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New Mexico Register

Volume XXXV, Issue 9
May 7, 2024

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A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

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SUPERINTENDENT OF INSURANCE, OFFICE OF

Notices of Rulemaking and Proposed Rules

GAMING CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Gaming Control Board hereby gives notice that the Board will conduct a public comment hearing on the described rules below.

The public comment hearing will be held on Tuesday, June 11, 2024 from 9:00 am to 12:00 pm at the Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113.

The public comment hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter and/or audio recording.

Subsection B of 15.1.2.8 NMAC Confidential Information:

Purpose: Repeal current Rule and replace with cleaned up language in the rule.

Summary of Full Text: Changing "operation of gaming establishments" to "gaming operations."

Subsections C, D, and F of 15.1.2.9 NMAC – Requests for Disclosure of Confidential Information:

Purpose: Repeal current Rule and replace with provisions to provide more time within which to process requests for disclosure of confidential information to ensure more thorough and thoughtful responses and to avoid mistakes.

Summary of Full Text: Changing "ten (10) working" to "45 calendar" days in subsection C. Changing "working" days to "calendar" days in subsection D. Changing "three" to "seven calendar" days in subsection F.

15.1.3.8 NMAC - Adoption, Amendment and Repeal

Purpose: Repeal current Rule and replace with a correction of the statutory reference in the rule.

Summary: Changing 60-2E-61 to 60-2E-62.

Subsection D of 15.1.10.32 NMAC - Definitions

Purpose: Repeal current Rule and replace with corrections of spelling/ grammatical errors.

Summary: Changing "building's" to "buildings" in definition of "premises".

Subsection D of 15.1.6.8 NMAC – Suitability of Premises

Purpose: Repeal current Rule and replace to connect rule to statute.

Summary: Adds reference to statutory definition of "permanent physical barrier".

Subsections B and E of 15.1.6.9 NMAC – Area of Licensed Premises; Restrictions:

Purpose: Repeal current Rule and replace to clarify requirements for gaming premises constructions and reiterates tie to statute.

Summary: Specifies that gaming premises construction needs to be completed in accordance with applicable building codes and a certificate of occupancy has been issued along with Board approval prior to gaming commencing on the licensed premises. Also adds reference to the statutory definition of "permanent physical barrier."

Subsections A, D, and E of 15.1.6.10 NMAC - Ownership of Premises

Purpose: Repeal current Rule and replace with same version but requiring disclosure of all potential applicable business relationships.

Summary: Requires disclosure of business relationships "in addition to the lease" between the licensee or applicant and the lessor "or owner" of the premises, adds requirement to disclose liens, clarifies that written board approval is required for a change in premises lease, ownership of, or interest in gaming premises.

Subsection B, C, D of 15.1.6.11 NMAC - Modification of Licensed Premises.

Purpose: Repeal current Rule and replace original rule with same version but adding cross-references to other rules and removing certain requirements for premises modifications.

Summary: Adds requirement to comply with 15.1.5.28 NMAC in addition to this rule in Subsection B. Changes "this rule" to "these rules" in Subsection C. Removes requirement that modifications of licensed premises must be approved by the Board prior to such modification in Subsection D.

15.1.6.12 NMAC - Transfer of License to New Premises.

Purpose: Repeal current Rule and replace with new title that better describes the rule and removing redundant language.

Summary: Changes "License" to "Gaming Operations" in the title. Removes "or license" and changes "an unapproved" to "a different" premises in Subsection A. Removes "or the gaming operator's license" in Subsection B.

Authority: Section 60-2E-7 NMSA1978 and Section 60-2E-8 NMSA 1978.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments:
Copies of the proposed rules are available on the Gaming Control Board's website at https://www.

gcb.nm.gov/rulemaking/ or can be obtained by emailing GCB-PIO@gcb.nm.gov. The proposed rules are also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to GCB-PIO@gcb.nm.gov, or by regular mail at Attn: Michelle Pato - proposed rule, The Gaming Control Board, 4900 Alameda Blvd. NE, Albuquerque, NM 87113. The deadline to receive written comment is Tuesday, June 11, 2024. All written public comments will be posted on the website throughout the written comment period at: https://www.gcb.nm.gov/rulemaking/.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 841-9700.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on June 10, 2024. The hearing will begin at 1:00 p.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding the proposed repeal and replacement to **5.7.20 NMAC, LEGISLATIVE LOTTERY SCHOLARSHIP PROGRAM**

Join via Microsoft Teams:
https//:teams.microsoft.com/l/meetup-join/19%3ameeting_OT1jMzk5YjUtMTA5MC00MGFjLTk0YmQtNmUxMjd1ZDM3ZTgx%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 221 470 167#

Purpose:
The purpose of the proposed repeal and replacement of 5.7.20 NMAC is to align with criteria established in S.B. 239 57th Leg., 1st Sess. (N.M. 2024). S.B. 239 adjusted eligibility criteria for the New Mexico Legislative Lottery Scholarship Program to provide more flexibility for students to meet credit hour requirements over a full academic year rather than per semester. The changes also allow the scholarship to cover summer courses. In addition, the Department proposes changes which clarify other scholarship eligibility requirements, procedures for students with disabilities, duration of the scholarship, scholarship amounts and the award packaging process.

Summary of proposed rule:
The proposed rule includes updates to the objective to align with new academic year requirements for "full-time". Various definitions are updated. Sections are renamed, added and reorganized for clarity. References are updated accordingly. Changes are made to the amount of scholarship section to specify the order in which the award is to be packaged and specified dollar amounts and calculation processes for sector awards are removed. Fluidity in the cost of post-secondary education requires flexibility within the rule for the Department to determine the amounts. The Department also proposes changes which clarify other scholarship eligibility requirements, procedures for students with disabilities and duration of the scholarship. Various grammatical and stylistic changes included.

Details for Obtaining a Copy, Public Hearing and Comments:
The proposed rule is posted on the NMHED website and may be accessed at http://www.hed.nm.gov under the "Data, Reports & Rules" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on June 10, 2024 from 1:00 p.m. until 2:00 p.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on June 6, 2024.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Sections 6-24-1 et seq. NMSA 1978 and Sections 21-21N-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department)

will hold a public rulemaking hearing on June 10, 2024. The hearing will begin at 3:00 p.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed amendments to **5.7.31 NMAC, PUBLIC SERVICE LAW LOAN REPAYMENT PROGRAM**

Join via Microsoft Teams:
https://teams.microsoft.com/1/meetup-join/19%3ameeting_NDYwY2M2OGMtYWYxZi00YjQyLWIwNzAtZjM2MzA0MWI2NzYx%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 313 318 540#

Purpose:
The purpose of the proposed amendment is to remove the salary cap from the rule. The salary cap is not in Statute and removal of the cap will allow the Department to broaden the applicant pool for the program. The proposed amendment also makes changes to the order of the criteria for the awards to prioritize applicants who have greatest financial need and are providing service in the areas of New Mexico with greatest need for public service attorneys.

Summary of proposed rule:
The proposed amendment removes the salary cap from rule and adds flexibility for the Department to determine the maximum annual salary. The proposed amendment also reorders the award criteria.

Details for Obtaining a Copy, Public Hearing and Comments:
The proposed rule is posted on the NMHED website and may be accessed at http://www.hed.nm.gov under the "Data, Reports and Rules" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on June 10, 2024 from 3:00 p.m. until 3:30 p.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on June 6, 2024.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Sections 21-22F-1 through 21-22F-11, NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on June 10, 2024. The hearing will begin at 3:30 p.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding proposed adoption of a new rule **5.7.36 NMAC, COMMUNITY GOVERNANCE ATTORNEY PROGRAM**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDJmNDNhMGMtZRhMy00MWI3LTk0NTgtMDVjOT1hNWUzYTgw%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%3a%22c327f958-5970-4536-8f6b-03d448b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 262 737 876#

Purpose:
The Department proposes adoption of new rule 5.7.36 NMAC. The new proposed rule establishes regulations and procedures for the Community Governance Attorney Program created by S.B.244, 54th Leg., 1st Sess. (N.M. 2019). The purpose of the program is to provide financial support to qualified third-year law students at the University of New Mexico School of Law and fifty percent of the salaries for the recipients' first two years of employment providing legal services for to Acequias, Land Grants-Mercedes or low-income residents of Colonias. The forgivable loans are intended to help defray the cost of attendance.

Summary of proposed rule:
The proposed rule lays out the various duties of the New Mexico Higher Education Department and the Community Governance Attorney Commission. The rule includes the make-up of the Commission; the requirements for participant eligibility; the process of granting, forgiving or repayment of the loan; the soliciting of employers and reporting requirements.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is posted on the NMHED website and may be accessed at http://www.hed.nm.gov under the "Data, Reports and Rules" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on June 10, 2024 from 3:30 p.m. until 4:00 p.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on June 6, 2024.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Section 21-21Q-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public rulemaking hearing on June 10, 2024. The hearing will begin at 2:00 p.m. and will be held via Microsoft Teams and in person at the New Mexico Higher Education Department. The purpose of the hearing is to take public comment regarding the proposed repeal and replacement to **5.7.37 NMAC, NEW MEXICO OPPORTUNITY SCHOLARSHIP PROGRAM**

Join via Microsoft Teams:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODAwNjIwOGEtMDU3Ni00OGI5LWI1YjYtNjg3NDc4NmYxYWF1%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c327f958-5970-4536-8f6b-03d48b60d29e%22%7d

Or call in (audio only)
+1 (505) 312-4308
Phone Conference ID: 954 438 951#

Purpose:
The purpose of the proposed repeal and replacement of 5.7.37 NMAC is to align with criteria established in S.B. 239 57th Leg., 1st Sess. (N.M. 2024). S.B. 239 removed college credits earned by high school students under the dual credit program from counting toward the credit hour cap for the New Mexico Opportunity Scholarship Program. In addition, the Department proposes changes which clarify other scholarship eligibility requirements, procedures for students with disabilities, duration of the scholarship, scholarship amounts and the award packaging process.

Summary of proposed rule:
The proposed rule includes updates to the objective to align with new criteria regarding dual credit. Various definitions are updated or removed. Sections are renamed, added and reorganized for clarity. References are updated accordingly. Changes are made to the amount of scholarship section to specify the order in which the award is to be packaged and specified dollar amounts and calculation processes for sector awards are removed. Fluidity in the cost of post-secondary education requires flexibility within the rule for the Department to determine the amounts. The Department also proposes changes which clarify other scholarship eligibility requirements, procedures for students with disabilities and duration of the scholarship. Various grammatical and stylistic changes included.

Details for Obtaining a Copy, Public Hearing and Comments:
The proposed rule is posted on the NMHED website and may be accessed at http://www.hed.nm.gov under the "Data, Reports & Rules" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@hed.nm.gov or (505)476-8411.

A public hearing will be held on June 10, 2024 from 2:00 p.m. until 3:00 p.m. via Microsoft Teams and in person at the NMHED Office located at **2044 Galisteo Street, Suite 4, Santa Fe, NM 87505**. Any person who is or may be affected by this proposed rule may participate. Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@hed.nm.gov. **Written comments must be received no later than 4:00 p.m. on June 6, 2024.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978 and Section 21-21R-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@hed.nm.gov ten (10) business days prior to the hearing.

HUMAN SERVICES DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

On July 1, 2024, the New Mexico Human Services Department (the Department) will become the New Mexico Health Care Authority ("HCA"), pursuant to the passage of S16 during the 2023 NM Legislative Session and signed into law by NM Governor Michelle Lujan Grisham. To bring the New Mexico Administrative Code (NMAC) into full alignment with this change, the Department is proposing to repeal within Title 7 of the New Mexico Administrative Code several Department of Health (DOH) rules and to establish HCA authority over certain programs and oversight activities with adoption of new rules within Title 8 of the New Mexico Administrative Code. Change of department name and statutory authority are the only substantive proposed changes to the rules. There are no programmatic or other substantive changes proposed for any new rule. This process of repealing DOH rules and adopting new HCA rules is necessary under 1.24.11.9 NMAC.

Section 9-8-6 NMSA 1978, authorizes the HSD Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions, and DOH has delegated HSD authority to carry out these rule changes on its behalf. (See attached letter.). All the DOH rules HSD proposes to make changes to are listed at the end of this notice, clearly marked which will be amended and which will be repealed and replaced.

Copies of these proposed changes are available online from the HSD website at: https://www.hsd.state.nm.us/lookingforinformation/registers/ and https://www.hsd.state.nm.us/2024-comment-period-open/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting HSD at (505) 709-8865.

Notice Date: May 7, 2024
Hearing Date: June 7, 2024
Proposed Effective Date: July 1, 2024

A public hearing to receive testimony on these repeals will be held on **June 7, 2024, at 2:30 pm** Mountain Time (MT). There are three options for attending the hearing:

1. Attend in person by coming to the large conference room at the Administrative Services Division (ASD), 1474 Rodeo Rd., Santa Fe, NM 87505.

2. Join the Zoom webinar on your computer, mobile app or room device:
https://us02web.zoom.us/j/82263420751?pwd=aVVtZjFGWE41eUZxTXVOdlVaOUx1dz09
Webinar ID 822 6342 0751
Passcode 144466

3. Or call in (audio only):
+1-719-359-4580 or +1-253-205-0468
Webinar ID 822 6342 0751
Passcode 144466

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact HSD at (505) 709-8865. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

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

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: HSD/HCA Rule Change Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 709-8865. Interested persons may also address comments via electronic mail to: Diane.Bilodeau@hsd.nm.gov. Written mail, electronic mail and recorded comments must be received **no later than 5 p.m. MT on June 7, 2024**. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at https://www.hsd.state.nm.us/2024-comment-period-open/ along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

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DOH rules to be repealed and replaced with new part numbers in Title 8

DOH Rule number to be repealed	New Title 8 rule numbers	New Title 8 Rule names
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7.1.7 NMAC	8.370.3 NMAC	Health Facility Licensure Fees and Procedures
7.1.8 NMAC	8.370.4 NMAC	Health Facility Sanctions and Civil Monetary Penalties
7.1.9 NMAC	8.370.5 NMAC	Caregivers Criminal History Screening Requirements
7.1.10 NMAC	8.370.6 NMAC	Access to Medical Records by Disability Applicants
7.1.11 NMAC	8.370.7 NMAC	Health Facility Receivership Requirements
7.1.12 NMAC	8.370.8 NMAC	Employee Abuse Registry
7.1.13 NMAC	8.370.9 NMAC	Incident Reporting, Intake, Processing and Training Requirements
7.1.14 NMAC	8.370.10 NMAC	Abuse, Neglect, Exploitation, and Death Reporting, Training and Related Requirements for Community Providers
7.1.32 NMAC	8.370.11 NMAC	Long-Term Care Facility Dementia Training
7.7.2. NMAC	8.370.12 NMAC	Requirements for Acute Care, Limited Services and Special Hospitals
7.7.3 NMAC	8.370.13 NMAC	Requirements for Rural Emergency Hospitals
7.8.2 NMAC	8.370.14 NMAC	Assisted Living Facilities for Adults
7.8.4 NMAC	8.370.15 NMAC	General Requirements for Boarding Homes
7.9.2 NMAC	8.370.16 NMAC	Requirements for Long Term Care Facilities
7.10.2 NMAC	8.370.17 NMAC	Requirements for Freestanding Birth Centers
7.11.2 NMAC	8.370.18 NMAC	Requirements for Facilities Providing Outpatient Medical Services and Infirmaries
7.12.2 NMAC	8.370.19 NMAC	Requirements for In home and Inpatient Hospice Care
7.13.2 NMAC	8.370.20 NMAC	Requirements for Adult Day Care Facilities
7.14.2 NMAC	8.370.21 NMAC	Quality Management System and Review Requirements for Providers of Community Based Services
7.28.2 NMAC	8.370.22 NMAC	Requirements for Home Health Agencies
7.36.2 NMAC	8.370.24 NMAC	Requirements for End Stage Renal Disease Facilities
16.12.20 NMAC	8.370.25 NMAC	Hearing Requirements for Certified Nurse Aides
	8.371.1 NMAC	General Provisions [RESERVED]
7.26.2 NMAC	8.371.2 NMAC	Requirements for Intermediate Care Facilities for the Mentally Retarded
7.26.3 NMAC	8.371.3 NMAC	Rights of Individuals with Developmental Disabilities Living in the Community
7.26.4 NMAC	8.371.4 NMAC	Client Complaint Procedures
7.26.5 NMAC	8.371.5 NMAC	Service Plans for Individuals with Developmental Disabilities Living in the Community
7.26.6 NMAC	8.371.6 NMAC	Requirements for Developmental Disabilities Community Programs
7.26.7 NMAC	8.371.7 NMAC	(Appendix A) Individual Transition Planning Process
7.26.8 NMAC	8.371.8 NMAC	(Appendix B) Dispute Resolution Process
7.26.9 NMAC	8.371.9 NMAC	Admission, Discharge and Transfer of Eligible Recipients for Services in ICF / MR Facilities
7.20.3 NMAC	8.321.6 NMAC	Requirements for Community Mental Health Centers
7.20.4 NMAC	8.321.7 NMAC	Behavioral Health Capital Fund Program
7.32.2 NMAC	8.321.8 NMAC	Admission Criteria for Alcohol and Substance Services

7.32.5 NMAC	8.321.9 NMAC	Procurement of Professional Services for Alcohol and Substance Abuse Services
7.32.8 NMAC	8.321.10 NMAC	Opioid Treatment Programs
7.30.13 NMAC	8.321.11 NMAC	Crisis Triage Centers

HUMAN SERVICES DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

On July 1, 2024, the New Mexico Human Services Department (the Department) will become the New Mexico Health Care Authority ("HCA"), pursuant to the passage of S16 during the 2023 NM Legislative Session and signed into law by NM Governor Michelle Lujan Grisham. To bring the New Mexico Administrative Code (NMAC) into full alignment with this change, the Department is proposing to amend rules found in the New Mexico Administrative Code (NMAC) as outlined below and as listed at the end of this Notice. These proposed amendments are to address the administrative need to change the name of the Human Services Department to the Health Care Authority and throughout this rule, if found, "department" to "authority" or "HSD" was changed to "HCA". There are no programmatic changes proposed.

