board, and the TPA on all aspects of the administration, operation, and defense of the fund which require application of actuarial science.

B. An actuary may be asked to evaluate or recommend:

(1) the claims experience data required for risk assessments;

(2) the establishment, maintenance, and adjustment of reserves on individual claims against the fund and the establishment, maintenance, and adjustment of reserves for incurred but not reported claims;

(3) surcharges, rated and classified according to the classes or risks against which the fund provides compensation, that shall reasonably ensure that the fund is sufficiently funded so as to be and remain financially and actuarially capable of providing the compensation for which it is organized;

(4) each hospital's or outpatient health care facility's base coverage and coverage terms upon initial admission into the fund, and whether additional charges need to be made for initial admission to the fund; and

(5) any other actuarial questions affecting the administration, operation, and defense of the fund.

[13.21.2.17 NMAC – Rp,13.21.2.17 NMAC, 01/01/2022]

13.21.2.18 ANNUAL ACTUARIAL STUDY:

A. Annually, as required by Section 41-5-25 NMSA 1978, the superintendent shall cause an independent actuary to perform an actuarial study of the fund, and of the surcharges necessary and appropriate to ensure that it is and remains financially and actuarially sound.

B. In the performance of the actuarial study, the independent actuary shall employ sound actuarial principles.

[13.21.2.18 NMAC – Rp,13.21.2.18 NMAC, 01/01/2022]

13.21.2.19 SURCHARGES:

A. For a health care provider other than a hospital or outpatient care facility, the superintendent, with the advice of the advisory board, shall determine surcharges based on classifications and categories of medical malpractice liability risks underwritten by the fund with respect to practice type or specialties as determined and specified in the annual actuarial study pursuant to this rule.

B. For a hospital or outpatient care facility, the superintendent, with the advice of the advisory board, shall determine surcharges based on the annual actuarial study using the information specified in Subsection D of Section 41-5-25 NMSA 1978.

[13.21.2.19 NMAC – Rp,13.21.2.19 NMAC, 01/01/2022]

13.21.2.20 PAYMENT OF SURCHARGES:

A. An insured health care provider must pay the applicable surcharge to the medical malpractice liability insurer within 30 days of the inception of coverage, and within 30 days of the inception of each period of renewal coverage.

B. A self-insured health care provider must pay the applicable surcharge within 30 days of the requested date for admission into the fund, and within 30 days of the inception of each renewal period. [13.21.2.20 NMAC – Rp,13.21.2.20 NMAC, 01/01/2022]

13.21.2.21 ADMISSION DATE:

A. A health care provider who applied for admission to the fund prior to the effective date of these rules, and who was approved for admission prior to the effective date of these rules, shall be admitted to the fund as of the date of the prior application.

B. A health care provider whose first application for admission to the fund is made after the effective date of these rules, and who is approved for admission pursuant to these rules, will be admitted to the fund as of the date of initial application.

C. Under Sections A and B of this section, the admission date for an insured health care provider who applies to participate in the fund, and who pays all applicable surcharges to the fund, within 60 days of the inception of the base coverage, shall relate back to the inception date of the base coverage.

D. The admission of all health care providers in the fund as of December 31, 2021 shall expire at the end of December 31, 2021. The admission of any health care provider renewed or admitted to the fund on or after January 1, 2022 shall expire at the end of December 31 of the year of renewal or admission.

[13.21.2.21 NMAC – Rp,13.21.2.21 NMAC, 01/01/2022]

History of 13.21.2 NMAC: 13.21.2 NMAC, Qualifications and Admissions, effective 3/1/2019.

History of Repealed Material: 13.21.2 NMAC, Qualifications and Admissions, filed 3/1/2019 was repealed and replaced by 13.21.2 NMAC, Qualifications and Admissions, effective 4/30/2019.

13.21.2 NMAC, Qualifications and Admissions, filed 4/30/2019 was repealed and replaced by 13.21.2 NMAC, Qualifications and Admissions, effective 01/01/2022.

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

**TITLE 13 INSURANCE
CHAPTER 21 PATIENT'S COMPENSATION FUND
PART 5 SURCHARGE RATE HEARINGS**

13.21.5.1 ISSUING AGENCY: New Mexico Superintendent of Insurance. [13.21.5.1 NMAC – N, 01/01/2022]

13.21.5.2 SCOPE: Except as otherwise provided, the rules in this part govern every surcharge rate proceeding conducted pursuant to Subsection D and Subsection F of Section 41-5-25 NMSA 1978. [13.21.5.2 NMAC – N, 01/01/2022]

13.21.5.3 STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978. [13.21.5.3 NMAC – N, 01/01/2022]

13.21.5.4 DURATION: Permanent. [13.21.5.4 NMAC – N, 01/01/2022]

13.21.5.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section. [13.21.5.5 NMAC – N, 01/01/2022]

13.21.5.6 OBJECTIVE: The purpose of this rule is to provide procedures to govern surcharge rate hearings required by the Medical Malpractice Act. [13.21.5.6 NMAC – N, 01/01/2022]

13.21.5.7 DEFINITIONS: This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1 NMSA 1978, in 1.24.1.7 NMAC, in 13.21.1.7 NMAC, and in 3.21.4.7 NMAC. [13.21.5.7 NMAC – N, 01/01/2022]

13.21.5.8 REVISION OF STANDING ORDERS: The superintendent may issue or withdraw standing procedural orders addressing general practice issues and filing protocols for the handling of surcharge rate hearings. Such standing orders will be available for public inspection at OSI office facilities, on the *Patient's Compensation Fund* website, and in any applicable information provided with a notice of hearing. Parties appearing at surcharge rate hearings are expected to comply with standing orders. [13.21.5.8 NMAC – N, 01/01/2022]

13.21.5.9 ADVISORY BOARD AS HEARING OFFICER:
A. General authority.

The advisory board is the hearing officer for surcharge rate hearings. The advisory board may conduct any hearing *en banc*, may designate any number of members less than its whole to conduct any hearing, or may designate a single member to conduct any hearing.