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

These proposed rule changes are available on the HSD website at: https://www.hsd.state.nm.us/lookingforinformation/registers/ and https://www.hsd.state.nm.us/2024-comment-period-open/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting HSD at (505) 709-8865.

For all amendments of all rules listed at the end of this notice, the draft language of every amendment will be substantially the same for each section:

Section 1 is being amended to reflect the change from the Human Services Department to the Health Care Authority.
Section 3 is being amended to add the statutory citation for the Health Care Authority (Section 9-8-1 et seq. NMSA 1978.

An explanatory sentence is added to every amendment that states: "Consistent with all other rules converted from the Human Services Department to the Health Care Authority; throughout this rule, if found, "department" was changed to "authority" or "HSD" was changed to "HCA"."

The amendments to these rules do not encompass any other substantive changes to any other section.

Notice Date: May 7, 2024
Hearing Date: June 7, 2024
Proposed Effective Date: July 1, 2024

A public hearing to receive testimony on these repeals will be held on **June 7, 2024, at 10:30 pm** Mountain Time (MT). There are three options for attending the hearing:

1. Attend in person by coming to the large conference room at the Administrative Services Division (ASD), 1474 Rodeo Rd., Santa Fe, NM 87505.

2. Join the Zoom webinar on your computer, mobile app or room device:
https://us02web.zoom.us/j/86195382902?pwd=YWI3aVFWS1czWTl6RjNMUXZMMWZOdz09
Webinar ID 861 9538 2902
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3. Or call in (audio only):

+1-669-444-9171 or +1-669-900-6833

Webinar ID 861 9538 2902
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Human Services Department
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ATTN: HSD/HCA Rule Change Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

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comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at https://www.hsd.state.nm.us/2024-comment-period-open/ along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

HSD Rules to be Amended:

Rule number	Rule name
8.1.2 NMAC	GENERAL OPERATING PROCEDURE FOR THE OFFICE OF THE INSPECTOR GENERAL
8.50.100 NMAC	GENERAL PROVISIONS
8.50.108 NMAC	ESTABLISHMENT AND MODIFICATION OF SUPPORT ORDER
8.50.109 NMAC	MEDICAL SUPPORT
8.50.110 NMAC	INCOME WITHHOLDING
8.50.111 NMAC	GENERAL ENFORCEMENT OF SUPPORT OBLIGATIONS
8.50.112 NMAC	ADMINISTRATIVE ENFORCEMENT OF SUPPORT OBLIGATIONS
8.50.113 NMAC	ENFORCEMENT OF SUPPORT OBLIGATIONS FROM FEDERAL EMPLOYEES INCLUDING MEMBERS OF THE ARMED SERVICES
8.50.114 NMAC	FINANCIAL INSTITUTION DATA MATCH (FIDM)
8.50.115 NMAC	EXPEDITED PROCESSES AND ADMINISTRATIVE EXPEDITED PROCESS
8.50.117 NMAC	INTERNATIONAL CHILD SUPPORT ENFORCEMENT
8.50.124 NMAC	INTERSTATE CASES
8.50.125 NMAC	FEES, PAYMENTS, AND DISTRIBUTIONS
8.50.129 NMAC	CASE MANAGEMENT
8.50.130 NMAC	ADMINISTRATIVE HEARINGS
8.50.131 NMAC	PENALTIES
8.50.132 NMAC	UNCLAIMED CHILD, SPOUSAL OR MEDICAL SUPPORT
8.100.140 NMAC	GENERAL OPERATING POLICIES CASE FILES
8.100.640 NMAC	RESTORATION AND CLAIMS
8.102.100 NMAC	RECIPIENT POLICIES – DEFINITIONS AND ACRONYMS
8.102.460 NMAC	RECIPIENT POLICIES – COMPLIANCE REQUIREMENTS
8.102.461 NMAC	WORK PROGRAM ACTIVITIES
8.102.462 NMAC	NEW MEXICO WAGE SUBSIDY PROGRAM
8.106.100 NMAC	RECIPIENT POLICIES – DEFINITIONS AND ACRONYMS
8.106.400 NMAC	RECIPIENT POLICIES – DEFINING THE BENEFIT GROUP
8.106.410 NMAC	RECIPIENT POLICIES – GENERAL RECIPIENT REQUIREMENTS
8.106.420 NMAC	RECIPIENT POLICIES – REQUIREMENTS FOR DETERMINING DISABILITY
8.106.430 NMAC	RECIPIENT POLICIES – REQUIREMENTS FOR DEPENDENT CHILDREN
8.106.431 NMAC	PRE CERTIFIED VICTIMS OF HUMAN TRAFFICKING
8.106.500 NMAC	ELIGIBILITY POLICY – GENERAL INFORMATION
8.106.502 NMAC	GENERAL INFORMATION – BURIAL ASSISTANCE
8.106.510 NMAC	ELIGIBILITY POLICY- RESOURCES/PROPERTY
8.106.520 NMAC	ELIGIBILITY POLICY – INCOME

8.106.610 NMAC	DESCRIPTION OF PROGRAM/BENEFITS – BENEFIT DELIVERY
8.106.620 NMAC	DESCRIPTION OF PROGRAM BENEFITS – BENEFIT DETERMINATION/ GENERAL
8.106.630 NMAC	DESCRIPTION OF PROGRAM/BENEFITS – CHANGES IN ELIGIBILITY
8.106.631 NMAC	HEAT AND EAT PROGRAM
8.119.100 NMAC	RECIPIENT POLICIES-DEFINITIONS AND ACRONYMS
8.139.410 NMAC	GENERAL RECIPIENT REQUIREMENTS – NONFINANCIAL ELIGIBILITY CRITERIA
8.139.501 NMAC	TRANSITIONAL FOOD STAMP BENEFIT ELIGIBILITY
8.139.502 NMAC	STATE FOOD STAMP SUPPLEMENT
8.139.503 NMAC	NEW MEXICO MODIFIED COMBINED APPLICATION PROJECT
8.139.504 NMAC	NEW MEXICO EXTRA HELP SNAP
8.139.520 NMAC	ELIGIBILITY POLICY – INCOME AND DEDUCTIONS
8.139.527 NMAC	FOOD STAMP PROGRAM – INCOME AND RESOURCES EXCLUDED BY FEDERAL LAW
8.200.410 NMAC	GENERAL RECIPIENT REQUIREMENTS
8.200.420 NMAC	SPECIAL RECIPIENT REQUIREMENTS
8.201.400 NMAC	RECIPIENT POLICIES
8.201.600 NMAC	BENEFIT DESCRIPTION
8.206.400 NMAC	RECIPIENT REQUIREMENTS
8.215.400 NMAC	RECIPIENT POLICIES
8.215.500 NMAC	INCOME AND RESOURCE STANDARDS
8.215.600 NMAC	BENEFIT DESCRIPTION
8.231.400 NMAC	RECIPIENT POLICIES
8.231.500 NMAC	INCOME AND RESOURCE STANDARDS
8.231.600 NMAC	BENEFIT DESCRIPTION
8.234.400 NMAC	RECIPIENT REQUIREMENTS
8.234.500 NMAC	INCOME AND RESOURCE STANDARDS
8.234.600 NMAC	BENEFIT DESCRIPTION
8.242.400 NMAC	RECIPIENT REQUIREMENTS
8.242.500 NMAC	INCOME AND RESOURCE STANDARDS
8.242.600 NMAC	BENEFIT DESCRIPTION
8.243.400 NMAC	RECIPIENT POLICIES
8.243.500 NMAC	INCOME AND RESOURCE STANDARDS
8.243.600 NMAC	BENEFIT DESCRIPTION
8.245.600 NMAC	BENEFIT DESCRIPTION
8.249.400 NMAC	RECIPIENT REQUIREMENTS
8.249.500 NMAC	INCOME AND RESOURCE STANDARDS
8.249.600 NMAC	BENEFIT DESCRIPTION
8.250.400 NMAC	RECIPIENT REQUIREMENTS
8.250.500 NMAC	INCOME AND RESOURCE STANDARDS
8.250.600 NMAC	BENEFIT DESCRIPTION

8.252.500 NMAC	INCOME AND RESOURCE STANDARDS
8.252.600 NMAC	BENEFIT DESCRIPTION
8.259.400 NMAC	RECIPIENT REQUIREMENTS
8.259.500 NMAC	INCOME AND RESOURCE STANDARDS
8.259.600 NMAC	BENEFIT DESCRIPTION
8.280.400 NMAC	RECIPIENT POLICIES
8.280.600 NMAC	BENEFIT DESCRIPTION
8.281.400 NMAC	RECIPIENT POLICIES
8.281.500 NMAC	INCOME AND RESOURCE STANDARDS
8.281.510 NMAC	TRUST STANDARDS
8.281.600 NMAC	BENEFIT DESCRIPTION
8.285.400 NMAC	RECIPIENT REQUIREMENTS
8.290.400 NMAC	RECIPIENT POLICIES
8.290.600 NMAC	BENEFIT DESCRIPTION
8.291.400 NMAC	ELIGIBILITY REQUIREMENTS
8.291.410 NMAC	GENERAL RECIPIENT REQUIREMENTS
8.291.420 NMAC	RECIPIENT RIGHTS AND RESPONSIBILITIES
8.292.400 NMAC	RECIPIENT REQUIREMENTS
8.292.500 NMAC	INCOME AND RESOURCE STANDARDS
8.292.600 NMAC	BENEFIT DESCRIPTION
8.293.400 NMAC	RECIPIENT REQUIREMENTS
8.293.500 NMAC	INCOME AND RESOURCE STANDARDS
8.293.600 NMAC	BENEFIT DESCRIPTION
8.294.400 NMAC	RECIPIENT REQUIREMENTS
8.294.500 NMAC	INCOME AND RESOURCE STANDARDS
8.294.600 NMAC	BENEFIT DESCRIPTION
8.295.400 NMAC	RECIPIENT REQUIREMENTS
8.295.500 NMAC	INCOME AND RESOURCE STANDARDS
8.295.600 NMAC	BENEFIT DESCRIPTION
8.296.400 NMAC	RECIPIENT REQUIREMENTS
8.296.500 NMAC	INCOME AND RESOURCE STANDARDS
8.296.600 NMAC	BENEFIT DESCRIPTION
8.297.400 NMAC	RECIPIENT REQUIREMENTS
8.297.500 NMAC	INCOME AND RESOURCE STANDARDS
8.297.600 NMAC	BENEFIT DESCRIPTION
8.298.400 NMAC	RECIPIENT REQUIREMENTS
8.298.500 NMAC	INCOME AND RESOURCE STANDARDS
8.298.600 NMAC	BENEFIT DESCRIPTION
8.299.400 NMAC	RECIPIENT REQUIREMENTS
8.299.500 NMAC	INCOME AND RESOURCE STANDARDS
8.299.600 NMAC	BENEFIT DESCRIPTION

8.300.22 NMAC	ELECTRONIC HEALTH RECORDS INCENTIVE PROGRAM
8.302.2 NMAC	BILLING FOR MEDICAID SERVICES
8.302.3 NMAC	THIRD PARTY LIABILITY PROVIDER RESPONSIBILITIES
8.308.2 NMAC	PROVIDER NETWORK
8.308.6 NMAC	ELIGIBILITY
8.308.7 NMAC	ENROLLMENT AND DISENROLLMENT
8.308.8 NMAC	MEMBER EDUCATION
8.308.9 NMAC	BENEFIT PACKAGE
8.308.10 NMAC	CARE COORDINATION
8.308.11 NMAC	TRANSITION OF CARE
8.308.12 NMAC	COMMUNITY BENEFIT
8.308.13 NMAC	MEMBER REWARDS
8.308.14 NMAC	CO-PAYMENTS
8.308.15 NMAC	GRIEVANCES AND APPEALS
8.308.20 NMAC	REIMBURSEMENT
8.308.21 NMAC	QUALITY MANAGEMENT
8.308.22 NMAC	FRAUD, WASTE AND ABUSE
8.309.4 NMAC	MAD ADMINISTERED BENEFITS AND LIMITATION OF SERVICES
8.310.2 NMAC	GENERAL BENEFIT DESCRIPTION
8.310.3 NMAC	PROFESSIONAL PROVIDERS, SERVICES AND REIMBURSEMENT
8.310.9 NMAC	RURAL HEALTH CLINIC SERVICES
8.310.12 NMAC	INDIAN HEALTH SERVICE AND TRIBAL 638 FACILITIES
8.311.3 NMAC	METHODS AND STANDARDS FOR ESTABLISHING PAYMENT – INPATIENT HOSPITAL SERVICES
8.311.5 NMAC	SWING BED HOSPITAL SERVICES
8.312.2 NMAC	NURSING FACILITIES
8.312.3 NMAC	COST RELATED REIMBURSEMENT OF NURSING FACILITIES
8.314.3 NMAC	MEDICALLY FRAGILE HOME AND COMMUNITY-BASED SERVICES WAIVER
8.314.5 NMAC	DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES WAIVER
8.314.6 NMAC	MI VIA HOME AND COMMUNITY-BASED SERVICES WAIVER
8.314.7 NMAC	SUPPORT WAIVER
8.320.2 NMAC	EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT) SERVICES
8.320.6 NMAC	SCHOOL-BASED SERVICES FOR MAP ELIGIBLE RECIPIENTS UNDER TWENTY-ONE YEARS OF AGE
8.324.4 NMAC	PHARMACY SERVICES, PRESCRIBING, AND PRACTITIONER ADMINISTERED DRUG ITEMS
8.324.5 NMAC	VISION APPLIANCES, HEARING APPLIANCES, DURABLE MEDICAL EQUIPMENT, OXYGEN, MEDICAL SUPPLIES, PROSTHETICS AND ORTHOTICS
8.324.7 NMAC	TRANSPORTATION SERVICES AND LODGING

8.325.8 NMAC	REHABILITATION SERVICE PROVIDERS
8.326.3 NMAC	CASE MANAGEMENT SERVICES FOR PREGNANT WOMEN AND THEIR INFANTS
8.326.4 NMAC	CASE MANAGEMENT SERVICES FOR THE CHRONICALLY MENTALLY ILL
8.326.5 NMAC	CASE MANAGEMENT SERVICES FOR TRAUMATICALLY BRAIN INJURED ADULTS
8.326.6 NMAC	CASE MANAGEMENT SERVICES FOR CHILDREN UP TO AGE THREE
8.326.7 NMAC	ADULT PROTECTIVE SERVICES CASE MANAGEMENT
8.326.8 NMAC	CASE MANAGEMENT SERVICES FOR CHILDREN PROVIDED BY JUVENILE PROBATION AND PAROLE OFFICERS
8.326.10 NMAC	TRAUMATIC BRAIN INJURY TRUST FUND PROGRAM
8.350.2 NMAC	RECONSIDERATION OF UTILIZATION REVIEW DECISIONS
8.350.3 NMAC	ABSTRACT SUBMISSION FOR LEVEL OF CARE DETERMINATIONS
8.350.4 NMAC	RECONSIDERATION OF AUDIT SETTLEMENTS
8.351.2 NMAC	SANCTIONS AND REMEDIES
8.352.2 NMAC	CLAIMANT HEARINGS
8.352.3 NMAC	PROVIDER HEARINGS
8.354.2 NMAC	PASRR AND PATIENT STATUS HEARINGS

HUMAN SERVICES DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

On July 1, 2024, the New Mexico Human Services Department (the Department) will become the New Mexico Health Care Authority ("HCA"), pursuant to the passage of S16 during the 2023 NM Legislative Session and signed into law by NM Governor Michelle Lujan Grisham. To bring the New Mexico Administrative Code (NMAC) into full alignment with this change, the Department is proposing to repeal and replace the following rules, pursuant to 1.24.11.9 NMAC, to change the department's name, update wording in two rules to change "aliens" to "non-citizens," and follow current NMAC formatting rules. These are the only substantive proposed changes to these rules, there are no programmatic changes proposed.

The process of repeal and replacement is necessary because 1.24.11.9 NMAC requires that when an agency amends a rule that was not filed in the current style and format, it must reformat the entire part and officially adopt the current style and formatting requirements in conjunction with the amendment. There are no programmatic changes proposed.

Section 9-8-6 NMSA 1978, authorizes the HSD Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions. Rules to be repealed and replaced are listed at the end of this Notice.

These proposed repeals are available on the HSD website at: https://www.hsd.state.nm.us/lookingforinformation/registers/ and https://www.hsd.state.nm.us/2024-comment-period-open/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting HSD at (505) 709-8865.

Notice Date: May 7, 2024
Hearing Date: June 7, 2024
Proposed Effective Date: July 1, 2024

A public hearing to receive testimony on these repeals will be held on **June 7, 2024, at 9:00 am** Mountain Time (MT). There are three options for attending the hearing:

1. Attend in person by coming to the large conference room at the Administrative Services Division (ASD), 1474 Rodeo Rd., Santa Fe, NM 87505.

2. Join the Zoom webinar on your computer, mobile app or room device: https://us02web.zoom.us/j/88954952376?pwd=cERwNU1JY0xMd21SelZjbHNjcjhaUT09

   Webinar ID 889 5495 2376
   Passcode 757646

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+1-253-205-0468 or +1-253-215-8782

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HSD Rules to be Repealed and Replaced

Rule number	Rule name
8.2.2 NMAC	REQUIREMENTS FOR PARTICIPATION IN THE CHILD AND ADULT CARE FOOD PROGRAM
8.2.3 NMAC	REQUIREMENTS FOR PARTICIPATION IN THE SUMMER FOOD SERVICE PROGRAM
8.21.540 NMAC	EMERGENCY ASSISTANCE PROGRAMS, AID TO FAMILIES WITH DEPENDENT CHILDREN – CHILD SAFETY RESTRAINT SEAT PROGRAM
8.50.105 NMAC	INTAKE
8.50.106 NMAC	LOCATION
8.50.107 NMAC	DETERMINATION OF PARENTAGE
8.50.116 NMAC	NATIVE AMERICAN INITIATIVE
8.100.100 NMAC	GENERAL OPERATING PROCEDURES
8.100.110 NMAC	GENERAL OPERATING POLICIES – APPLICATIONS
8.100.120 NMAC	GENERAL OPERATING POLICIES – CASE MANAGEMENT
8.100.130 NMAC	GENERAL OPERATING POLICIES – ELIGIBILITY AND VERIFICATION STANDARDS
8.100.150 NMAC	GENERAL OPERATING POLICIES – RECORD RETENTION/MANAGEMENT
8.100.180 NMAC	GENERAL OPERATING POLICIES – EXTERNAL COMMUNICATIONS
8.100.390 NMAC	GENERAL SUPPORT – INFORMATION SYSTEMS
8.102.110 NMAC	GENERAL OPERATING POLICIES – APPLICATIONS
8.102.120 NMAC	ELIGIBILITY POLICY – CASE ADMINISTRATION
8.102.230 NMAC	GENERAL FINANCIAL – PAYABLES AND DISPERSEMENT
8.102.400 NMAC	RECIPIENT POLICIES – DEFINING THE ASSISTANCE GROUP
8.102.410 NMAC	RECIPIENT POLICIES – GENERAL RECIPIENT REQUIREMENTS
8.102.420 NMAC	RECIPIENT POLICIES – SPECIAL RECIPIENT REQUIREMENTS
8.102.500 NMAC	ELIGIBILITY POLICY – GENERAL INFORMATION

8.102.501 NMAC	TRANSITION BONUS PROGRAM
8.102.510 NMAC	ELIGIBILITY POLICY- RESOURCES/PROPERTY
8.102.520 NMAC	ELIGIBILITY POLICY – INCOME
8.102.610 NMAC	DESCRIPTION OF PROGRAM/BENEFITS – BENEFIT DELIVERY
8.102.611 NMAC	EDUCATION WORKS PROGRAM
8.102.620 NMAC	DESCRIPTION OF PROGRAM BENEFITS – BENEFIT DETERMINATION/ GENERAL
8.106.110 NMAC	GENERAL OPERATING POLICIES – APPLICATIONS
8.106.120 NMAC	ELIGIBILITY POLICY – CASE ADMINISTRATION
8.106.230 NMAC	GENERAL FINANCIAL – PAYABLES AND DISBURSEMENT
8.119.110 NMAC	GENERAL OPERATING POLICIES APPLICATIONS
8.119.410 NMAC	RECIPIENT POLICIES – GENERAL RECIPIENT REQUIREMENTS
8.119.500 NMAC	ELIGIBILITY POLICY – GENERAL INFORMATION
8.119.510 NMAC	ELIGIBILITY POLICY – RESOURCES/PROPERTY
8.119.520 NMAC	ELIGIBILITY POLICY – INCOME
8.139.100 NMAC	GENERAL PROVISIONS FOR THE FOOD STAMP PROGRAM
8.139.110 NMAC	GENERAL ADMINISTRATION – APPLICATION PROCESSING
8.139.120 NMAC	CASE ADMINISTRATION – CASE MANAGEMENT
8.139.400 NMAC	RECIPIENT POLICY – WHO CAN BE A RECIPIENT
8.139.420 NMAC	RECIPIENT REQUIREMENTS – SPECIAL HOUSEHOLDS
8.139.500 NMAC	FINANCIAL ELIGIBILITY – NEED DETERMINATION
8.139.510 NMAC	ELIGIBILITY POLICY – RESOURCES AND PROPERTY
8.139.610 NMAC	PROGRAM BENEFITS – ISSUANCE AND RECEIPT
8.139.647 NMAC	FOOD STAMP PROGRAM – ADMINISTRATIVE DISQUALIFICATION PROCEDURES
8.150.100 NMAC	GENERAL PROVISIONS FOR THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM
8.150.110 NMAC	APPLICATIONS
8.150.410 NMAC	GENERAL RECIPIENT REQUIREMENTS
8.150.500 NMAC	ELIGIBILITY
8.150.510 NMAC	RESOURCES/PROPERTY
8.150.520 NMAC	INCOME
8.150.600 NMAC	DESCRIPTION OF PROGRAM/BENEFITS
8.150.620 NMAC	BENEFIT DETERMINATION/GENERAL
8.150.624 NMAC	RETROACTIVE BENEFIT COVERAGE
8.200.450 NMAC	REPORTING REQUIREMENTS
8.201.500 NMAC	INCOME AND RESOURCE STANDARDS
8.206.500 NMAC	INCOME AND RESOURCE STANDARDS
8.206.600 NMAC	BENEFIT DESCRIPTION
8.240.400 NMAC	RECIPIENT POLICIES
8.240.500 NMAC	INCOME AND RESOURCE STANDARDS
8.240.600 NMAC	BENEFIT DESCRIPTION
8.245.400 NMAC	RECIPIENT POLICIES
8.245.500 NMAC	INCOME AND RESOURCE STANDARDS

8.248.400 NMAC	RECIPIENT POLICIES
8.248.500 NMAC	INCOME AND RESOURCE STANDARDS
8.248.600 NMAC	BENEFIT DESCRIPTION
8.252.400 NMAC	RECIPIENT POLICIES
8.280.500 NMAC	INCOME AND RESOURCE STANDARDS
8.285.500 NMAC	INCOME AND RESOURCE STANDARDS
8.285.600 NMAC	BENEFIT DESCRIPTION
8.290.500 NMAC	INCOME AND RESOURCE STANDARDS
8.300.1 NMAC	GENERAL PROGRAM DESCRIPTION
8.300.2 NMAC	HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) POLICIES
8.300.6 NMAC	RESPONSIBILITY AND DELEGATION OF AUTHORITY
8.300.11 NMAC	CONFIDENTIALITY
8.300.17 NMAC	CONFLICT OF INTEREST
8.300.21 NMAC	MEDICAL ASSISTANCE DIVISION POLICY MANUAL
8.301.5 NMAC	MEDICAL MANAGEMENT
8.301.6 NMAC	CLIENT MEDICAL TRANSPORTATION SERVICES
8.302.1 NMAC	GENERAL PROVIDER POLICIES
8.302.4 NMAC	OUT-OF-STATE AND BORDER AREA PROVIDERS
8.310.4 NMAC	FEDERALLY QUALIFIED HEALTH CENTER SERVICES
8.311.2 NMAC	HOSPITAL SERVICES
8.313.2 NMAC	INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED
8.313.3 NMAC	COST RELATED REIMBURSEMENT OF ICF-MR FACILITIES
8.315.2 NMAC	PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)
8.324.10 NMAC	AMBULATORY SURGICAL CENTER SERVICES
8.325.2 NMAC	DIALYSIS SERVICES
8.325.4 NMAC	HOSPICE CARE SERVICES
8.325.9 NMAC	HOME HEALTH SERVICES
8.325.10 NMAC	EMERGENCY MEDICAL SERVICES FOR ALIENS
8.326.2 NMAC	CASE MANAGEMENT SERVICES FOR ADULTS WITH DEVELOPMENTAL DISABILITIES
8.349.2 NMAC	APPEALS AND GRIEVANCE PROCESS
7.21.1 NMAC (Renumbered as 8.372.1 NMAC)	GENERAL PROVISIONS
7.21.2 NMAC (Renumbered as 8.372.2 NMAC)	STANDARDS OF DELIVERY FOR BEHAVIORAL HEALTH SERVICES
7.21.3 NMAC (Renumbered as 8.372.3 NMAC)	BEHAVIORAL HEALTH ENTITY CONTRACTING

Notices of Proposed Rulemaking
Continued Next Page

HUMAN SERVICES DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

On July 1, 2024, the New Mexico Human Services Department (the Department) will become the New Mexico Health Care Authority ("HCA"), pursuant to the passage of S16 during the 2023 NM Legislative Session and signed into law by NM Governor Michelle Lujan Grisham. To bring the New Mexico Administrative Code (NMAC) into full alignment with this change, the Department is proposing to repeal the following rules, as listed below. The purpose for these repeals is that the rules are for programs that are defunct or no longer exist. The Department is also proposing to repeal a DOH rule within Title 7 of the New Mexico Administrative Code that has been rendered obsolete by virtual of a new rule (8.9.8 NMAC) promulgated by the Early Childhood and Education Care Department.

Section 9-8-6 NMSA 1978, authorizes the HSD Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions. Rules to be repealed are listed at the end of this Notice.

These proposed repeals are available on the HSD website at: https://www.hsd.state.nm.us/lookingforinformation/registers/ and https://www.hsd.state.nm.us/2024-comment-period-open/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting HSD at (505) 709-8865.

Notice Date: May 7, 2024
Hearing Date: June 7, 2024
Proposed Effective Date: July 1, 2024

A public hearing to receive testimony on these repeals will be held on **June 7, 2024, at 1:00 pm** Mountain Time (MT). There are three options for attending the hearing:

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HSD Rules to be Repealed:

Rule number	Rule name
8.171.400 NMAC	RECIPIENT POLICIES
8.171.500 NMAC	INCOME AND RESOURCE STANDARDS
8.171.600 NMAC	BENEFIT DESCRIPTION
8.172.400 NMAC	RECIPIENT POLICIES
8.172.500 NMAC	INCOME AND RESOURCE STANDARDS
8.172.600 NMAC	BENEFIT DESCRIPTION
8.202.400 NMAC	RECIPIENT REQUIREMENTS
8.202.500 NMAC	INCOME AND RESOURCE STANDARDS

8.202.600 NMAC	BENEFIT DESCRIPTION
8.227.400 NMAC	RECIPIENT REQUIREMENTS
8.227.500 NMAC	INCOME AND RESOURCE STANDARDS
8.227.600 NMAC	BENEFIT DESCRIPTION
8.228.400 NMAC	RECIPIENT REQUIREMENTS
8.228.500 NMAC	INCOME AND RESOURCE STANDARDS
8.228.600 NMAC	BENEFIT DESCRIPTION
8.230.400 NMAC	RECIPIENT REQUIREMENTS
8.230.500 NMAC	INCOME AND RESOURCE STANDARDS
8.230.600 NMAC	BENEFIT DESCRIPTION
8.232.400 NMAC	RECIPIENT REQUIREMENTS
8.232.500 NMAC	INCOME AND RESOURCE STANDARDS
8.232.600 NMAC	BENEFIT DESCRIPTION
8.233.400 NMAC	RECIPIENT POLICIES
8.233.500 NMAC	INCOME AND RESOURCE STANDARDS
8.233.600 NMAC	BENEFIT DESCRIPTION
8.235.400 NMAC	RECIPIENT REQUIREMENTS
8.235.500 NMAC	INCOME AND RESOURCE STANDARDS
8.235.600 NMAC	BENEFIT DESCRIPTION

DOH Rule to be Repealed – was replaced by 8.9.8 NMAC in July 2021.

Rule number	Rule name
7.30.8 NMAC	Requirements For Family Infant Toddler Early Intervention Services

LIVESTOCK BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Livestock Board (NMLB) will hold an in-person rulemaking hearing on June 10, 2024, at 1:00 p.m. at the Ruidoso Convention Center 111 Sierra Blanca Drive, Ruidoso, NM 88345. The hearing will be held via an in-person format.

The NMLB will consider proposed amend/repeal/replace Rules. The purpose of the amended rules adoption is to provide definition of "EID: tags, provide NMLB regulatory authority over Exhibition Livestock bearing official EID tags, expand the scope of Alternative to Branding, and strike obsolete addresses and phone numbers and reformat to the newest requirements. See Rules 21.32.2.; 21.32.2.7; 21.32.2.9; 21.32.2.10; 21.30.2.1; 21.30.3.1; 21.30.4.1; 21.30.7.1; 21.32.2 NMAC, Sections 1, 7, 8, 9, 10; 21.32.4.1; 21.32.10.1; 21.34.20.1; 21.35.3.1; 21.35.4.1; 21.35.5.1.

Full copies of text of the proposed new rules can be obtained from the agency's website at www.nmlbonline.com. To request a copy of the proposed rule by mail, contact the NMLB at (505)841-6161. Visit www.nmlbonline for instructions on how to attend the virtual public hearing.

Interested persons may submit written comments on the proposed Rules 21.32.2.; 21.32.2.7; 21.32.2.9; 21.32.2.10; 21.30.2.1; 21.30.3.1; 21.30.4.1; 21.30.7.1; 21.32.2 NMAC, Sections 1, 7, 8, 9, 10; 21.32.4.1; 21.32.10.1; 21.34.20.1; 21.35.3.1; 21.35.4.1; 21.35.5.1 at www.nmlbonline.com or individuals may mail written comments to: NMLB/ Rule Comments, 2105 Osuna Rd NE Building South, Albuquerque, NM 87113. Comments are due by 4:30 p.m. on Friday, June 7, 2024. The final proposed rules will be voted on by the Board during the public hearing on Monday, June 10, 2024. Interested persons may also provide data, views or arguments, orally or in writing, at the in-person public rule hearing to be held on June 10, 2024 at 1:00 p.m. at the Ruidoso Convention Center 111 Sierra Blanca Drive, Ruidoso, NM 88345. All written comments will be posted on the agency's website within three (3) days of receipt.

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

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

Notices of Proposed Rulemaking Continued Next Page

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing

The New Mexico Public Education Department (PED) gives notice on Tuesday, May 7, 2024, that it will conduct a public hearing for the following proposed rulemaking on Tuesday, June 11, 2024, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501:

Repeal of 6.19.7 NMAC, Demonstration of Competency for High School Graduation
New rule 6.29.18 NMAC, Braille Standards

The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comment on record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comment, please see the Public Comment section of this notice.

Explanation of Purpose of Rulemaking, Summary of Text, and Statutory Authority

6.19.7 NMAC, Demonstration of Competency for High School Graduation
Explanation: At the close of the 2024 Legislative Session, Governor Michelle Lujan Grisham signed into law House Bill 171. This legislation removed demonstration of competency as a requirement for high school graduation. The proposed repeal would align New Mexico Administrative Code (NMAC) with current statute.
Summary: The proposed repeal eliminates from NMAC demonstration of competency as required for high school graduation.
Statutory Authority: Sections 9-24-8, 22-2-1, 22-2-2, and 22-2C-3 NMSA 1978.