B. Duties of the advisory board. The advisory board shall conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings and maintain order. The advisory board shall have the powers necessary to carry out these duties, including the following:

- (1) to administer or have administered oaths and affirmations;
- (2) to cause depositions to be taken;
- (3) to require the production or inspection of documents and other items;
- (4) to require the answering of interrogatories and requests for admissions;
- (5) to rule upon offers of proof and receive evidence;
- (6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;
- (7) to issue a scheduling order, schedule a prehearing conference for

simplification of the issues, or any other proper purpose;

- (8) to schedule, continue and reschedule hearings;
- (9) to consider and rule upon all procedural and other motions appropriate in the proceeding, including qualification of expert witnesses and admission of exhibits;
- (10) to require the filing of briefs on specific legal issues prior to or after the hearing;
- (11) to cause a complete record of a hearing to be made;
- (12) to make and issue decisions and procedural orders;
- (13) to issue subpoenas in the name of the superintendent;
- (14) to issue a recommendation to the superintendent regarding the final resolution of the matter; and
- (15) to appropriately sanction, up to exclusion, indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or other improper conduct that interferes with the conduct of a fair and orderly hearing or the development of a complete record.

C. Independence of the advisory board. In the performance of these functions, the advisory board shall not be responsible to or subject to the direction of any officer, employee or agent of OSI or the TPA. Pursuant to Subsection A of Section 41-5-25.1 NMSA 1978, OSI shall provide staff services to the advisory board to assist in the administration of the hearing.

D. Ex parte communication. In the performance of these functions, the advisory board is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter. An improper *ex parte* communication occurs when the advisory board, or any of its members, discusses or otherwise communicates regarding the substance of a case

without the opposing party being present, except that it is not an improper *ex parte* communication for the advisory board to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

E. Recommended decision. Upon conclusion of the surcharge rate hearing, the advisory board, or a quorum thereof, shall meet to determine the surcharge rates to recommend to the superintendent. The advisory board shall base its determination upon substantial evidence in the whole record. The advisory board shall provide a written recommended decision to the superintendent on or before October 21 of each year, which shall set forth the recommended surcharge rates and a summary of the evidence supporting those rates.

F. Final order. After a thorough review of the record and the recommendation prepared by the advisory board, the superintendent shall issue a final order. No party or member of OSI or TPA staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence a final decision. The superintendent may seek counsel from OSI's office of legal counsel. [13.21.5.9 NMAC – N, 01/01/2022]

13.21.5.10 INITIATION OF THE SURCHARGE RATE HEARING:

A. Selection of actuary. No later than March 1 of each year, the advisory board shall meet with the superintendent to consult on the selection of an independent actuary to perform the independent actuarial study of the fund. The actuarial study is to be completed by August 1 of the year in which the actuary is selected.

B. Opening the docket. No later than March 15 of each year, the superintendent shall open a docket in OSI's electronic docket system for that year's surcharge rate hearing. A docket number shall be assigned and referenced in all subsequent

communications and filings concerning the surcharge rate hearing.

(1) The superintendent shall file an initial order setting the surcharge rate hearing between September 15 and September 30 of each year.

(2) The superintendent shall establish the caption for the docket, which caption shall be used thereafter for any matters pertaining to the hearing. The caption shall state the nature of the matter and shall include the docket number.

(3) Every written document that is submitted to the superintendent or advisory board or exchanged between the parties for consideration, including pleadings such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the docket.

C. Designation of advisory board as hearing officer.

The superintendent's initial order shall designate the advisory board as the hearing officer in the surcharge rate hearing.

D. Intervenors. Any person who claims an interest relating to the surcharge rate hearing, and is so situated that the hearing may impair or impede the person's ability to protect that interest, may apply to intervene in the proceeding.

(1) In determining whether to allow or deny intervention, the advisory board shall consider the nature of the claimed interest of the applicant, the potential impact of the advisory board's decision on the applicant's ability to protect that interest, the timeliness of the application, the potential disruption of the proceedings and prejudice to existing parties if intervention were allowed.

(2) Whether to allow intervention is at the sole discretion of the advisory board. [13.21.5.10 NMAC – N, 01/01/2022]

13.21.5.11 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE,

SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:

A. Representation. Unless otherwise expressly authorized by statute, only a person made a party or a bona fide majority owner if the party is a business entity, or that person's attorney may represent the person in the surcharge rate proceeding.

B. Entry of appearance. Any attorney wishing to represent a party must file a formal written entry of appearance in the docket of the proceeding. The entry of appearance must list the attorney's mailing address, phone and fax number (if any), and an email address (if any). Any attorney wishing to substitute in for a previous attorney must file a substitution of counsel containing the same information required in the initial entry of appearance.

C. Withdrawal. An attorney who intends to withdraw from representation of a party must do so in accordance with the rules of professional conduct.

(1) Withdrawing counsel must file in the docket a written request to withdraw from representation that indicates when counsel notified the party of the withdrawal, and of the date and time of the scheduled hearing.

(2) The advisory board may deny a request to withdraw from representation only when withdrawal would have a clear, materially adverse effect on the represented party's interests and impede the conduct of a full, fair, and efficient hearing. [13.21.5.11 NMAC – N, 01/01/2022]

13.21.5.12 ELECTRONIC DOCKET AND FILING OF DOCUMENTS:

A. Electronic docket. Individuals or their counsel may access OSI's free electronic docket to view cases and filed pleadings. Registration of a free user account is required to file pleadings into a docket. Every written document that is submitted to a hearing officer

or exchanged between parties for consideration, including pleadings, such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the electronic docket

B. Public access.

Unless the document contains information protected under Subsection D of Section 41-5-25 NMSA 1978, all documents filed in the docket for the surcharge rate proceeding shall be open for public inspection. Any protected information will be filed under seal or redacted in publicly available documents, in a manner ensuring the greatest possible public access to non-confidential information.

C. Filing restrictions and service.

(1) The OSI docket administrator will review all filings for compliance with these rules. Non-compliance with filings will be returned to submitter for correction.

(2) The OSI’s electronic docket does allow for electron service. All parties of record shall be listed on the initial request for hearing and shall be selected for service with each additional filing.

(3) All filings shall include a certificate of service that documents the method of service used. A represented party shall only be served through counsel.