6.29.18 NMAC, Braille Standards
Explanation: The proposed rule establishes standards specifically designed to support students who are blind or visually impaired in developing braille literacy across all school subjects.
Summary: The rule outlines standards for learning environments and defines the roles and responsibilities of educators working with students who are blind or visually impaired. It modifies existing New Mexico content standards to integrate braille literacy comprehensively, ensuring that it is supported across all subject areas.
Statutory Authority: Sections 9-24-8, 22-2-1, and 22-15-26 to 22-15-31 NMSA 1978.

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

Public Comment

Interested parties may provide comment at the public hearing or may submit written comments by mail or e-mail.

Mailing Address
Policy and Legislative Affairs Division
New Mexico Public Education Department
300 Don Gaspar Avenue, Room 121
Santa Fe, New Mexico 87501

E-Mail Address
Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Tuesday, June 11, 2024. The PED encourages early submission of written comments.

Public Comment Period

The public comment period is from Tuesday, May 7, 2024, to Tuesday, June 11, 2024, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

Copies of the proposed rule may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Policy and Legislative Affairs webpage titled, "Proposed Rules," at http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Terrazas at (505) 470-5303 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

REGULATION AND LICENSING DEPARTMENT

COUNSELING AND THERAPY PRACTICE BOARD

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The New Mexico Counseling and Therapy Practice Board will hold a rule hearing on Friday, June 7, 2024, at 9:00 a.m., immediately followed by a meeting of the board to consider any public comment and adoption of the proposed rules listed below.

Public participation is welcomed, and comments may be submitted in writing during the public comment period, or in person during the public rule hearing. The hearing and subsequent meeting will take place at the Regulation and Licensing Department, Toney Anaya, located at

2550 Cerrillos Road, Santa Fe, New Mexico.

The hearing and subsequent meeting may also be accessed virtually via Microsoft Teams.
Meeting Link: https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting
Meeting ID: 273 695 579 204
Passcode: qz6R2w
or
Join by Phone: +1-505-312-4308
Phone Access Code: 768 851 482#

The purpose of the rule hearing is to consider proposed amendments to the following board rules:
16.27.3 NMAC – Application Procedures, Initial Licenses, and License Period;
16.27.17 NMAC – Fees;
16.27.18 NMAC – Code of Ethics;

Copies of the proposed rule may be obtained through the board website or contacting the Board Administrator through the information below:
https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/counseling-and-therapy-practice/board-information/ct-board-meetings/
Jen Rodgers, Sr. Board Administrator
(505) 476-4607 – Board Administrator Direct Line
Counseling.board@rld.nm.gov

Written comment will be accepted during the public comment period, up until Friday, June 7, 2024, and may be submitted either by email or by postal mail to the following addresses:
counseling.board@rld.nm.gov
Attn: New Mexico Counseling and Therapy Practice Board
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period prior to the public rule hearing will be posted to the board website page linked above. Public comment will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending both in-person and virtually. The board will not enter into substantive discussion of public comments during the rule hearing, but will consider and deliberate any public comment during the board meeting immediately following the conclusion of the public rule hearing.

The agenda for the board meeting, which will begin immediately after the public rule hearing, will available no less than 72 hours prior to the meeting, and available on the Board website linked above or by contacting the Board Administrator.

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 the Board Administrator.

Statutory Authority:
The proposed rule changes are authorized by the Counseling and Therapy Practice Act, Sections 61-9A-1 through 61-9A-30 NMSA 1978, which provides explicit authority for the board to promulgate rules to protect public health and safety and carry out the provisions of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25.1 through 1.24.25.16 NMAC.

Purpose of Proposed Rules:
The proposed rule changes are intended to clarify the rules for Inactive licenses, continuing education requirements, record retention requirements, and honest advertising. More generally, the proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board's statutory obligation to promote, preserve and protect the public health, safety and welfare.

Summary of Proposed Changes:

16.27.3 NMAC – Application Procedures, Initial Licenses, and License Period;
This change will clarify that Inactive licensees do not have a continuing education requirement but do have a fee and must renew their license every other year. It will also allow newly licensed individuals (licensees who have held a license less than two years) to only have to complete half of the continuing education requirements of those whose license was held for two years or more.

16.27.17 NMAC – Fees;
This repeal and replace of the rule will allow the board to collect inactive license fees every two years.

16.27.18 NMAC – Code of Ethics;
This change will establish that all licensees must have a record retention and succession plan and to ensure that licensees advertise their licenses truthfully.

TRANSPORTATION, DEPARTMENT OF

The New Mexico Department of Transportation (NMDOT) is correcting its Notice of Proposed Rule Making for Rule 18.7.1 NMAC, originally published in the New Mexico Register on April 9, 2024, because the ending time of the May 10, 2024 public hearing was provided as 9:30 PM instead of 9:30 AM. The correct ending time for the May 10, 2024 public hearing was published on the NMDOT's website and the New Mexico Sunshine portal on April 9, 2024.

CORRECTED NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Transportation (NMDOT), in cooperation with the state transportation division of the Public

Regulation Commission (PRC), is proposing to repeal and replace Rule 18.7.1 NMAC, General Provisions, effective July 1, 2024, pursuant to 2023 N.M. Laws, Chapter 100, Section 81.

Approval of the initial rulemaking action for the proposed repeal and replacement of above referenced rule was granted to NMDOT by the New Mexico State Transportation Commission on November 16, 2023, pursuant to Sections 9-1-5, 67-3-8 and 67-3-11, NMSA 1978.

Summary of Full Text: The proposed repeal and replace rule replaces existing Rule 18.7.1 NMAC pursuant to Laws 2023 Chapter 100, which transfers the statutory responsibilities of the transportation division of the PRC to the NMDOT. The proposed replacement rules update the issuing authority from PRC to NMDOT, replace "commission" with "department" where needed, update citations to statutory authority, modernize outdated language, and streamline processes.

Purpose: The purpose for the above-listed proposed repeal and replacement of Rule 18.7.1 NMAC is to update the issuing agency of the rules as well as to update the rules to modernize the language and to streamline processes.

Full Text of the Proposed Rule: A copy of the full text of the proposed replacement rules may be found on the NMDOT website at the following Internet link, under the *Public Notices* tab: https://dot.state.nm.us/content/nmdot/en/public-notices.html. To obtain a printed copy of the proposed replacement rule, contact **John Newell at: 505-469-6411 Telephone 505-660-3304 or Email: johnp.newell@dot.nm.gov**. A reasonable fee may be charged for printed copies.

Rulemaking Hearing: NMDOT, in cooperation with the transportation division of the PRC, will hold one statewide public hearing for the purpose of receiving oral and written public comment from interested parties on the proposed replacement Rule 18.7.1 NAMC. The hearing is scheduled on **Friday, May 10, 2024, from 8:00 AM to 9:30 AM** at New Mexico Department of Transportation General Office, Training rooms #1 and #2, 1120 Cerrillos Rd., Santa Fe, New Mexico 87504.

Written Comments: To submit written comments on or before date of hearing, please send to: **John Newell, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, at Telephone: 505-469-6411 or Email: johnp.newell@dot.nm.gov**. Written comments will be accepted from the date this notice is published in the New Mexico Register, April 9, 2024, until the close of the hearing scheduled in this rulemaking. If you plan to submit written comments, argument or data, please make sure any documentation contains your name, phone number and email address. If submitting written comments by email, please indicate the rule number in the subject line. Oral comments will only be accepted at the public hearing, and may be subject to time limitations. After the close of the final hearing scheduled in this rulemaking, the rulemaking record will be closed and no other comments will be accepted. All written comments will be posted on the department's website within three days of receipt.

Accommodations: Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact **John Newell at: Telephone 505-469-6411 or Email: johnp.newell@dot.nm.gov** at least ten days before the hearing.

TRANSPORTATION, DEPARTMENT OF

The New Mexico Department of Transportation (NMDOT) is correcting its Notice of Proposed Rule Making for Rule 18.14.2 NMAC, originally publish in the New Mexico Register on April 9, 2024, because the ending time of the May 10, 2024 public hearing was provided as 10:30 PM instead of 10:30 AM. The correct ending time for the May 10, 2024 public hearing was published on the NMDOT's website and the New Mexico Sunshine portal on April 9, 2024.

CORRECTED NOTICE OF PROPOSED RULEMAKING

The New Mexico Department of Transportation (NMDOT), in cooperation with the state transportation division of the Public Regulation Commission (PRC), is proposing to repeal and replace Rule 18.14.2 NMAC, Railroad Safety, effective July 1, 2024, pursuant to 2023 N.M. Laws, Chapter 100, Section 81.

Approval of the initial rulemaking action for the proposed repeal and replacement of above referenced rule was granted to NMDOT by the New Mexico State Transportation Commission on March 21, 2024, pursuant to Sections 9-1-5, 67-3-8 and 67-3-11, NMSA 1978.

Summary of Full Text: The proposed repeal and replace rule replaces existing Rule 18.14.2 NMAC pursuant to Laws 2023 Chapter 100, which transfers the statutory responsibilities of the transportation division of the PRC to the NMDOT. The proposed replacement rules update the issuing authority from PRC to NMDOT, replace "commission" with "department" where needed, update citations to statutory authority, modernize outdated language, and streamline processes.

Purpose: The purpose for the above-listed proposed repeal and replacement of Rule 18.14.2 NMAC is to update the issuing agency of the rules as well as to update the rules to modernize the language and to streamline processes.

Full Text of the Proposed Rule: A copy of the full text of the proposed replacement rules may be found on the NMDOT website at the following Internet link, under the *Public Notices* tab: https://dot.state.nm.us/content/nmdot/en/public-notices.html. To obtain a printed copy of the proposed replacement rule, contact **John Newell at: Telephone 505-469-6411 or Email: johnp.newell@dot.nm.gov**. A reasonable fee may be charged for printed copies.

Rulemaking Hearing: NMDOT, in cooperation with the transportation division of the PRC, will hold one statewide public hearing for the purpose of receiving oral and written public comment from interested parties on the proposed replacement Rule 18.14.2 NAMC. The hearing is scheduled on **Friday, May 10, 2024, from 10:00 AM to 11:30 AM** at New Mexico Department of Transportation General Office, Training rooms #1 and #2, 1120 Cerrillos Rd., Santa Fe, New Mexico 87504.

Written Comments: To submit written comments on or before date of hearing, please send to: **John Newell, New Mexico Department of Transportation, P.O. Box 1149, Santa Fe, New Mexico 87504, at Telephone: 505-469-6411 or Email: johnp.newell@dot.nm.gov**. Written comments will be accepted from the date this notice is published in the New Mexico Register, April 9, 2024, until the close of the hearing scheduled in this rulemaking. If you plan to submit written comments, argument or data, please make sure any documentation contains your name, phone number and email address. If submitting written comments by email, please indicate the rule number in the subject line. Oral comments will only be accepted at the public hearing, and may be subject to time limitations. After the close of the final hearing scheduled in this rulemaking, the rulemaking record will be closed and no other comments will be accepted. All written comments will be posted on the department's website within three days of receipt.

Accommodations: Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule revisions in an accessible form may contact **John Newell at: Telephone 505-469-6411 or Email: johnp.newell@dot.nm.gov** at least ten days before the hearing.

End of Notices of Proposed Rulemaking

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Adopted Rules

Effective Date and Validity of Rule Filings

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

HEALTH, DEPARTMENT OF
MEDICAL ASSISTANCE DIVISION

The New Mexico Department of Health approved the repeal of its rule 16.11.2 NMAC - Certified Nurse- Midwives (filed 11/13/2020) and replaced it with 16.11.2 NMAC - Certified Nurse-Midwives (adopted on 4/18/2024), and effective 05/07/2024.

HEALTH, DEPARTMENT OF
MEDICAL ASSISTANCE DIVISION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 11 MIDWIVES
PART 2 CERTIFIED NURSE - MIDWIVES

16.11.2.1 ISSUING AGENCY: New Mexico Department of Health.
[16.11.2.1 NMAC - Rp, 16.11.2.1 NMAC, 5/7/2024]

16.11.2.2 SCOPE: This rule applies to any person seeking to practice or currently practicing as a certified nurse-midwife in the state of New Mexico.
[16.11.2.2 NMAC - Rp, 16.11.2.2 NMAC, 5/7/2024]

16.11.2.3 STATUTORY AUTHORITY: This rule is authorized by Subsection E of Section 9-7-6 NMSA 1978, Subsection S and Subsection V of Section 24-1-3 NMSA 1978 and Section 24-1-4.1 NMSA 1978.
[16.11.2.3 NMAC - Rp, 16.11.2.3 NMAC, 5/7/2024]

16.11.2.4 DURATION: Permanent.
[16.11.2.4 NMAC - Rp, 16.11.2.4 NMAC, 5/7/2024]

16.11.2.5 EFFECTIVE DATE: May 7, 2024, unless a later date is cited at the end of a section.
[16.11.2.5 NMAC - Rp, 16.11.2.5 NMAC, 5/7/2024]

16.11.2.6 OBJECTIVE: This rule governs the licensure and practice of certified nurse-midwives (CNMs) in New Mexico.
[16.11.2.6 NMAC - Rp, 16.11.2.6 NMAC, 5/7/2024]

16.11.2.7 DEFINITIONS:

A. Definitions beginning with "A":

(1) "ACNM" means the American college of nurse-midwives.

(2) "AMCB" means American midwifery certification board.

(3) "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opiate or opioid therapy for pain and should not by themselves be considered addiction.

(4) "Audit" means an examination and verification of continuing education and practice documents.

B. Definitions beginning with "B": "Board" means the certified nurse-midwifery advisory board established under these rules.

C. Definitions beginning with "C":

(1) "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who is certified by the AMCB or its designee and who is licensed under this rule.

(2) "Chronic pain" means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. For purposes of this rule, chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

(3) "Client" means any person domiciled, residing, or receiving care, service or treatment from a New Mexico licensed CNM. This includes but is not limited to patients, residents, or consumers.

(4) "CNM license" means the legal privilege to practice within the scope of this rule as authorized by the department.

(5) "Contact hour" means 50-60 minutes of an organized learning experience relevant to CNM practice.

(6) "Continuance" means the adjournment or postponement of a trial or other proceeding to a future date.

(7) "Continuing education" means planned learning experiences occurring after initial licensure. These experiences are designed to promote the development of knowledge, skills

and attitudes for the enhancement of midwifery practice, thus improving health care to the public.

(8) **"Continuing education unit"** means 10 contact hours of participation in an organized continuing education experience.

(9) **"Controlled substance"** means any drug or therapeutic agent listed in Schedules I through V of Sections 30-31-6 to 30-3-10 NMSA 1978, Controlled Substances Act, or rules adopted thereto, which is commonly understood to include narcotics.

D. Definitions beginning with "D":

(1) **"Dangerous drug"** means a prescription drug other than a controlled substance that has been determined by law to be unsafe for self-administration and is included in Sections 26-1-1 to 26-1-26 NMSA 1978, New Mexico Drug, Device and Cosmetic Act, and in Section 30-31-6 NMSA, Controlled Substances Act.

(2) **"Department"** means the New Mexico department of health.

(3) "Division" means the public health division.

E. Definitions beginning with "E": "Electronic professional licensing management system" means the system by which licensees apply and submit an application for midwifery license and keep up to date their online profile.

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": [RESERVED]

I. Definitions beginning with "I": [RESERVED]

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": "Lapsed license" means a license that a person has voluntarily lapsed, has failed to renew as required, or the license of a person who failed to meet stated obligations for renewal within a stated time.

M. Definitions beginning with "M": [RESERVED]

N. Definitions beginning with "N": "National practitioner data bank (NPDB)" means the web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers.

O. Definitions beginning with "O": "Opioid antagonist" means a drug approved by the federal food and drug administration that when administered negates or neutralizes in whole or in part the pharmacological effects of an opioid analgesic in the body; this includes naloxone and such other medications approved by the board of pharmacy for the reversal of opioid analgesic overdoses.

P. Definitions beginning with "P":

(1) "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage or described in terms of such inflammation and damage, which could include acute, persistent, or chronic pain.

(2) "Peer review" means the assessment and evaluation of CNM practice by other CNMs and other health care providers to measure compliance with established institutional or legal standards. In the peer review process, a CNM's practice undergoes scrutiny for the purpose of professional self-regulation.