(4) In-person filing shall be accepted on business days between 8:00 am and 4:00 pm. In-person pleadings will be marked as filed on the business day that the OSI receives the pleading.

D. Filing requirements.

(1) All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall

be in writing and shall state with particularity the grounds and the relief sought.

(2) Absent any order to the contrary, no pleading shall exceed 10 pages, excluding the caption and certificate of service, of double-spaced (except for block quotations), 12-point font. Only relevant excerpts of a motion exhibit shall be filed, with the pertinent portions highlighted, underlined, or otherwise emphasized. All exhibits and attachments shall identify the total number of pages, and consecutive page numbers (e.g., “Page 1 of 10”). Only single-sided documents will be accepted for filing or into a record at a hearing.

E. Request for concurrence. Before submission of any motion, request for relief or request for continuance, the requesting party should make reasonable efforts to consult with each other party about that party’s position on the motion unless the nature of the pleading is such that it can be reasonably assumed the requested relief would be opposed. The moving party shall state the position of each other party in the pleading.

F. Responses to filings.

(1) Unless a different deadline has been established by the advisory board, each non-moving party shall have 10 calendar days to file a written response to a pleading.

(2) If a deadline for filing falls on a non-business day, the deadline falls on the next business day.

(3) The advisory board has the discretion to extend or shorten the response deadline.

(4) Failure to file a response in opposition may be presumed to be consent to the relief sought.

(5) The advisory board is not required to make a default ruling on any motion if the relief sought could be contrary to the facts or law on the issues.

G. In the event of a procedural defect or other error with the manner, method, or content of a submitted filing, the advisory board or records manager may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to certify service, failure to comply with the page limitations, failure to confer with other parties, failure to use the form or follow the specific filing method required by the Patient’s Compensation Fund, submission of double-sided documents, failing to properly number pages, failure to use the correct caption of reference the assigned docket number, or failure to comply with an applicable standing order.

[13.21.5.12 NMAC – N, 01/01/2022]

13.21.5.13 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. Purpose of prehearing conferences. The advisory board may direct representatives for all parties to meet together or with the advisory board present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending issues;

(2) stipulations and admissions of fact and of the contents and authenticity of documents;

(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of exhibits and expert, economic or technical witnesses;

(4) matters of which administrative notice will be taken; and

(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be

introduced in evidence in the course of the proceeding.

B. Conduct of prehearing conferences.

(1) Prehearing conferences conducted by the advisory board may be electronically, but not stenographically, recorded. Should a party request that the recording be transcribed, that party shall pay any costs of transcription.

(2) The advisory board may issue a written order that recites the results of the conference. Such order shall include rulings upon matters considered at the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, unless superseded by a subsequent order.

C. Status conferences.

(1) The advisory board may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

(2) The advisory board may conduct a status conference upon the request of either party or on the advisory board's own initiative, at which time the advisory board may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.

[13.21.5.13 NMAC – N, 01/01/2022]

13.21.5.14 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:

A. Location.

(1) In the absence of any statutory requirements to the contrary, all hearings conducted by the advisory board shall occur in Santa Fe, at the office of superintendent of insurance, unless the advisory board orders the parties to appear at another location in New Mexico.

(2) The parties may express a mutual preference for location of any hearing.

(3) In selecting a location other than Santa

Fe, the advisory board shall consider and give weight to the location and wishes of the parties, witnesses, and access for members of the advisory board.

(4) If selecting a location other than Santa Fe would cause an unreasonable, undue burden to any party, that party may file a written objection to the selected location within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The advisory board will promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to another more reasonable location.

B. Notice. Except for the evidentiary hearing to establish surcharge rates set by the superintendent's initial order (unless the advisory board determines to change the date of that hearing), the advisory board will notify the parties to the hearing of the date, time and place scheduled for any hearing at least seven days before the that hearing. This notice will be directed to the party's attorney, or to the last known address of any unrepresented party. Notice will be provided in a manner calculated to provide actual notice.

[13.21.5.14 NMAC – N, 01/01/2022]

13.21.5.15 TELEPHONIC, VIDEOCONFERENCE AND OTHER EQUIVALENT ELECTRONIC METHOD HEARINGS:

A. If not otherwise prohibited by statute, rule, or court ruling, the advisory board may conduct any hearing in person or by telephone, videoconference, or other equivalent electronic method. The advisory board shall cause a stenographic or audio recording to be made of all proceedings involving the presentation of evidence, points, authorities or argument pertaining to the merits of the matter before the advisory board.

B. If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall

so inform the parties. Either party may file a written objection to conducting the hearing by telephone, videoconference, or other equivalent electronic method within 10 days of the notice of hearing. Failure to timely object to the conduct of a telephone, videoconference, or other equivalent electronic method hearing constitutes consent to the hearing proceeding in that manner and waiver of any other applicable statutory in-county hearing requirement.

C. Upon receipt of a timely objection, the advisory board shall consider the applicable legal requirements, the location of the parties and witnesses, the complexity of the particular matter, the availability of necessary electronic equipment for conduct of a full and fair hearing by telephone, videoconference, or other equivalent electronic method, and the basis of the objection in determining whether the hearing should occur at a specific location rather than via telephone, videoconference, or other equivalent electronic method.

D. Provided that the requesting party has not previously demanded an in-person hearing or otherwise objected to conducting the matter via telephone, videoconference, or other equivalent electronic methods, any party may request to appear directly or have a witness on their behalf appear via telephone, videoconference, or alternative electronic means by filing a request at least three business days before the scheduled hearing. The filing of a request to appear via telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete waiver of any in-person, in-county hearing requirement and deemed as consent for all parties, all witnesses, and the advisory board to appear via telephone, videoconference, or other equivalent electronic methods.

E. All parties appearing via telephone, videoconference, or other electronic method shall provide the advisory board with a working email address or facsimile number for the exchange

of all documentary evidence before or during the hearing.

F. Failure to follow the advisory board’s instructions for participating in the hearing via telephone, videoconference, or other equivalent electronic method will be treated as a non-appearance at the hearing.

G. Any technical issues shall be promptly reported to the advisory board.

H. In the event that technical or other computer problems prevent a hearing by videoconference or other electronic method from occurring or otherwise interfere with maintaining or developing a complete record at the hearing, the parties agree and consent that the advisory board may continue the matter to a different time before expiration of the statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the remaining portion of the hearing via telephone.

I. If the advisory board determines during the course of the hearing, either *sua sponte* or upon argument of a party, that an in-person hearing is necessary to adequately complete the record, address credibility issues, or is otherwise necessary to ensure a full or fair hearing process, the advisory board may recess a hearing occurring by telephone, videoconference, or other equivalent electronic method and reconvene the proceeding as an in-person hearing.
[13.21.5.15 NMAC – N, 01/01/2022]

13.21.5.16 CONTINUANCES:

A. At the request of a party, a witness, or upon the advisory board’s own determination, a hearing may be continued for good cause. The advisory board shall consider only written continuance requests made at least three working days prior to the scheduled hearing absent extraordinary, unforeseen circumstances that the requesting party or witness could not have known earlier. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an

order prior to the scheduled hearing, the advisory board may grant or deny the request on the record at the hearing. No continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory deadline.

B. Within the time limits set by statute, the superintendent or advisory board may *sua sponte* continue any matter as necessary to address OSI or TPA staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the advisory board may contact the parties to inquire about the status of a scheduled case.

C. No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable time limit on the case.
[13.21.5.16 NMAC – N, 01/01/2022]

13.21.5.17 ATTIRE AT HEARING: All attorneys and other authorized representatives must be attired in a dignified, professional manner at all times during the hearing. Witnesses shall dress in a respectful manner. No attire or dress so flamboyant, disheveled, inflammatory, obscene, offensive or revealing as to create a distraction to the orderly conduct of the hearing will be permitted.
[13.21.5.17 NMAC – N, 01/01/2022]

13.21.5.18 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE:

A. Burden of proof. Unless otherwise specified by statute, the burden of proof in a proceeding is the preponderance of evidence.

B. Presentation order. The party with the burden of proof in the case will ordinarily present their case first, followed by the opposing party, if any, unless the advisory board makes reasonable exceptions related to the availability of the witnesses and representatives or other scheduling concerns.

C. Opening statements. The advisory board may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be adopted as evidence by sworn oath of the party-witness who made the opening statement.

D. Testimony under oath. All testimony must be given under oath and will be subject to questioning of each other party. The advisory board may also ask questions of the witness as appropriate. At the advisory board’s discretion, redirect and re-cross may be allowed.

E. Closing arguments. The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the advisory board, in writing after conclusion of the hearing.

F. Post-hearing briefs. The advisory board may also order the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. The advisory board will establish a timeline for submission of any post-hearing pleadings, including time for the parties to exchange briefs, as the advisory board finds necessary. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing or submission.

G. Rules of evidence.
(1) Formal rules of evidence and civil procedure shall not apply in a proceeding unless otherwise expressly and specifically required by statute, regulation, or order of the advisory board.

(2) Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded.

(3) A party may offer exhibits, such as records of transactions.

(a) The party shall have the exhibits numbered by the stenographer prior to the hearing.

(b)

The party shall provide copies of the evidence to the stenographer, all parties and to the advisory board.

(c)

Exhibits must be introduced and explained by a witness, who must be prepared to answer questions from the parties and the advisory board.

(d)

The advisory board shall be asked by the party offering an exhibit to accept the exhibit into evidence.

The advisory board may be asked to consider all exhibits introduced by a witness at the conclusion of that witness's testimony or at the conclusion of that party's case.

(e)

The stenographer shall retain copies of all exhibits that are admitted and shall make them a part of the record.

(4)

The advisory board shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

H. Hearsay evidence.

Hearsay evidence may be admitted in a proceeding.

I. Taking notice.

(1)

The advisory board may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute.

(2)

The advisory board may take administrative notice at any stage in the proceeding, whether *sua sponte* or at the request of a party.

(3)

A party may dispute the propriety of taking administrative notice, including the opportunity to refute a noticed fact.

J. Objections.

(1)

A party objecting to evidence, qualifications of an expert, a line of questioning, or the response shall timely and briefly state the grounds for the objection.

(2)

Rulings

on objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

K. Audio or video

evidence. Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained as part of the record.

L. Size of exhibits.

In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the advisory board. The advisory board may admit larger documentary exhibits presented at hearing, provided the proponent of such exhibits provides the advisory board with a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. Arrangements to provide a reduced copy of a large exhibit shall be undertaken in advance of the hearing. Failure by the proponent to provide a reduced copy shall be deemed a withdrawal of the exhibit.

M. Substitutions for

objects. In lieu of the introduction of tangible objects as exhibits, the advisory board may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object for the record.

[13.21.5.18 NMAC – N, 01/01/2022]

13.21.5.19 WITNESSES, EXPERT WITNESSES, AND INVOCATION OF THE RULE:

A. Use of witnesses.

Any person having relevant, material knowledge related to one of the issues in a hearing may testify as a witness under oath in a proceeding. Upon affirming the oath, the witness may be questioned by any party and by the advisory board.

B. Method of

appearance. Unless a more specific provision applies, witnesses are

ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the advisory board allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone or videoconference.

C. Advisory board as

a witness. The current or previously assigned advisory board in a matter shall not be called and shall not be a witness in the proceeding.

D. Use of expert

witnesses.

(1)

If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party must identify the purported expert to the other parties and to the advisory board at least seven days before the scheduled hearing, or with sufficient time before completion of the discovery deadline specified in a scheduling order to allow for deposition.

(2)

The party shall include the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and a listing of any materials the expert reviewed as part of reaching his or her expert opinion.

(3)

The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.

E. Use of

exclusionary rule. At the hearing, any party can invoke the exclusionary rule, excluding all witnesses other than the real party in interest, their representative, one main case agent, and any designated expert witness from the proceeding until the time of their testimony. If the rule has been invoked, the witnesses shall not discuss their testimony with each other until the conclusion of the

proceeding. When the rule has been invoked, any witness who remains in the hearing after conclusion of their testimony may not be recalled as a witness in the proceeding, except that any witness may observe the testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

F. OSI staff as experts.

(1) The advisory board may request one or more members of OSI staff to be present at the hearing to assist the advisory board with any matters within the expertise of the staff person.