(3) "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

(4) **"Prescription monitoring program (PMP)"** means a centralized electronic system within the New Mexico board of pharmacy that collects, monitors, and analyzes data submitted by dispensing practitioners and pharmacies related to the prescribing and dispensing of controlled substances. The data are used to support efforts in education, research, enforcement, and misuse prevention.

(5) "Primary care" means the provision of integrated, accessible health care services by clinicians who are accountable for addressing the large majority of presenting health care needs, developing sustained partnerships with clients, and practicing within the context of family and community.

Q. Definitions beginning with "Q":

(1) "Quality assurance" means monitoring structural, procedural, and outcome indicators as they relate to accepted standards.

(2) "Quality improvement" means modifying the process for providing care in order to improve outcomes. Modifications are based upon the measurement of parameters such as evidence-based best practices, client satisfaction, clinical outcomes, population specific care, culturally appropriate care, appropriate use of technology and resources, and access to care.

R. Definitions beginning with "R":

(1) **"Reactivation"** means the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve disciplinary action at any juncture.

(2) **"Reinstatement"** means the process whereby a license which has been subject to revocation or suspension, is returned to active status; this process always involves disciplinary action.

S. Definitions beginning with "S": "Substance use disorder" means a treatable mental disorder that affects a person's

brain and behavior, leading to their inability to control their use of substances like legal or illegal drugs, alcohol or medications.

T Definitions beginning with "T":

(1) **"Therapeutic purpose"** means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines.

(2) **"Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

U. Definitions beginning with "U": [RESERVED]

V. Definitions beginning with "V": "Valid CNM-client relationship" means a professional relationship between the CNM and the client for the purpose of maintaining the client's well-being. At minimum, this relationship is an interactive encounter between the CNM and client involving an appropriate history and physical or mental examination; ordering labs or diagnostic tests sufficient to make a diagnosis; and providing, prescribing, or recommending treatment, or referring to other health care providers. A client record must be generated by the encounter.

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[16.11.2.7 NMAC - Rp, 16.11.2.7 NMAC, 5/7/2024]

16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:

A. ACNM "core competencies for basic midwifery practice".

B. ACNM "standards for the practice of midwifery".

C. ACNM handbook: "the home birth practice manual".

[16.11.2.8 NMAC - Rp, 16.11.2.8 NMAC, 5/7/2024]

16.11.2.9 LICENSURE:

A. Licensure requirements: A CNM practicing in New Mexico shall hold an active license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico and shall hold current certification by AMCB or its designee. The department may deny licensure, including renewal, reinstatement, or reactivation of licensure, to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. If denied due to disciplinary action, re-application will only be considered after a minimum of one year from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions. A CNM license is not transferable.

B. Initial licensure:

(1) An applicant for licensure to practice as a CNM in New Mexico shall submit to the department via the electronic professional licensing management system:

(a) a completed application;

(b) proof of holding a valid license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico;

(c) proof of current certification by AMCB or its designee;

(d) the fee designated in Subsection E of 16.11.2.9 NMAC.

(2) An initial CNM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of this subsection and shall expire on the last day of the month of the CNM's birth month. A CNM license shall be valid for a maximum of two years.

(3) If the licensure process is not completed, the application becomes null and void one year after the date of application being received, and fees paid are not refundable.

(4) If a license is denied due to disciplinary action on initial application, the applicant may reapply after one year and upon meeting all the requirements under Subsection B of 16.11.2.9 NMAC.

(5) Any final action denying a license to an applicant is an event reportable to the NPDB.

C. Licensure renewal:

(1) A CNM's renewed license shall expire on the last day of the month of the CNM's birth month of the second year after it is issued.

(2) An applicant for licensure renewal shall submit to the department via the electronic professional licensing management system:

(a) a completed application electronically submitted by the fifth day of the month of the expiration of the CNM license;

(b) proof of holding a valid license that meets the requirement of the New Mexico board of nursing to practice as a registered nurse in New Mexico for the period the renewed CNM license will cover;

(c) proof of current certification by AMCB or its designee;

(d) proof of having met the continuing education and quality management requirements in Paragraphs (3) and (4) of this subsection; and

(e) the fee designated in Subsection E of this section;

(f) an additional fee designated in Subsection E of this section for applications electronically submitted after the fifth day of the month after the license is expiring.

(3) Continuing education: CNMs must complete a

minimum of 30 contact hours during the two years preceding license renewal.

(a) 15 of the contact hours shall be pharmacology-related. As part of the pharmacology-related contact hours, a CNM who holds a CNM license shall submit with the first license renewal application proof of completing a minimum of five contact hours on any of the following topics:

(i) the CNM rule as it applies to management of chronic pain,

(ii) the pharmacology and risks of controlled substances,

(iii) the problems of substance use disorder and addiction, or

(iv) state and federal regulations for the prescription of controlled substances.

(b) With each subsequent license renewal application, a CNM shall submit proof of completing a minimum of two contact hours on the above topics.

(c) A minimum of two of the contact hours shall be focused on health equity. Acceptable content includes but is not limited to:

(i) Implicit bias training to identify strategies to reduce bias during assessment, diagnosis, and care. This may include, but is not limited to training in bias, racism, and poverty, that manifest as health inequities.

(ii) Development of individual and system level interventions and self-reflection to assess how the CNM's social position can influence their relationship with clients and their communities.

(iii) Skills to enable a health care professional to care effectively for clients from diverse cultures, groups, and communities and apply health equity concepts into practices.

(d) The following options, subject to audit and approval by the department, may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

(i) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection C of 16.11.2.10 NMAC, will count for twice the number of contact hours for which the presentation is approved with a maximum award of 15 contact hours per licensure period; the same presentation cannot be credited more than once;

(ii) sole or primary authorship of one nurse-midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

(iii) completion of a formal university or college course directly related to nurse-midwifery practice; each university or college unit shall be credited as 15 hours of continuing education for a semester system and 10 hours of continuing education for a quarter system; and

(iv) acting as preceptor for a midwifery student; each 10 hours of precepting shall be credited as one continuing education hour, with maximum award of 10 contact hours; verification shall be provided by an accreditation commission for midwifery education (ACME) accredited nurse-midwifery education program or can be verified by a division-approved form. This option shall not be accepted in place of pharmacology-related contact hours.

(4) Quality management: documentation of participation during the preceding two years in a system of quality management meeting the approval of the department is required for license renewal. Quality management includes peer review, quality assurance and quality improvement as defined in Subsection S of 16.11.2.7 NMAC, Subsection W of 16.11.2.7 NMAC, and Subsection X of 16.11.2.7 NMAC.

(5) If license renewal is denied, the applicant may request an administrative hearing under the terms set forth by Paragraph (5) of Subsection C of 16.11.2.12 NMAC.

D. Reactivation of a CNM license:

(1) A lapsed license occurs on the first day of the following month following the expiration date of the current license if license not renewed on time, and a CNM must apply for reactivation of the license, paying all added fees before being allowed to practice. A CNM may not work with a lapsed license or disciplinary action will be taken.

(2) The requirements for reactivation of a CNM license that has voluntarily lapsed in status or for an applicant that is returning to New Mexico are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except the applicant must pay the additional fee for reactivation pursuant to Subsection F of 16.12.2.9 NMAC.

(3) The license will be reactivated with the original license number.

E. Reinstatement of a CNM license:

(1) The requirements for reinstatement of a revoked or suspended CNM license are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except that the fee is higher than a renewal, as designated in Subsection F of 16.11.2.9 NMAC.

(2) The license will be reinstated with the original license number.

F. Fees: the department shall charge applicants the following fees for licensure services:

(1) two hundred dollars ($200) for initial licensure;

(2) one hundred dollars ($100) for license renewal;

(3) one hundred and fifty dollars ($150.00)

late fee for renewing a license when the complete application is not electronically submitted by the fifth calendar day of the month of the current license's expiration date or for voluntary lapse of a license; this fee is in addition to the renewal fee;

(4) two hundred dollars ($200.00) for reinstatement of a revoked or suspended license, or reactivation of a lapsed license; this fee is in addition to the renewal fee;

(5) twenty-five dollars ($25.00) for verifying licenses by FAX or letter;

(6) fifty dollars ($50.00) for rejected electronic payment for insufficient funds.

G. Change of address or other contact information: a CNM shall submit a change of any contact information to the department's electronic professional licensing management system within 30 days of the change; failure to update information within this time frame may result in disciplinary action.

[16.11.2.9 NMAC - Rp, 16.11.2.9 NMAC, 5/7/2024]

16.11.2.10 CONTINUING EDUCATION:

A. Introduction:

(1) The division prescribes the following regulations establishing requirements for CE to be met by the licensee to protect the health and well-being of the citizens of New Mexico and to promote current midwifery knowledge and practice.

(2) Philosophy of CE: The division believes that CE is one of the most important responsibilities of the midwife and is a lifelong process. The primary responsibility for CE rests with the individual midwife. A diversity of midwifery-related learning activities is recommended to enhance the scope of professional development.

B. Requirements and rules:

(1) Records:

(a) All licensees must indicate compliance with the CE required by these rules on the renewal application. All information must be completed as requested.

(b) Licensees are responsible for maintaining their own CE records and for keeping the certificates of verification of attendance of CE activities for at least one year after the license is renewed. Copies of certificates must be submitted to the division if audited and requested.

(2) CE Audit:

(a) Continuing education records are subject to audit by the division.

(b) Licensee may be subject to disciplinary action by the division if non-compliant with a request for additional information within 60 days of the first notice of CE non-compliance.

C. Approved continuing education: To be acceptable in New Mexico, the CE activity must have been approved by a recognized approval body and must enhance the licensee's scope of professional development as related to CNM scope of practice. The participant must receive a certificate of attendance which validates the number of approved CE hours awarded, name of the participant, sponsoring agency, approval body and date attended.

(1) Recognized approval bodies for CE for CNMs:

(a) clinician-level continuing education accrediting agencies approved by the division;

(b) national or state recognized nursing organizations or boards of nursing;

(c) other state boards of nursing.

(2) Other CE which may be accepted as approved CE for CNMs:

(a) academic credit, computation: as set forth in Item (iii) of Subparagraph (d) of Paragraph (3) of Subsection C of 16.11.2.9 NMAC;

(b) CE units (CEUs) or contact hours awarded by CE divisions within educational institutions of higher learning;

(c) educational offerings approved through other generally recognized health care or professional organizations as related to CNM's scope of practice.

[16.11.2.10 NMAC - N, 5/7/2024]

16.11.2.11 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:

A. Scope of practice: Practice by CNMs encompasses independently providing a full range of primary health care services for clients from adolescence to beyond menopause. These services include primary care; sexual and reproductive health care; gynecologic health; family planning services; pre-conception care; care during pregnancy, childbirth, and the postpartum period; and care of the normal newborn up to six weeks of age. CNMs provide care for all individuals who seek midwifery care, inclusive of all gender identities and sexual orientations. CNMs provide initial and ongoing comprehensive assessment, diagnosis, and treatment. They conduct physical examinations; independently prescribe, distribute, and administer dangerous drugs, devices, and contraceptive methods, and controlled substances in Schedules II through V of Sections 30-31-1 NMSA 1978, Controlled Substances Act; admit, manage, and discharge clients; order and interpret laboratory and diagnostic tests; and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with clients in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals, and birth centers. A CNM practices within a health care system that provides for consultation, collaborative

management, or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery". A CNM who expands beyond the ACNM "core competencies" to incorporate new procedures that improve care for their clients shall comply with the guidelines set out in the ACNM "standards for the practice of midwifery", standard VIII. Practice guidelines for home births should be informed by the most recent edition of the "ACNM home birth practice manual."

B. Prescriptive authority:

(1) Dangerous drugs: A CNM who prescribes, distributes, or administers a dangerous drug or device shall do so in accordance with Section 26-1 NMSA 1978, New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances:

(a) A CNM shall not prescribe nor distribute controlled substances in Schedule I of Section 26-1 1978 NMSA, Controlled Substances Act.

(b) A CNM shall not prescribe, distribute, or administer controlled substances in Schedules II-V of the Controlled Substances Act unless the CNM is registered with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA) to prescribe, distribute, and administer controlled substances.

(c) A CNM who prescribes, distributes, or administers a controlled substance in Schedules II-V of Section 26-1 NMSA 1978, Controlled Substances Act, shall do so in accordance with the Controlled Substances Act.

(d) An individual employed as a CNM by the United States military, the United States veterans administration, or the United States public health service, and operating in the official capacity of that employment, who is prescribing, distributing or administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the Subparagraphs (a), (b) and (c) of Paragraph (2) of this subsection.

(e) A CNM may prescribe, provide samples of, and dispense any dangerous drug to a client if, at the time of the prescription, the CNM has a valid CNM-client relationship. The relationship includes:

(i) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;

(ii) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;

(iii) the CNM provides a client with appropriate information on the proper dosage, route, frequency, and duration of a drug treatment;

(iv) the CNM informs the client of possible untoward effects and side effects of a proposed treatment;

(v) the CNM provides care for a client in the event of an untoward effect or a side effect that requires care;

(vi) the CNM provides for client education regarding a condition and the condition's treatment to enhance client compliance with plan of care;

(vii) the CNM provides for appropriate follow-up care, including further testing, treatment and education, as appropriate; and

(viii) the CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual.

(3) Prescriptions: A CNM may prescribe by telephone, by written prescription, by e-mail, or through an electronic health record (EHR) system. Controlled substances may only be prescribed by written or electronic prescription. A CNM prescription shall have the CNM's name, office address, and telephone number printed on it. In the event that a CNM is writing a prescription printed with the names of more than one CNM, the name of the CNM writing the individual prescription shall be indicated. The name and address of the client, the date of the prescription, the name and quantity of the drug prescribed, and directions for use shall be included on a prescription.

(4) Labeling: When distributing a drug, a CNM shall label it with the client's name and date of birth; the date; instructions for use; and the CNM's name, address, and telephone number.

C. Guidelines for management of chronic pain or other conditions with controlled substances: The treatment of chronic pain or other conditions with various modalities, including controlled substances such as opioids, is a legitimate practice when done in the usual course of CNM practice. The goal when treating chronic pain is to reduce or eliminate pain and also to avoid development of or contribution to addiction, drug misuse and overdose. Effective dosages should be prescribed, with both under- and over-prescribing to be avoided, using client protection as a guiding principle. The CNM should provide control of the client's pain for its duration, while effectively addressing other aspects of the client's functioning, including physical, psychological, social, and work-related factors. A CNM may treat clients with substance use disorder, physical dependence, or tolerance who have pain, however such clients require very close monitoring and precise documentation.

(1) If, in a CNM's professional opinion, a client is seeking pain medication for reasons that are not medically justified, the CNM is not required to prescribe controlled substances for the client.

(2) When prescribing, dispensing, or

administering controlled substances for management of chronic pain, a CNM shall:

(a) obtain a PMP report for the client covering the preceding 12 months from the New Mexico board of pharmacy and any other state's report that is applicable and available;

(b) complete a history and physical examination and include an evaluation of the client's psychological and pain status, any previous history of significant pain, past history of alternate treatments for pain, potential for substance misuse, coexisting disease or medical conditions, and the presence of medical indications or contra-indications related to controlled substances;

(c) be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain, and consider an integrative approach to pain management in collaboration with other care providers, including but not limited to acupuncturists, chiropractors, doctors of oriental medicine, exercise physiologists, massage therapists, pharmacists, physical therapists, psychiatrists, or psychologists;

(d) develop a written individual treatment plan taking age, gender, and culture into consideration, with stated objectives by which treatment can be evaluated, such as degree of pain relief, improved physical and psychological function, or other accepted measures, and include any need for further testing, consultation, referral, or use of other treatment modalities as appropriate;

(e) discuss the risks and benefits of using controlled substances with the client or legal guardian and document this discussion in the medical record;

(f) make a written agreement with the client or legal guardian outlining client responsibilities, including a provision stating that the chronic pain client will receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible;

(g) maintain complete and accurate records of care provided and drugs prescribed, including the indications for use, the name of the drug, quantity, prescribed dosage, and number of refills authorized;

(h) when indicated by the client's condition, consult with health care professionals who are experienced in the area of the chronic pain or other conditions, though not necessarily specialists in pain control, both early in the course of long-term treatment and at least every six months;

(i) when treating a client with addiction, substance use disorder or physical dependence, use drug screening prior to and during the course of treatment to identify the drugs the client is consuming and compare the screening results with clients' self-reports (this should be included in the written agreement, see Subparagraph (f) above);

(j) note possible indications of drug misuse by a client and take appropriate steps to further investigate and to avoid contributing to drug misuse; such steps may include termination of treatment. Information about some of the indications may be available only through PMP reports. The following list of possible indications of drug misuse is non-exhaustive:

(i) receiving controlled substances from multiple prescribers;

(ii) receiving controlled substances for more than 12 consecutive weeks;

(iii) receiving more than one controlled substance analgesic;

(iv) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone;

(v) overutilization, including but not limited to early refills;

(vi) appearing overly sedated or intoxicated upon presentation; or

(vii) an unfamiliar client requesting a controlled substance by specific name, street name, color, or identifying marks.