(2) The staff person may be called as a witness by the advisory board and examined by the parties and the advisory board.

(3) Any party may call the staff person as a witness.

(4) Each other party will have the opportunity to cross-examine a staff person who is called as a witness. In the discretion of the advisory board, the advisory board may permit re-direct or re-cross examination of the staff person.

(5) The advisory board shall not discuss the case with the staff person outside the hearing or off the record.

(6) Any staff person requested to be present by the advisory board shall not be subject to the exclusionary rule.

[13.21.5.19 NMAC – N, 01/01/2022]

13.21.5.20 CLOSED OR PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF ADVISORY BOARD:

A. Closed hearings.

Unless otherwise provided by law, ordered by the advisory board for good cause, or required to prevent disclosure of confidential information, all hearings and the record are open to the public. Any party to a proceeding may submit a written request to close the hearing and the record to the public, which shall be granted if authorized by statute, regulation, to preserve confidentiality or to protect a

party from harassment or reprisal.

B. Open hearings.

If the hearing is open to the public, members of the public and the media may attend the hearing so long as they do not interrupt, interfere with, or impede the orderly, fair, and efficient hearing process. With prior consent of the advisory board, media members may record the proceeding from a fixed location in the hearing room. The advisory board may direct any member of the public, including media members, to leave the proceeding if they engage in any conduct that interferes with the advisory board’s ability to maintain order, develop the record, and provide a fair and efficient hearing process.

The proceedings shall be made available telephonically to members of the public, including the media, upon prior request.

C. Sealed records.

Upon request of any party, and upon a showing of good cause, the advisory board may seal a particular exhibit, document, or portions of a witness’s testimony from public disclosure if such items contain statutorily-protected confidential information, privileged information, or otherwise contain private identification information of a party or third party that is immaterial to a substantive issue in the proceeding or if its materiality is substantially outweighed by the prejudice of public release of the information. Upon issuance of an order sealing such documents or exhibits, these records will remain under seal throughout the proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal.

The opposing party shall be entitled to promptly review these documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process; however, the opposing party shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of these sealed documents to any other party outside of the hearing process.

D. Notes of

deliberation. The advisory board’s notes taken during the course of the hearing, notes generated during the decision-making process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure.

[13.21.5.20 NMAC – N, 01/01/2022]

13.21.5.21 SUBPOENAS:

Any request for issuance of subpoenas in matters subject to these rules shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the powers of the superintendent.

Any subpoena issued shall be in the name of the superintendent.

The party requesting the subpoena shall prepare a proposed subpoena, submit the proposed subpoena to each other party and to the advisory board for approval, and shall timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 days-notice before compelled attendance at a hearing or deposition, and at least 10 days-notice before compelled production of materials.

All returns or certificates of service on served subpoenas shall be filed in the docket of the proceeding, copied to the opposing party, and shall be made part of the record of the proceeding.

[13.21.5.21 NMAC – N, 01/01/2022]

13.21.5.22 LANGUAGE

INTERPRETERS: A party to a proceeding who needs language interpreter services for translation of one language into another is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a matter before the superintendent must be approved by the advisory board and must affirm the interpreter’s oath applicable in New Mexico courts. Upon reasonable

notice by the party, any interpreter required to be provided under the Americans with Disabilities Act shall be provided for by the superintendent. [13.21.5.22 NMAC – N, 01/01/2022]

13.21.5.23 FAILURE TO APPEAR:

A. Entry of default order. If a party fails to appear for a properly noticed hearing, either in person, through a permissible representative or telephonically with prior approval of the advisory board, the person waives the right to protest or challenge any action that is the subject of the hearing notice. The matter shall go on the record for the limited purpose of addressing notice and non-appearance, and the advisory board shall enter an appropriate order based on the waiver of the hearing by failing to appear.

B. Evidence of notice. In considering the non-appearance and whether the person received appropriate notice necessitating issuance of the order, the advisory board may consider the contents of the docket, information conveyed to or known by the advisory board, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by any present party, all of which may be addressed on the record of the hearing or in any subsequent order.

C. Written order required. Oral rulings based on a party’s failure to appear are not final until reduced to writing. The advisory board may issue a different written order as new information arises after the hearing regarding whether the notice of hearing was properly sent to the correct address or otherwise properly served. [13.21.5.23 NMAC – N, 01/01/2022]

13.21.5.24 RECONSIDERATION:

A. Time to file. A party may file a motion for reconsideration within 15 days after

the date of the final order. Any other party may file a response no more than 15 days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically. A timely filed motion for reconsideration should be decided based on the merits, whether or not a response is filed.

B. Posture. The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

C. Basis for motion. Motions for reconsideration shall not endeavor to present new evidence previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors or omissions contained in the final decision and order. [13.21.5.24 NMAC – N, 01/01/2022]

13.21.5.25 APPEALS

FOLLOWING HEARING: Any person who is adversely affected by a final order or decision in a surcharge rate proceeding may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Each order issued by the superintendent after a surcharge rate proceeding shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall promptly provide a court-endorsed copy of the appeal to the superintendent so that the OSI records manager can prepare and submit the proper record. [13.21.5.25 NMAC – N, 01/01/2022]

13.21.5.26 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE RECORD:

Any party may access and copy any written document filed to the docket. Copies of an audio

recording or written transcript of the proceeding shall be arranged through the stenographic service. The OSI may charge a reasonable fee for copies made, consistent with OSI’s fee schedule under the Inspection of Public Records Act. The superintendent may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record. [13.21.5.26 NMAC – N, 01/01/2022]

History of 13.21.5 NMAC: [RESERVED]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

This is an amendment to 13.21.3 NMAC, Sections 2, 6, 7, and 11, effective 01/01/2022.

13.21.3.2 SCOPE: This rule applies to all proceedings relating to the [PCF] Patient’s Compensation Fund (the fund) in which the superintendent adopts rules as required by law. [13.21.3.2 NMAC – N/E, 3/01/2019; Rp, 13.21.3.2 NMAC, 4/30/2019 A, 01/01/2022]

13.21.3.6 OBJECTIVE: To provide procedural rules for public rule hearings for use by the superintendent consistent with the State Rules Act in the organization, administration, and defense of the [PCF] fund and to facilitate public engagement with the superintendent’s rulemaking process in a transparent, organized, and fair manner. [13.21.3.6 NMAC – N/E, 3/01/2019; Rp, 13.21.3.6 NMAC, 4/30/2019; A, 01/01/2022]

13.21.3.7 DEFINITIONS: This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1 NMSA 1978.

in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC. In addition:

A. “Final order” also means “concise explanatory statement” as described in Section 14-4-5.5 NMSA 1978;

B. “Logical outgrowth” occurs when a final rule differs from the proposed rule if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period;

C. “Recommended decision” means the written decision of any designated hearing officer which contains a description of the rulemaking proceeding, a summary of any written comments submitted to the superintendent, a summary of any oral comments made at the public hearing, any analysis or conclusions of the designated hearing officer, and recommendations to the superintendent concerning adoption, rejection, or amendment of the proposed rule.
[13.21.3.7 NMAC – N/E, 3/01/2019; Rp, 13.21.3.7 NMAC, 4/30/2019 A, 01/01/2022]

13.21.3.11 WRITTEN COMMENT PERIOD:

A. The public comment period must be at least 30 calendar days, beginning after publication of the notice in the New Mexico register and issuance of the rulemaking notice. The superintendent shall not adopt a proposed rule before the end of the public comment period.

B. As long as the public comment period is at least 30 calendar days, the public comment period will close for initial comments at 4:00 p.m. on the day of the public hearing, or on the last day of the public hearing if the public hearing extends for more than one day. For purposes only of responses to written comments or oral comments at the public hearing, the public comment period will extend at least 10 calendar days beyond the public hearing or close of the 30 day comment

period, whichever is later, unless the necessity of adopting or publishing the rule by a certain date makes the extension of the public comment period impractical.

C. A person may submit, by mail or in electronic form, written comments or responses to comments on a proposed rule, and those comments or responses shall be made part of the record. Written comments may be submitted through the end of the public comment period, and responses to comments may be submitted for an additional 10 days, unless the necessity of adopting or publishing the rule by a certain date makes a response period impractical.

D. The superintendent may decide to amend the comment period, or response period, if the superintendent provides to the public, as defined in Section 14-4-2 NMSA 1978, notice of the changes.

E. The superintendent shall post all written comments and responses on the [PCF] patient’s compensation fund website, as soon as practicable, and no more than three business days following receipt to allow for public review. All written comments and responses received by the superintendent shall also be available for public inspection at the main office of the superintendent.
[13.21.3.11 NMAC – Rp, 13.21.3.11 NMAC, 4/30/2019 A, 01/01/2022]

SUPERINTENDENT OF INSURANCE, OFFICE OF THE

This is an amendment to 13.21.4 NMAC, Sections 2, 7, 8, 9, 11, 13, 15, 19, 25, and 26, effective 01/01/2022.

13.21.4.2 SCOPE: Except as otherwise provided, the rules in this part govern every adjudicatory proceeding, ~~[and every]~~ except any surcharge rate proceeding conducted pursuant to a notice of hearing issued by the superintendent on any matter delegated to the superintendent under the Medical Malpractice Act (MMA) or the rules adopted in Chapter 21 of Title 13 of the New Mexico

Administrative Code, and to any request for hearing submitted to the superintendent, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted.
[13.21.4.2 NMAC – N/E, 3/01/2019; Rp, 13.21.4.2 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.7 DEFINITIONS: This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC. In addition:

A. “Attorney” means only an individual who is licensed to practice law in New Mexico or who has requested temporary licensure under the New Mexico supreme court’s *pro hac vice* rules.

B. “Day or days” shall be interpreted as follows, unless otherwise specified:

- (1) “Business day”** means Monday through Friday, excluding any days that state offices are officially closed;
- (2)** one to five days means only business days; and
- (3)** six days or more means calendar days, including weekends and state holidays.

C. “Hearing” means an on-the-record adjudicatory proceeding ~~[or surcharge rate proceeding]~~ before the superintendent or the before a hearing officer appointed by the superintendent.

D. “Hearing officer” is the superintendent, or a person designated by the superintendent, to serve as a neutral decision maker in a proceeding.

E. “Order” means any directive, command, determination of a disputed issue, or ruling on a disputed matter issued by the superintendent or a hearing officer in a proceeding governed by these rules.

F. “OSI” means the New Mexico office of superintendent of insurance.

G. “Party” means an entity who participates in a proceeding governed by these rules by order of the superintendent.

H. “Pleading” means any written request, motion, or proposed action filed by a party in a docketed proceeding, as set forth in 13.21.4.10 NMAC.

I. “Proceeding” means any formal adjudicatory [~~or surcharge rate~~] proceeding, case, or hearing conducted by the superintendent pursuant to these rules.

J. “Request for hearing” means a formal written request for an opportunity to appear before the superintendent and offer testimony, to call witnesses, present evidence and ask questions, that is submitted by a person with respect to a particular matter where the superintendent has statutory or regulatory authority to conduct an adjudicatory [~~or surcharge rate~~] proceeding.

K. “Sua Sponte” means any determination of the superintendent or of his designee made without prompting of the parties.

L. “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.

[13.21.4.7 NMAC – N/E, 3/01/2019; Rp, 13.21.4.7 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.8 REVISION OF STANDING ORDERS:

The superintendent may issue or withdraw standing procedural orders addressing general practice issues and filing protocols for the handling of matters to be adjudicated before the superintendent. Such standing orders will be available for public inspection at OSI office facilities, on the [~~PCF~~] OSI website, and in any applicable information provided with a notice of hearing. Parties appearing before the superintendent are expected to comply with standing orders.