(k) comply with the opioid antagonist prescribing practices as set forth in the Pain Relief Act Section 24-2D-1, et.al NMSA1978.

D. Prescription Monitoring Program (PMP) Requirements: The department requires participation in the PMP to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals. Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the client's medical record. Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a client for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the client for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the client's medical

record. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

(1) A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

(a) for a period of four days or less; or

(b) to a client in a nursing facility; or

(c) to a client in hospice care.

(d) or when prescribing, dispensing, or administering of: testosterone, pregabalin, lacosamide, ezogabine or stimulant therapy for pediatric clients less than age 14.

(2) Upon review of a prescription monitoring report for a client, the practitioner shall identify, be aware, and document if a patient is currently:

(a) receiving opioids from multiple prescribers;

(b) receiving opioids and benzodiazepines concurrently;

(c) receiving opioids for more than 12 consecutive weeks;

(d) receiving more than one controlled substance analgesic;

(e) receiving opioids totaling more than 90 morphine milligram equivalents per day;

(f) exhibiting potential for misuse of opioids and other controlled substances, such as any of the following indicators:

(g) over-utilization;

(h) requests to fill early;

(i) requests for a controlled substance or specific opioid by specific name, street name; color, or identifying marks;

(j) requests to pay cash when insurance is available;

(k) receiving opioids from multiple pharmacies; or

(l) appearing overly sedated or intoxicated upon presentation.

(m) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone.

(3) Upon recognizing any of the above conditions described in Subparagraph (j) of Paragraph (2) of Subsection C of 16.11.2.11 NMAC, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse or overdose. These steps may involve counseling the client on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(4) Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a client's initial enrollment into the Opioid Treatment Program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II-V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the client's medical record.

E. Immediate reporting: A CNM must report within 48 hours to the division any neonatal or maternal mortality in clients for whom the provider has cared in the perinatal period in a setting other than a licensed health facility; this includes stillbirths. These will be reviewed by the division on a case-by-case basis for compliance with these CNM regulations.

F. Other rules: a CNM shall fulfill the requirements of all relevant department rules including:

(1) "bureau of vital records and health statistics," 7.2.2 NMAC;

(2) "control of disease and conditions of public health significance," 7.4.3 NMAC;

(3) "newborn genetic screening," 7.30.6 NMAC;

(4) "prevention of infant blindness," 7.30.7 NMAC;

(5) "requirement for freestanding birth centers," 7.10.2 NMAC; and

(6) "birthing workforce retention fund," 7.30.9 NMAC.

[16.11.2.11 NMAC - Rp, 16.11.2.10 NMAC, 5/7/2024]

16.11.2.12 LICENSE DENIAL, SUSPENSION, OR REVOCATION; DISCIPLINARY ACTION: The department may deny, revoke, or suspend any license held or applied for or reprimand or place a license on probation on the grounds of incompetence, unprofessional conduct, or other grounds listed in this section, pursuant to Subsection V of Section 24-1-3, NMSA 1978.

A. Grounds for action:

(1) Incompetence: A CNM who fails to possess and apply the knowledge, skill, or care that is ordinarily possessed and exercised by CNMs or as defined by the ACNM "core

competencies for basic midwifery practice" is considered incompetent. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. Conduct of such a character that could result in harm to the client or to the public from the act or omission or series of acts or omissions constitutes incompetence, whether or not actual harm resulted.

(2) Unprofessional conduct: For purposes of this rule "unprofessional conduct" includes, but is not limited to, the following:

(a) verbally or physically abusing a client;

(b) engaging in sexual contact with or toward a client;

(c) abandonment of a client;

(d) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

(e) practice that is beyond the scope of CNM licensure;

(f) dissemination of a client's health information or treatment plan to individuals not entitled to such information and where such information is protected by law from disclosure;

(g) falsifying or altering client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(h) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation, or deceit;

(i) aiding, abetting, assisting, or hiring an individual to violate any rule of the department;

(j) failure to follow established procedure regarding controlled substances;

(k) failure to make or to keep accurate, intelligible entries in records as required by the ACNM "standards for the practice of midwifery";

(l) obtaining or attempting to obtain a license to practice certified nurse-midwifery for one's self or for another through fraud, deceit, misrepresentation, or any other act of dishonesty in any phase of the licensure or relicense process;

(m) practicing midwifery in New Mexico without a valid New Mexico license or permit or aiding, abetting or assisting another to practice midwifery without a valid New Mexico license;

(n) delegation of midwifery assessment, evaluation, judgment, or medication administration to a non-licensed person; or

(o) failure to provide information requested by the department pursuant to this rule within 20 business days of receiving the request.

(3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.

(4) Dereliction of any duty imposed by law.

(5) Conviction of a felony pursuant to Paragraph (1) of Subsection A of Section 28-2-4 NMSA 1978.

(6) Conviction or entered into an agreed disposition, of a misdemeanor offense related to the practice of midwifery as determined on a case-by-case basis.

(7) Failure to report in writing to the division any complaint or claim made against the CNM's practice as a registered, certified, or licensed health care provider in any jurisdiction, including as a registered nurse. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the CNM becoming aware of the complaint or claim.

(8) Conduct resulting in the suspension or revocation of a registration, license, or certification to perform as a health care provider.

(9) Failure to report a CNM who appears to have violated the rule for the practice of certified nurse-midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability under this rule unless the person acted in bad faith or with malicious purpose.

(10) Failure to report to the department a change in contact information within 30 days of the change as set forth in Subsection G of 16.11.2.9 NMAC.

(11) Non-compliance for requirements of CEs as determined by audit as set forth in Paragraph (2) of Subsection B of 16.11.2.10 NMAC.

(12) Violation of any of the provisions of this rule.

B. Non-disciplinary proceedings: For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated action and the right to the hearing procedures set forth in Paragraphs (4) and (5) of Subsection C of 16.11.2.12 NMAC.

C. Disciplinary proceedings: Disciplinary proceedings shall be conducted in accordance with Sections 61-1-1 through 61-1-31 NMSA 1978 of the Uniform Licensing Act (ULA). Disciplinary proceedings related to a CNM's treatment of a client, for chronic pain or other conditions, with a controlled substance shall be conducted in accordance with Sections 24-2D-1 through 24-2D-6 NMSA 1978 of the Pain Relief Act, in addition to this rule.

(1) Filing of a complaint:

(a) A written complaint must be filed

with the division before a disciplinary proceeding may be initiated.

(i) A complaint is an allegation of a wrongful act(s) or omission(s).

(ii) An allegation of a wrongful act may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(2) Investigation of a complaint:

(a) All complaints alleging a violation of the rules adopted by the department shall be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in a notice of contemplated action (NCA), as defined in the ULA, being issued by the department if a violation occurred or it may result in a dismissal of the complaint if no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(3) Notice of contemplated action:

(a) The NCA shall be drafted by the department.

(b) The director of the division, or her/his designee shall sign all NCAs.

(c) The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

(4) Request for a hearing, notice of hearing and request for continuance:

(a) Every licensee shall be afforded notice and an opportunity to be heard.

(b) Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

(c) The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative attorney of the department at any time prior to the hearing; if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval; the proposed stipulation and agreement does not divest the department of its authority to require a formal hearing or final approval, amendment, or rejection; if a settlement is not reached, a hearing shall be held.

(d) Once a hearing has been scheduled, if a request for a continuance is made it shall be presented to the department's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.

(e) If a person fails to appear after requesting a hearing, the department may proceed to consider the matter and make a decision.

(f) If no request for a hearing is made within the time and manner stated in the NCA, the department may take the action contemplated in the NCA. Such action shall be final and reportable to NPDB.

(g) The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated.

(5) Administrative hearing:

(a) All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all non-dispositive motions.

(b) All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

(i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a CNM license must not be based solely on hearsay evidence.

(c) The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

(d) The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the department.

(e) The hearing officer shall issue a report and recommended finding to the department secretary.

(f) Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA and placed in the CNM's licensure file. The department shall mail a copy of the written decision to the authority(ies) that license(s) the CNM as a registered nurse and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

D. Reinstatement of a suspended or revoked license:

(1) Individuals who request reinstatement of their license or who request that their probation be lifted or altered

shall provide the department with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the individual's activities and progress during the period of probation, suspension, or revocation.

(2) For reinstatement of licenses for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, requests for reinstatement of a revoked license shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date of the order of revocation is the controlling date, unless otherwise specified in the order. Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of revoked license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(3) Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension. Reinstatement of a suspended license requires proof of meeting the renewal requirements as set forth in this rule, any remedial education, supervised practice or other condition specified in the order for suspension required by the department and payment of the reinstatement of current or suspended license fee of Paragraph (4) of Subsection F of 16.11.2.9 NMAC.

(4) When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance.

[16.11.2.12 NMAC - Rp, 16.11.2.11 NMAC, 5/7/2024]

16.11.2.13 ADVISORY BOARD: The department shall appoint a CNM advisory board to make recommendations to the department regarding the regulation of CNMs:

A. The board may be comprised of:

(1) up to four New Mexico licensed CNMs, at least two of whom are actively practicing midwifery;

(2) one New Mexico licensed midwife (LM) who is actively practicing midwifery;

(3) two members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;

(4) one actively practicing New Mexico licensed board-certified obstetrician-gynecologist physician;

(5) one student nurse-midwife, who may continue to serve out their term following graduation; and

(6) one employee of the division.

B. Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms; a student nurse-midwife who has completed their education is not eligible for a second term as the student member. The department representative shall not be subject to term limits.

C. The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

D. Board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 and the department of finance administration rules, Section 2.42.2 NMAC.

E. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.13 NMAC - Rp, 16.11.2.12 NMAC, 5/7/2024]

16.11.2.14 SEVERABILITY: If any part or application of these rules is determined to be illegal, the remainder of these rules shall not be affected.

[16.11.2.14 NMAC - Rp, 16.11.2.13 NMAC, 5/7/2024]

HISTORY OF 16.11.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

DPHW 67-24, Nurse Midwife Regulations For New Mexico, filed 12/12/1967.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/1976.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/1980.

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives, filed 11/04/1991.

History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) repealed 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) repealed 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) repealed 11/24/2020.

16.11.2 NMAC, Certified Nurse Midwives (filed 11/13/2020) repealed 5/7/2024.

Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/1991) was renumbered into first version of the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/1996.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) was replaced by16.11.2 NMAC, Certified Nurse Midwives, effective 8/30/2013. 16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) was replaced by16.11.2 NMAC, Certified Nurse Midwives, effective 6/25/2019. 16.11.2 NMAC, Certified Nurse Midwives (filed 6/6/2019) replaced by 16.11.2 NMAC, Certified Nurse Midwives effective 11/24/2020. 16.11.2 NMAC, Certified Nurse Midwives (filed 11/13/2020) replaced by 16.11.2 NMAC, Certified Nurse Midwives effective 5/7/2024.

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an amendment to 16.8.2 NMAC, Sections 8, 22, 23, 30, 31, 36, 37, 42, 44, 45, 50, 51, 57, and 58, effective 05/07/2024.

16.8.2.8 GENERAL OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS:

A. State and local laws: Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.

B. Licensure on federally recognized Indian Nation, Tribe or Pueblo: The division shall not approve an application for licensure to operate within the exterior boundaries of a federally recognized Indian Nation, Tribe or Pueblo located wholly or partially in the state, unless the tribal government and the department have entered an intergovernmental agreement to coordinate the cross-jurisdictional administration of the laws of New Mexico and the laws of a tribal government relating to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

C. Age requirements: All applicants for licensure, including controlling persons of applicants, must be at least 21 years of age. All employees of a commercial cannabis establishment must be at least 21 years of age.

D. Consumption prohibited: Licensees shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.

E. Illegal sale or distribution: Licensees shall not knowingly and intentionally sell, deliver, or transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.

F. Sales of alcoholic beverages prohibited: Licensees are allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, Section 76-24-3 *et seq.*, NMSA 1978, except for sales of alcoholic beverages.

G. No guarantee of licensure: An applicant may not exercise any of the privileges of licensure until the division approves the license application and issues a license. The submission of an application is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the division for the licensing process shall be accurate and truthful. The division may initiate action to deny licensure, or other administrative action against an applicant or licensee, pursuant to the Uniform Licensing Act.

H. Computation of time: The word "days" as used in this rule means calendar days unless otherwise noted.

I. Display of license: A division license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

J. Inventory and sales equipment: The division shall require licensees to utilize division approved track and trace equipment, software, and services.

K. Limitation of licensed premises: Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

L. Multiple licensee premises: Multiple licensees may, upon determination by the division, occupy a single licensed premises, provided each is individually licensed by the division.

M. Reporting of theft or security incident to division: Licensees shall submit to the division written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensee's premises, no later than 24 hours after the licensee first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide a copy of the police report, video footage and any other supporting evidence requested by the division. The premises must be secured prior to continuing operations, including the replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

N. Non-transferable or assignable license: A license shall

not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license, the license shall be void and returned to the division when any one of the following situations occurs:

(1) location of the licensed premises changes;

(2) the discontinuance of operation at a licensed premises; or

(3) suspension or revocation of the license by the division.

O. Online application: Online application: All applications for initial licensure, amended licensure, additional premises, and renewal must be made available on the division website. If applicable, applicants shall first register for a user account.

P. Complete application and fees required: Applicants must submit a completed application to the division before it will be accepted by the division as complete and considered for approval or denial. License and additional premises application or renewal fees must be paid at the time of application submission. Annual plant fees must be paid upon the division's approval of the initial application or renewal application and approval of the number of cannabis plants that a licensee may produce.

Q. Process for incomplete application: In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. All licensing or renewal fees are non-refundable and must be paid for each new application.

~~**[R. Provisional license with contingencies:** Upon written request of the applicant, the division may issue a provisional license letter with defined contingencies that the applicant must obtain documents that may be pending approval of a cannabis establishment license or must be obtained from other state agencies or local jurisdictions for the application to be considered complete. The provisional license letter shall list the remaining items necessary for the application to be complete and shall expire six-months from the date the provisional license letter was issued to the applicant. Upon written request of the applicant, the division may extend a provisional license letter for an additional six-months. Final approval or denial of a license shall be stated on the provisional license letter as contingent on the applicant submitting all remaining items. Such a provisional license letter shall not authorize an applicant to begin licensed cannabis activity.~~

~~**S.]**~~ **R. Request for clarifying information:** Upon request of the division, an applicant shall provide additional information required to process and fully review the application. If the requested information is not received by the division within 90 days from the date the application was deemed to be complete, the division shall initiate action to deny licensure pursuant to the Uniform Licensing Act.

[~~T.~~] S. Physical and email address: Applicants and licensees must provide a physical mailing address and an email address. General correspondence from the division will be sent to the applicant or licensee's email address of record. Legal notice and determinations regarding an application, renewal or an administrative action, including an action taken by the division to deny, suspend, or revoke a license or impose a sanction and civil monetary penalty, shall be sent to the last mailing address and to the last email address furnished to the division. Licensees must inform the division in writing of any change to its physical mailing address or email address within 10 days of the change. If applicable, such changes may be submitted via the online licensing portal. An applicant or licensee's failure to notify the division of a change in physical or email address does not relieve the applicant or licensee from the obligation of responding to a division communication.

[~~U.~~] T. Electronic signature: The division will accept an electronic signature that complies with the Uniform Electronic Transactions Act, Section 14-16-1 *et seq.*, NMSA 1978, or the Revised Uniform Law on Notarial Acts, or rules promulgated pursuant thereto, on any documents required to be submitted to the division and that are submitted electronically.

[~~V.~~] U. Withdrawal of application: An applicant may withdraw an application at any time prior to the division's issuance of a license or denial of a license. Requests to withdraw an application must be submitted to the division in writing, dated, and signed by the applicant. Withdrawal of an application shall not, unless the division has consented in writing to such withdrawal, deprive the division of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground. The division shall not refund application fees for a withdrawn application. An applicant may reapply at any time following the withdrawal of an application and shall be required to submit a new application and fee.