[13.21.4.8 NMAC – N/E, 3/01/2019; Rp, 13.21.4.8 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.9 REQUESTING A HEARING:

A. Written request required. Any person seeking a hearing before the superintendent shall file a written request for a hearing [~~using the form available on the PCF website~~] to the OSI’s electronic docket or as otherwise directed by the superintendent. The request shall include all of the following:

- (1) a brief summary identifying the nature of the dispute;
- (2) the applicable statute, rule, bulletin, or order in dispute in the matter;
- (3) a statement of the jurisdictional basis for the superintendent to adjudicate the matter;
- (4) the triggering action of the superintendent, such as an order, denial, suspension, revocation, penalty, fine, rule, or interpretative publication;
- (5) the requestor’s reason for challenging that action or inaction; and
- (6) the mailing address of the requestor.

B. Request rejected. The superintendent may reject any request for hearing if the superintendent lacks jurisdiction to adjudicate the matter; the matter is moot; or the request for hearing is procedurally or substantively deficient.

(1) If a request for hearing is rejected, the superintendent will [~~notify the requestor in writing with a brief~~] issue an order denying the request with an explanation [~~of the rejection~~].

(2) If the request for hearing is deficient for any reason other than lack of subject matter jurisdiction or mootness, the requestor may correct any deficiency and resubmit the request for hearing.

C. Designation of hearing officer [~~and docket~~]. Upon receipt of a request for hearing that contains all information required by Subsection A of this section and over which the superintendent has

jurisdiction, the superintendent may designate a hearing officer to preside in the matter based on the knowledge, expertise, experience, efficiency, and staffing needs of the office. The superintendent may subsequently reassign the matter to a different hearing officer, if necessary. The superintendent shall assign a docket number to be referenced in all subsequent communications and filings concerning the matter.

D. Intervenors. Any person who claims an interest relating to the subject of a notice of hearing, and is so situated that the hearing may impair or impede the person’s ability to protect that interest, may apply to intervene in the proceeding.

(1) In determining whether to allow or deny intervention, the superintendent shall consider the nature of the claimed interest of the applicant, the potential impact of the superintendent’s decision on the applicant’s ability to protect that interest, the timeliness of the application, the potential disruption of the proceedings and prejudice to existing parties if intervention were allowed.

(2) Whether to allow intervention at the sole discretion of the superintendent.

(3) OSI staff may intervene in any proceeding as a matter of right by filing a notice of intervention.

[13.21.4.9 NMAC – N/E, 3/01/2019; Rp, 13.21.4.9 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.11 ELECTRONIC DOCKET AND FILING OF PLEADINGS:

A. Electronic docket.

Individuals or their counsel may access OSI’s free electronic docket to view cases and filed pleadings. Registration of a free user account is required to file pleadings into a docket or to request a hearing. Every written document that is submitted to a hearing officer or exchanged between parties for consideration, including pleadings, such as motions, responses and objections, all evidentiary documents and any other filings shall

include the caption and shall be filed to the electronic docket.

~~[A]~~ **B. Opening the docket.** A docket shall be opened ~~[in the PCF records management system immediately upon the superintendent's determination that the requestor shall be granted a hearing.]~~ by the superintendent at the superintendent's discretion or by request for hearing filed in the OSI's electronic docket.

~~(1)~~—The superintendent shall direct that the requestor's original request for hearing be filed to the docket.

~~(2)~~—The superintendent shall establish the caption for the docket, which caption shall be used thereafter for any matters pertaining to the hearing. The caption shall establish the nature of the matter and shall include the docket number.

~~(3)~~—Every written document that is submitted to the superintendent or exchanged between the parties for consideration, including pleadings such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the docket.]

[B] C. Public access. Unless otherwise determined by the superintendent upon consideration of a request by a party for confidentiality, all dockets shall be open for public inspection.

[E] D. Filing restrictions and service.

(1) ~~[The PCF will accept filings through mail, facsimile, or electronic mail]~~ The OSI docket administrator will review all filings for compliance with these rules. Non compliance with filings will be returned to submitter for correction.

(2) ~~[Any item that is filed to the docket shall also be contemporaneously served upon all parties of record and on the hearing officer.]~~

The OSI's electronic docket does allow for electron service. All parties of record shall be listed on the initial request for hearing and shall

be selected for service with each additional filing.

(3) All filings shall include a certificate of service that documents the method of service used. A represented party shall only be served through counsel.

(4) ~~[Electronic and in-person]~~ In-person filing shall be accepted on business days between 8:00 am. and 4:00 pm. ~~[Pleadings]~~ In-person pleadings will be marked as filed on the business day that the ~~[PCF]~~ OSI receives the pleading.

D. Filing requirements.

(1) All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

(2) Absent any order to the contrary, no pleading shall exceed 10 pages, excluding the caption and certificate of service, of double-spaced (except for block quotations), 12-point font. Only relevant excerpts of a motion exhibit shall be filed, with the pertinent portions highlighted, underlined, or otherwise emphasized. All exhibits and attachments shall identify the total number of pages, and consecutive page numbers (e.g., "Page 1 of 10"). Only single-sided documents will be accepted for filing or into a record at a hearing.

E. Request for concurrence. Before submission of any motion, request for relief or request for continuance, the requesting party should make reasonable efforts to consult with each other party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the requested relief would be opposed. The moving party shall state the position of each other party in the pleading.

F. Responses to pleadings.

(1) Unless a different deadline has been established by the hearing officer, each non-moving party shall have 10 calendar days to file a written response to a pleading.

(2) If a deadline for filing falls on a non-business day, the deadline falls on the next business day.

(3) The hearing officer has the discretion to extend or shorten the response deadline.

(4) Failure to file a response in opposition may be presumed to be consent to the relief sought.

(5) The hearing officer is not required to make a default ruling on any motion if the relief sought could be contrary to the facts or law on the issues.

G. In the event of a procedural defect or other error with the manner, method, or content of a submitted pleading, the hearing officer or records manager may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to certify service, failure to comply with the page limitations, failure to confer with other parties, failure to use the form or follow the specific filing method required by the ~~[PCF]~~ OSI, submission of double-sided documents, failing to properly number pages, failure to use the correct caption of reference the assigned docket number, or failure to comply with an applicable standing order. [13.21.4.11 NMAC – N/E, 3/01/2019; Rp, 13.21.4.11 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.13 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:

A. Location.

(1) In the absence of any statutory requirements to the contrary, all hearings conducted by the superintendent shall

occur in Santa Fe, at the office of superintendent of insurance, unless the hearing officer orders the parties to appear at another location in New Mexico.

(2) The parties may express a mutual preference for location of the hearing in their request for hearing.

(3) In selecting a location other than Santa Fe, the hearing officer shall consider and give weight to the location and wishes of the parties, witnesses, access for a hearing officer with expertise in the matter, and the scheduling and staffing needs of the [PCF] OSI,

(4) If selecting a location other than Santa Fe would cause an unreasonable, undue burden to any party, that party may file a written objection to the selected location within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The hearing officer will promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to another more reasonable location and the superintendent may designate another hearing officer if necessary.

B. Notice. The superintendent will notify the parties to the hearing of the date, time and place scheduled for the hearing at least seven days before the scheduled hearing. This notice will be directed to the party’s attorney, or to the last known address of any unrepresented party. Notice will be sent via US mail unless the parties have requested an alternate method of notification that is acceptable to the superintendent. [13.21.4.13 NMAC – N/E, 3/01/2019; Rp, 13.21.4.13 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.15 CONTINUANCES:

A. At the request of a party, a witness, or upon the hearing officer’s own determination, a hearing may be continued for good cause. The hearing officer shall consider only written continuance requests made at least three working days prior to the scheduled hearing

absent extraordinary, unforeseen circumstances that the requesting party or witness could not have known earlier. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the hearing officer may grant or deny the request on the record at the hearing. No continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory jurisdictional deadline.

B. Within the jurisdictional time limits set by statute, the superintendent or hearing officer may *sua sponte* continue any matter as necessary to address [PCF] OSI, staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the hearing officer may contact the parties to inquire about the status of a scheduled case.

C. No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable jurisdictional time limit on the case.

[13.21.4.15 NMAC – N/E, 3/01/2019; Rp, 13.21.4.15 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.19 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. General authority. The superintendent may preside over [PCF] OSI, hearings or may designate a hearing officer to preside instead.

B. Duties of the hearing officer. The hearing officer shall conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings and maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in proceeding, including qualification of expert witnesses and admission of exhibits;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a docket to be opened and a complete record of a hearing to be made;

(12) to make and issue decisions and procedural orders;

(13) to issue subpoenas in the name of the superintendent;

(14) if acting on behalf of the superintendent, to issue a recommendation to the superintendent regarding the final resolution of the matter; and

(15) to appropriately sanction, up to exclusion, indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or other improper conduct that interferes with the conduct of a fair and orderly hearing or the development of a complete record.

C. Independence of the hearing officer. In the performance of these functions, the hearing officer shall not be

responsible to or subject to the direction of any other officer, employee or agent of OSI or the [PCF] TPA, except that a hearing officer appointed by the superintendent shall be subject to the direction of the superintendent.

D. Ex parte communication. In the performance of these functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter. An improper *ex parte* communication occurs when the hearing officer discusses or otherwise communicates regarding the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

E. Final order. After a thorough review of the record and any recommendation prepared by a designated hearing officer, the superintendent shall issue a final order. No party or member of OSI or [PCF] TPA staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence his final decision.

[13.21.4.19 NMAC – N/E, 3/01/2019; Rp, 13.21.4.19 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.25 APPEALS FOLLOWING HEARING:

Any party who has exhausted all administrative remedies available under these rules and who is adversely affected by a final order or decision in an adjudicatory proceeding [~~or surcharge rate proceeding~~] may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Each order issued by the superintendent after an adjudicatory proceeding [~~or surcharge rate proceeding~~] shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall promptly provide a court-endorsed copy of the appeal to the superintendent so that the [PCF] OSI

records manager can prepare and submit the proper record.

[13.21.4.25 NMAC – N/E, 3/01/2019; Rp, 13.21.4.25 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.26 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE

RECORD: Any party may access and copy any written document filed to the docket. Copies of an audio recording or written transcript of the proceeding shall be arranged through the stenographic service. The [PCF] OSI may charge a reasonable fee for copies made, consistent with OSI's fee schedule under the Inspection of Public Records Act. The superintendent may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record.

[13.21.4.26 NMAC – N/E, 3/01/2019; Rp, 13.21.4.26 NMAC 4/30/2019; A, 01/01/2022]

End of Adopted Rules

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Other Material Related to Administrative Law

**REGULATION AND
LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Regulation and Licensing Department, Cannabis Control Division gives Notice of a Minor, Nonsubstantive Correction to 16.8.1 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 7: The paragraph numberings were corrected from (6) and (7) to paragraphs (5) and (6) within Subsection A.

A copy of this Notification will be filed with the official version of each of the above rules.

**REGULATION AND
LICENSING DEPARTMENT
COUNSELING AND THERAPY
PRACTICE BOARD****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The New Mexico Counseling and Therapy Practice Board gives Notice of a Minor, Nonsubstantive Correction to 16.27.19 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made

to all electronic copies of the above rule:

On the transmittal form and on the repeal statement, the part name was incorrectly noted as “Approved Supervision”. The part name is, and always has been, “Approved Supervisors”. The part name has been corrected in both places.

A copy of this Notification will be filed with the official version of each of the above rules.

**End of Other Material
Related to Administrative
Law**

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 12
Issue 2	January 14	January 26
Issue 3	January 28	February 9
Issue 4	February 11	February 23
Issue 5	February 25	March 9
Issue 6	March 11	March 23
Issue 7	March 25	April 6
Issue 8	April 8	April 20
Issue 9	April 22	May 4
Issue 10	May 6	May 25
Issue 11	May 27	June 8
Issue 12	June 10	June 22
Issue 13	June 24	July 7
Issue 14	July 8	July 20
Issue 15	July 22	August 10
Issue 16	August 12	August 24
Issue 17	August 26	September 14
Issue 18	September 12	September 28
Issue 19	September 30	October 13
Issue 20	October 14	October 26
Issue 21	October 28	November 9
Issue 22	November 15	November 30
Issue 23	December 2	December 14
Issue 24	December 16	December 28

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941.

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