[~~W.~~] V. Closure of a licensed cannabis establishment: A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or

local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

[~~X.~~] W. Persons licensed pursuant to the medical cannabis program: In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the division notifying the licensee that a renewal application is available. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

~~**[Y. Application for variance:**~~

~~**(1)** Any applicant or licensee may seek a variance from division rule(s) and shall do so by filing a written petition with the division. The petitioner may submit with the petition any relevant documents or material, which the petitioner believes would support the petition.~~

~~**(2)** Petitions shall:~~

~~**(a)** state the petitioner's name and address;~~

~~**(b)** state the date of the petition;~~

~~**(c)** describe the facility or activity for which the variance is sought;~~

~~**(d)** state the address or description of the premises upon which the cannabis establishment or activity is located;~~

~~**(e)** identify the rule(s) from which the variance is sought;~~

~~**(f)** state in detail the extent to which the petitioner wishes to vary from the rule(s) and how the petitioner will ensure public health and safety is not negatively impacted;~~

~~**(g)** state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and~~

~~**(h)** state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.~~

~~**(3)** At the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division. The division shall deny any request for a waiver related to a legal right to water pursuant to Paragraphs (3) and (4) of Subsection B of Section 26-2C-7 NMSA 1978.~~

~~**(4)** Prior to a final decision, the division will hold a public hearing pursuant to the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978. The purpose of the hearing is to provide interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed variance. The division, at its sole discretion, may determine whether to hold more than one hearing. The division may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification purposes. The hearing officer shall identify and mark all written comments submitted during the hearing. The public comments should be labeled as exhibits for reference, but do not require formal admission into the hearing record. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath. Any individual who provides public comment at the hearing may be questioned by the hearing officer. The hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the format in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment. The rules of evidence shall not apply and the hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.~~

~~**(5)** The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.~~

~~**(6)** The division shall set forth in the final order the reasons for its actions and shall not be subject to review.~~

~~Z.~~] X. **Application for additional licensed premises:** Licensees must apply for the specific cannabis establishment license type intended for each additional licensed premises as defined in the Cannabis Regulation Act.

[~~AA.~~] Y. **Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:**

(1) Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

(a) production of cannabis;

(b) manufacturing of cannabis products;

(c) retail establishment; or

(d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.

[16.8.2.8 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022; A, 05/07/2024]

16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:

A. An initial application or renewal for cannabis producer 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 date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person; [~~and~~]

(k) demographic data pursuant to the Cannabis Regulation Act; and

(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) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

[~~(3)~~] **(5)** demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, 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 from cannabis production 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, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation 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.

[~~(4)~~] **(6)** a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:

(a) drip irrigation and water collection;

(b) natural lighting and energy efficiency measures;

(c) renewable energy generation; and

(d) estimated water and energy use related to the applicants cultivation plan;

[~~(5)~~] **(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;

[~~(6)~~] **(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;

[~~(7)~~] **(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 detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

[~~(8)~~] **(11)** the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a 12 month period;

[~~(9)~~] **(12)** certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

[~~(10)~~] **(13)** 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, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

[~~(11)~~] **(14)** certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

[~~(12)~~] **(15)** certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

[~~(13)~~] **(16)** 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, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

[~~(14)~~] **(17)** 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, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

[~~(15)~~] **(18)** 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 medical or commercial 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;

[~~(16)~~] **(19)** 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;

[~~(17)~~] **(20)** certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

[~~(18)~~] **(21)** certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility used for the cannabis establishment and the method(s) to be used to produce cannabis;

[~~(19)~~] **(22)** 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

[~~(20)~~] **(23)** payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of

cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

B. Verification of information: The division may verify information contained in each application and accompanying documentation, including:

(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.

[16.8.2.22 NMAC – N, 08/22/2021; A/E, 12/06/2021; A/E, 1/13/2022; A, 03/22/2022; A, 05/07/2024]

16.8.2.23 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS PRODUCER LICENSE:

A . Application: A licensed producer shall submit to the division an application form for an amended license, pay the required fee, and must obtain approval from the division, prior to implementing any of the following:

[~~**(1)** material or substantial change of the size of the premises;~~

~~**(2)**~~] **(1)** change of licensee's legal or business name;

[~~**(3)**~~] **(2)** change in water source, or licensees water and energy conservation plan, including, the reuse of water and disposal of effluent;

[~~**(4)**~~] **(3)** increase in plant count beyond which licensee is currently licensed to produce;

(4) decrease in plant count which licensee is currently licensed to produce;

(5) addition or elimination of a controlling person;

[~~**(6)** material or substantial change to a license's security system;~~] or

[~~**(7)**~~] **(6)** material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, or the purchase of additional property for the use of the cannabis establishment;

(2) an addition or removal of licensed activities taking place on a single licensed premise; or

[~~**(2)**~~] **(3)** a change in the licensee's access to the water source submitted with an application for initial, amended, or renewal licensure or a ten percent, or more, increase in the licensee's water usage.

[~~**(3)** change to a license's security system, including relocation or security points or installation of a new security system; or

~~**(4)** modification of the premises to relocate cannabis activities.~~]

[16.8.2.23 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 05/07/2024]

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); and

(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) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located

does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

[~~(3)~~] **(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;

[~~(4)~~] **(6)** 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;

[~~(5)~~] **(7)** 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;

[~~(6)~~] **(8)** 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;

(9) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

[~~(7)~~] **(10)** 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;

[~~(8)~~] **(11)** 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;

[~~(9)~~] **(12)** for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;

[~~(10)~~] **(13)** certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(11)~~] **(14)** 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;

[~~(12)~~] **(15)** certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(13)~~] **(16)** 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;

[~~(14)~~] **(17)** 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;

[~~(15)~~] **(18)** 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;

[~~(16)~~] **(19)** certification the applicant is not licensed under the Liquor Control Act.

[~~(17)~~] **(20)** 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;

[~~(18)~~] **(21)** 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;

[~~(19)~~] **(22)** certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

[~~(20)~~] **(23)** certification the applicant will maintain at all times a legible and accurate diagram containing information required by 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;

[~~(21)~~] **(24)** 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

[~~(22)~~] **(25)** 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 10 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, 12/02/2021; N, 12/28/2021; A/E, 01/13/2022; A, 3/22/2022; A, 05/07/2024]

16.8.2.31 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS MANUFACTURER LICENSE:

A. Application: A licensed manufacturer shall submit to the division an application form for an amended license, if applicable, and obtain approval from the division, prior to implementing any of the following:

[~~**(1)** material or substantial change of the size of the premises;~~

~~**(2)**~~] **(1)** change of licensee's legal or business name;

[~~**(3)**~~] **(2)** change or modification in extraction type(s) or equipment;

[~~**(4)**~~] **(3)** material or substantial change in water source;

[~~**(5)**~~] **(4)** addition or elimination of a controlling person;

[~~**(6)** material or substantial change to a license's security system;~~] or

[~~**(7)**~~] **(5)** material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, or the purchase of additional property for the use of the cannabis establishment;

(2) an addition or removal of licensed activities taking place on a single licensed premise; or

[~~**(2)**~~] **(3)** a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a ten percent, or more, increase in the licensee's water usage.

[~~**(3)** change to a license's security system, including relocation or security points or installation of a new security system; or

~~**(4)** modification of the premises to relocate cannabis activities.~~] [16.8.2.31 NMAC – N/E, 09/08/2021; N, 12/28/2021; A, 05/07/2024]

16.8.2.36 APPLICATION REQUIREMENTS FOR CANNABIS RETAILER LICENSE:

A. An initial application or renewal for cannabis retailer 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 date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person;

(k) demographic data pursuant to the Cannabis Regulation Act; [~~and~~]

(l) license type sought; and

(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) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

[~~(3)~~] **(5)** 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;

[~~(4)~~] **(6)** 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;

[~~(5)~~] **(7)** 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;

(8) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

[~~(6)~~] **(9)** certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(7)~~] **(10)** 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;

[~~(8)~~] **(11)** certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(9)~~] **(12)** 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;

[~~(10)~~] **(13)** 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, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

[~~(11)~~] **(14)** 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;

[~~(12)~~] **(15)** certification the applicant is not licensed under the Liquor Control Act;

[~~(13)~~] **(16)** certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

[~~(14)~~] **(17)** certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility to be

used for the cannabis establishment, including a description of each retail area and all security requirements;

[~~(15)~~] **(18)** if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(16)~~] **(19)** 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;

[~~(17)~~] **(20)** 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

[~~(18)~~] **(21)** 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.

[16.8.2.36 NMAC – N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022; A, 05/07/2024]

16.8.2.37 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RETAILER LICENSE:

A. Application: A licensed retailer shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

[~~**(1)** material or substantial change of the size;~~

~~**(2)**~~] **(1)** change of licensee's legal or business name;

[~~**(3)**~~] **(2)** addition or elimination of a controlling person;

[~~**(4)** material or substantial change to a license's security system;~~] or

[~~**(5)**~~] **(3)** material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises; or

(2) an addition or removal of licensed activities taking place on a single licensed premise.

[~~**(2)** change to a license's security system, including relocation or security points or installation of a new security system; or~~

~~**(3)** modification of the premises to relocate cannabis activities.~~]

[16.8.2.37 NMAC – N, 12/28/2021; A, 05/07/2024]

16.8.2.42 APPLICATION REQUIREMENTS FOR CANNABIS COURIER LICENSE:

A. An initial application or renewal for cannabis courier licensure shall include the following:

(1) Contact information for the applicant, to include:

(a) applicant's full legal name;

(b) applicant's date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) physical address and mailing address, if different; [~~and~~]

(g) demographic data pursuant to the Cannabis Regulation Act; and

(2) proof the applicant 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) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

(5) proof of vehicle registration and vehicle insurance for each vehicle to be used for courier activities;

(6) a copy of the delivery plan including, but not limited to, how cannabis and cannabis products will be picked up and delivered ensuring proper chain of custody throughout, how security will be maintained throughout delivery, and how payment will be accepted;

[~~(3)~~] **(7)** criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

[~~(4)~~] **(8)** a detailed description of any criminal convictions of the applicant, 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;

(9) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

[~~(5)~~] **(10)** certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(6)~~] **(11)** 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;

[~~(7)~~] **(12)** certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(8)~~] **(13)** 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;

[~~(9)~~] **(14)** 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;

[~~(10)~~] **(15)** certification the applicant is not licensed under the Liquor Control Act;

[~~(11)~~] **(16)** 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

[~~(12)~~] **(17)** 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 by telephone, mail, or electronic mail;

(2) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(3) consulting with state or local governments.

[16.8.2.42 NMAC – N, 12/28/2021, A, 05/07/2024]

16.8.2.44 APPLICATION REQUIREMENTS FOR CANNABIS TESTING LABORATORY LICENSE:

A. Contents of application:

(1) for any initial or renewal application, 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;

(2) for any initial application, information about controlling persons, to include:

(a) name and contact information;

(b) documentation of legal name change, if applicable;

(c) criminal history screening documents. as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(d) a detailed description of any criminal convictions, including for each: the date of the conviction; dates of incarceration, probation, or parole; description of the offense; and any evidence of rehabilitation, including court documents, personal or professional references, completion of treatment, employment records, and other relevant information;

(e) demographic data pursuant to the Cannabis Regulation Act; and

(f) A copy of identification issued by a federal or state government, including name, date of birth, and picture and indicating the person is at least 21 years of age;

(3) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

(5) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

[~~(3)~~] **(6)** for any renewal application, certifications that the applicant:[

(a) attests to 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;

(b) will adhere to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules, including:

(i) testing requirements;

(ii) transport requirements;

(iii) security requirements;

(iv) quality assurance requirements; and

(v) the prohibition on any person holding an interest in one or more cannabis testing laboratories from holding an interest in any other cannabis license other than a cannabis research laboratory;

(c) 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;

(d) 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; and

(e) is not licensed at the same location under the Liquor Control Act;

(f) has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance; and

(g) maintain on its licensed premise at all times, a complete and detailed diagram of the premises containing information required by 16.8.2.46 NMAC, which shall be made immediately available to the division upon request.

[~~(4)~~] **(7)** for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:

(a) a list of categories of testing for which licensure is sought; and

(b) 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 premises are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities; and

[~~(5)~~] **(8)** for any initial or renewal application, payment of any required fees as set forth in 16.8.11 NMAC.

B. Initial demonstration of capability: The division requires the submission of an initial demonstration of capability (IDC) for every test a cannabis testing laboratory intends to conduct, except tests for research and development purposes only. The IDC must identify a limit of quantitation that is equal to or lower than the action level for the specified test.

(1) An IDC is required whenever:

(a) an initial application is submitted, except that an applicant may instead submit evidence of prior completion of an IDC as a requirement of licensing under the Lynn and Erin Compassionate Use Act;

(b) the cannabis testing laboratory proposes to use a new analytical instrument to test for an analyte; or

(c) the cannabis testing laboratory proposes material changes to testing methods.

(2) Every IDC shall include the following elements:

(a) Demonstration of method calibration: The calibration range shall use at least five calibration points consisting of five different concentration levels of target compounds. The calibration

range shall include a low calibration point equal to, or less than, the action level for each targeted compound. The cannabis testing laboratory shall provide the equation and the type of curve fit used for the calibration range, and the percent relative standard deviation or the goodness of fit. The percent relative standard deviation shall be less than twenty percent, or the goodness of fit (correlation coefficient) shall be 0.995 or better.

(b) Demonstration of method accuracy and precision: A cannabis testing laboratory shall supply the quantitation data for five positive control samples analyzed by its testing method utilizing median or mid-level calibration concentration. The cannabis testing laboratory shall identify and justify acceptance criteria and shall calculate and provide the calculated mean (average) result and the standard deviation. Any standard deviations greater than twenty percent shall be noted and explained.

(c) Demonstration of method detection limit: A cannabis testing laboratory shall calculate its method detection limit using a generally accepted method.

(d) Demonstration of low system background: A cannabis testing laboratory shall supply the analytical data of at least three negative control samples that do not contain any target analytes.

(e) Demonstration of analyte identification: A cannabis testing laboratory that uses, high performance liquid chromatography (HPLC) or gas chromatography with flame ionization detector or photoionization detector (GC-FID or GC-PID/FID) instrumentation shall supply analytical data where each targeted compound is analyzed as a single compound giving it its characteristic retention time. A cannabis testing laboratory that uses gas chromatography–mass spectrometry (GCMS), liquid chromatography–mass spectrometry (LCMS), or liquid chromatography–tandem mass spectrometry (LCMSMS) instrumentation shall supply analytical data with the characteristic mass spectrum of each targeted compound.

C. Continuing demonstration of capability: A cannabis testing laboratory shall submit a continuing demonstration of capability (CDC) for each test performed annually as part of the laboratory's application for renewal of licensure. A CDC may consist of:

(1) Evidence that the cannabis testing laboratory has the test within its current scope of accreditation to the current standards of ISO/IEC 17025, *Testing and Calibration Laboratories*;

(2) Evidence that each analyst performing the test has successfully completed, within the previous year, relevant proficiency testing administered by a provider accredited to the standards of ISO/IEC 17043, *Conformity Assessment—General Requirements for Proficiency Testing*; or

(3) The re-performance of the IDC.

D. 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.

E. 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 by clearly identifying such information as "confidential trade secrets" 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. [16.8.2.44 NMAC – N, 01/11/2022; A/E, 01/13/2022; A, 03/22/2022; A, 05/07/2024]

16.8.2.45 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS TESTING LABORATORY LICENSE:

A. Application: A cannabis testing laboratory shall submit to the division an application form for an amended license and obtain approval from the division, prior to implementing any of the following:

[~~**(1)** material or substantial change of the size of the premises;~~

~~**(2)**~~] **(1)** change of licensee's legal or business name;

[~~**(3)**~~] **(2)** material or substantial change in testing methods or equipment;

[~~**(4)**~~] **(3)** addition or elimination of a controlling person;

[~~**(5)** material or substantial change to a licensee's security system;~~] or

[~~**(6)**~~] **(4)** material or substantial modification of the premises.

B. Requirements and processing of application for amended license: The application for amended license shall:

(1) be clearly designated as one for an amended license;

(2) supply any information representing a

material change from the most recent application; and

(3) include an initial demonstration of capability for any new or materially different method for performing a required test, including testing for an additional analyte or testing for an analyte using a different type of instrument.

C. Approval or denial: The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment; or

(2) testing for an analyte required in required testing using a different type of instrument. [~~or~~

~~**(3)** change to a licensee's security system, including relocation of security points or installation of a new security system.~~]

E. Amended license not required: Other changes to standard operating policies and procedures, unless material or substantial, may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

[16.8.2.45 NMAC – N, 01/11/2022; A, 05/07/2024]

16.8.2.50 APPLICATION REQUIREMENTS FOR CANNABIS CONSUMPTION AREA LICENSE:

A. An initial application or renewal for cannabis consumption area 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 date of birth, if applicable;

(c) applicant's mailing address;

(d) applicant's contact telephone number;

(e) applicant's contact email address;

(f) applicant's business physical address and mailing address, if different;

(g) applicant's business legal name, including a DBA name if applicable;

(h) applicant's business web address, if applicable;

(i) applicant's business hours of operation;

(j) name and contact information for each controlling person;

(k) demographic data pursuant to the Cannabis Regulation Act; [~~and~~]

(l) license type sought; and

(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 and description of the location of the land or facility to be used for the cannabis establishment, including a description of each consumption or retail area and all security requirements, 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) a copy of a current business license, fire inspection report, and zoning approval;

(6) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

[~~**(6)**~~] **(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;

[~~**(7)**~~] **(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;

[~~**(8)**~~] **(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 detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

[~~**(9)**~~] **(11)** 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 purchased for retail sale;

[~~**(10)**~~] **(12)** certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(11)~~] **(13)** 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;

[~~(12)~~] **(14)** certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

[~~(13)~~] **(15)** 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;

[~~(14)~~] **(16)** 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, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

[~~(15)~~] **(17)** 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;

[~~(16)~~] **(18)** certification the applicant is not licensed under the Liquor Control Act;

[~~(17)~~] **(19)** 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;

[~~(18)~~] **(20)** 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

[~~(19)~~] **(21)** 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.

[16.8.2.50 NMAC - N, 06/07/2022; A, 05/07/2024]

16.8.2.51 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS CONSUMPTION AREA LICENSE:

A. Application: A licensed cannabis consumption area shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

[~~**(1)** material or substantial change of the size or location of the premises;~~

~~**(2)**~~] **(1)** change of licensee's legal or business name;

[~~**(3)**~~] **(2)** addition or elimination of a controlling person;

[~~**(4)** material or substantial change to a license's security system;~~] or

[~~**(5)**~~] **(3)** material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval [~~include~~] includes

[~~**(1)**~~] increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment~~;~~

[~~**(2)** change to a license's security system, including relocation or security points or installation of a new security system; or~~

~~**(3)** modification of the premises to relocate cannabis activities.~~]

[16.8.2.51 NMAC - N, 06/07/2022; A, 05/07/2024]

16.8.2.57 APPLICATION REQUIREMENTS FOR CANNABIS RESEARCH LABORATORY LICENSE:

A. An initial application or renewal for cannabis research laboratory licensure shall include the following:

(1) Business and controlling person(s) contact information, to include:

(a) legal business name, including DBA if applicable

(b) type of business entity;

(c) business mailing address;

(d) business telephone number;

(e) business email address;

(f) business physical address, if different;

(g) business web address, if applicable;

(h) 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 (Tier I, Tier II, or Tier III); and

(2) proof 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 controlling person;

(3) proof of compliance with local laws by submitting either:

(a) a copy of a current business license issued by the local jurisdiction in which the proposed premise is located, which may include zoning approval and a fire inspection report;

(b) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses; or

(c) evidence that the local jurisdiction in which the proposed premise is located does not issue business licenses prior to the issuance of a cannabis license.

(4) proof the applicant is properly registered with the New Mexico taxation and revenue department (TRD) for payment of gross receipts tax;

[~~(3)~~] **(5)** if applicable, certification the applicant is in good standing with the New Mexico secretary of state;

[~~(4)~~] **(6)** a list of other current or prior licensed cannabis businesses;

[~~(5)~~] **(7)** a list of other names used by controlling person(s);

[~~(6)~~] **(8)** name and contact information for the primary controlling person for the business or an authorized representative of the business if not a controlling person;

[~~(7)~~] **(9)** criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

[~~(8)~~] **(10)** 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;

(11) a detailed description of any denial, suspension, revocation, surrender, or any other form of discipline or disciplinary action by a cannabis licensing agency in another state, jurisdiction or territory against the applicant or any controlling person associated with the applicant;

[~~(9)~~] **(12)** if applicable, a detailed research plan, including but not limited to the applicant's plan for recruiting research subjects, producing or acquiring cannabis, dispensing cannabis, plans for continuing research, and the forms of usable cannabis and cannabis-derived products to be examined; if applicable, a detailed description of any private or public partnerships with higher education institutions, other cannabis research laboratories, or private business;

[~~(10)~~] **(13)** if applicable, drug enforcement administration license to conduct research;

[~~(11)~~] **(14)** 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;

[~~(12)~~] **(15)** if applicable, the applicant's DEA license or any conditional approval from the DEA to bulk manufacture cannabis for research, or the applicant's plan for seeking such licensure in the future;

[~~(13)~~] **(16)** certification the applicant will not use dimethylsulfoxide (DMSO) in the production of cannabis derived products, and will not possess DMSO on the premises of the licensee;

[~~(14)~~] **(17)** evidence that the applicant has obtained all necessary permits required for the production of edible and topical cannabis products from the New Mexico environment department and that such permits are valid at the time the license application is submitted

[~~(15)~~] **(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;

[~~(16)~~] **(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;

[~~(17)~~] **(20)** 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;

[~~(18)~~] **(21)** 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;

[~~(19)~~] **(22)** certification the applicant will adhere to production and manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis products;

[~~(20)~~] **(23)** certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

[~~(21)~~] **(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 grantmerced, federally designated opportunity zone, or other rural historic communities;

[~~(22)~~] **(25)** an attestation by a person authorized to act on behalf of the business 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

[~~(23)~~] **(26)** 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 10 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.

[16.8.2.57 NMAC – N, 07/12/2022; A, 05/07/2024]

16.8.2.58 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RESEARCH LABORATORY LICENSE:

A. Application: A licensed research laboratory shall submit to the division an application form for an amended license, if applicable and obtain approval from the division, prior to implementing any of the following:

[~~**(1)** material or substantial change of the size or location of the premises;~~

~~**(2)**~~] **(1)** change of licensee's legal or business name;

[~~**(3)**~~] **(2)** change or modification in extraction type(s) or equipment;

[~~**(4)**~~] **(3)** material or substantial change in water source;

[~~**(5)**~~] **(4)** addition or elimination of a controlling person;

[~~**(6)** material or substantial change to a license's security system;~~] or

[~~**(7)**~~] **(5)** material or substantial modification of the premise.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply

with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) an addition or removal of licensed activities taking place on a single licensed premise; or

[~~**(2)**~~] **(3)** a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a ten percent, or more, increase in the licensee's water usage.

[~~**(3)** change to a license's security system, including relocation or security points or installation of a new security system; or~~

~~**(4)** modification of the premises to relocate cannabis activities.~~]

[16.8.2.58 NMAC – N, 07/12/2022; A, 05/07/2024]

REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION

This is an amendment to 16.8.11 NMAC, Sections 9 and 10, effective 05/07/2024.

16.8.11.9 ANNUAL LICENSING FEES: Every application for the issuance or renewal of the following licenses shall be accompanied by an annual licensing fee in the following specified amounts:

A. Cannabis courier license: $250 annually
Each additional licensed premises of the licensee: $100 annually

B. Cannabis testing laboratory license: $2,500 annually
Each additional licensed premises of the licensee: $1,000 annually

C. Cannabis manufacturer license: $2,500 annually
Each additional licensed premises of the licensee: $1,000 annually

D. Cannabis producer license: $2,500 annually
Each additional licensed premises of the licensee: $1,000 annually

E. Cannabis retailer license: $2,500 annually
Each additional licensed premises of the licensee: $1,000 annually

F. Cannabis research laboratory license: $2,500 annually
Each additional licensed premises of the licensee: $1,000 annually

G. Vertically integrated cannabis establishment license: $7,500 annually
Each additional licensed premises of the licensee: $1,000 annually

H. Cannabis producer microbusiness license: [~~License fees for cannabis producer microbusinesses shall be determined by the number of plants growing under each license.~~

~~**(1) Licensees growing 100 plants or less:** $500 annually~~

~~**(2) Licensees growing 101 to 200 plants:**~~] $1,000 annually

I. Integrated cannabis microbusiness license: [~~License fees for integrated cannabis microbusinesses shall be determined by the number of activities conducted under each license. Activities considered are defined by the Cannabis Regulation Act and entail:~~

~~**(1)** production of cannabis at a single licensed premises, provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;~~

~~**(2)** manufacture of cannabis products at a single licensed premises;~~

~~**(3)** sale and transportation of only cannabis products produced or manufactured by that person;~~

~~**(4)** operation of only one retail establishment; or~~

~~**(5)** couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.~~

~~**(a)** Two activities: $1,000 annually~~

~~**(b)** Three activities: $1,500 annually~~

~~**(c)** Four activities: $2,000 annually~~

~~**(d)** Five activities~~] $2,500 annually

J. Cannabis consumption area: $2,500 annually

[16.8.11.9 NMAC - N, 08/24/2021; A, 05/07/2024]

16.8.11.10 [~~**ANNUAL LICENSING FEE PRORATION:** Licensees submitting an amended application to add or change a license type shall only be required to pay the difference between the fee for the original license type and the fee for the amended license type, provided that the division will not issue any refunds. The division shall prorate the fee to align with the expiration date of the licensee's original license.~~] **FEES FOR THE ADMINISTRATION OF LICENSING:** The division shall

collect fees for the administration of licensing activities in the following specified amounts:

A. License amendments as set forth in 16.8.2 NMAC $75 per amendment.

B. Designation of a non-controlling person as an agent $75 per designation.

[16.8.11.10 NMAC – Rp, 16.8.11.10 NMAC; 05/07/2024]

REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF

This is an amendment to 16.19.1 NMAC, Section 1, 3, 6, 8, 9 and 11 effective 5/07/2024

16.19.1.1 ISSUING AGENCY: [~~Regulation and Licensing Department~~] Board of Pharmacy [~~, Albuquerque, NM.~~]
[02-15-96; 16.19.1.1 NMAC - Rn, 16 NMAC 19.1.1, 03-30-02; A, 08-16-10; A, 5/07/2024]

16.19.1.3 STATUTORY AUTHORITY: The board of pharmacy is authorized under Paragraph (1) of Subsection A of Section 61-11-6 [~~(A)(1)~~] NMSA 1978 to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Paragraph (3) of Subsection A of Section 61-11-6 [~~(A)(3)~~] directs the board to provide for the issuance and renewal of licenses for pharmacists. Paragraphs (12), (13) and (14) of Subsection A of Section[~~s~~] 61-11-6 [~~(A) (12), (13) and (14)~~] NMSA 1978 authorize the board to employ and define the duties of an executive officer, inspectors, and qualified employees. Subsection B of Section 61-11-5 [~~(B)~~] NMSA 1978 directs the board to meet at least once every three months.
[02-05-96; 7-31-98; 16.19.1.3 NMAC - Rn, 16 NMAC 19.1.3, 03-30-02; A, 5/07/2024]

16.19.1.6 OBJECTIVE: The objective of Part 1 of Chapter 19 is to establish the location for regular meetings of the board, designate persons to preside over board meetings, establish standards for employees and members [~~who are required to give surety bonds~~], and provide for employee job descriptions and a registry of pharmacists.
[02-15-96; 16.19.1.6 NMAC - Rn, 16 NMAC 19.1.6, 03-30-02; A, 5/07/2024]

16.19.1.8 MEETINGS:

A. The chairman of the board shall preside at all meetings, preserve order, appoint committees and decide all questions of order subject to appeal to the board. In the absence of the chairman, the vice-chairman or a member of the board shall preside. Roberts Rules of Order shall govern all proceedings.

B. Meetings shall be held in the office of the board unless a [~~waiver is requested by a majority of the board~~] different location (physical or virtual) is designated by the board.

C. Examinations shall be administered at a place or location specified by the board.
[08-27-90; 16.19.1.8 NMAC - Rn, 16 NMAC 19.1.8, 03-30-02; A, 5/07/2024]

16.19.1.9 PENALTIES: As provided in the Uniform Licensing Act, those individuals found to have violated provisions of Subsection A of Section 61-11-20 NMSA 1978 [~~(A)~~] may be fined up to $1,000 for each violation committed plus the cost of the hearing and incurred investigative expenses.
[08-27-90; A, 07-31-98; 16.19.1.9 NMAC - Rn, 16 NMAC 19.1.9, 03-30-02; A, 5/07/2024]

16.19.1.11 REGISTRY: [~~Registry of pharmacists to be maintained by the board shall record the name, registry number, date of registration, grades of examination by subject, and if by reciprocity, the name of the state from which examined~~] The board shall provide a registry of all persons licensed as pharmacists or pharmacist interns in the state, the board's online license look up system shall satisfy this requirement.
[08-27-90; 16.19.1.11 NMAC - Rn, 16 NMAC 19.1.11, 03-30-02; A, 5/07/2024]

REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF

This is an amendment to 16.19.2 NMAC, Section 1, 3, 6, 7, 8, 9, 10, 13 and 14 effective 5/07/2024

16.19.2.1 ISSUING AGENCY: [~~Regulation and Licensing Department -~~] Board of Pharmacy[~~, Albuquerque, NM.~~].
[02-15-96; 16.19.2.1 NMAC - Rn, 16 NMAC 19.2.1, 03-30-02; A, 06-08-16; A, 5/07/2024]

16.19.2.3 STATUTORY AUTHORITY: Section 61-11-9 NMSA 1978 establishes qualifications for licensure as a pharmacist by examination. Paragraph (2) of Subsection A of Section 61-11-6 [~~.A.(2)~~] NMSA 1978 requires that the board of pharmacy provide for [~~at least two~~] examinations [~~a year~~] of applicants for licensure as pharmacists.
[02-15-96; 16.19.2.3 NMAC - Rn, 16 NMAC 19.2.3, 03-30-02; A, 06-08-16; A, 5/07/2024]

16.19.2.6 OBJECTIVE: The objective of Part 2 of Chapter 19 is to identify candidate's qualifications and establish uniform criteria for obtaining licensure as a pharmacist by examination.
[02-15-96; 16.19.2.6 NMAC - Rn, 16 NMAC 19.2.6, 03-30-02; A, 5/07/2024]

16.19.2.7 DEFINITIONS: [~~RESERVED~~]

A. "ACPE" Accreditation council for pharmacy education.

B. "FPGEE" Foreign pharmacy graduate equivalency examination.

C. "MPJE" Multistate pharmacy jurisprudence examination.

D. "NABP" National association of boards of pharmacy.

E. "NAPLEX" North american pharmacist licensure examination.

[02-15-96; 16.19.2.7 NMAC - Rn, 16 NMAC 19.2.7, 03-30-02; A, 5/07/2024]

16.19.2.8 APPLICATIONS - SUBJECTS: Applicants for licensure by examination shall pass the standard national examination currently known as the [~~North American pharmacist licensure examination~~] NAPLEX and pass the [~~multi-state pharmacy jurisprudence examination~~ MPJE.

A. EXAMINATIONS:

(1) In order to sit for the [~~examination based on~~] NAPLEX [~~subjects~~], the applicant must be a graduate from a college of pharmacy accredited by the [~~American council on pharmaceutical education (~~] ACPE [~~)~~].

(2) [~~To pass an examination, the candidate shall have a score of at least 75 in the NAPLEX examination.~~] Candidates must achieve a score of passing as set by NABP to pass the NAPLEX.

(3) [~~To pass the MPJE in the state of New Mexico, the candidate shall have a score of at least 75.~~] Candidates must achieve a score of passing as set by NABP to pass the MPJE.

(4) Candidates taking the NAPLEX in participating states may transfer scores in compliance with [~~national association of board of pharmacy~~ NABP "score transfer program", upon payment of the fee to the New Mexico board of pharmacy for licensure by examination, and in compliance with such other requirements set by the New Mexico board of pharmacy so long as New Mexico participates in the NABP "score transfer program."

(5) Only those score-transfer applicants who have passed the NAPLEX and received their score may take the MPJE.

B. Graduates of schools or colleges of pharmacy not accredited by the ACPE, shall be eligible to take the licensing examination required under this section by providing evidence satisfactory to the board that the applicant has satisfied the requirements of Section 61-11-9 NMSA 1978:

(1) has submitted an application on a form supplied by the board;

(2) has completed the internship requirements of 16.19.5 NMAC; and

(3) has successfully completed the NABP [~~foreign pharmacy graduate equivalency examination~~] FPGEE certification program.

C. Applicants with work experience as a pharmacist in another country may petition the board to accept the work experience in lieu of internship requirements of 16.19.5 NMAC. The board may elect to accept all, a portion or none of the experience as a substitute for internship requirements.

[04-30-98; 16.19.2.8 NMAC - Rn, 16 NMAC 19.2.8, 03-30-02; A, 02-15-03; A, 12-15-05; A, 06-08-16; A, 03-29-17; A, 5/07/2024]

16.19.2.9 EXAMINATION REPEATS: A candidate who fails either the NAPLEX or MPJE may repeat that examination upon submittal of the proper application and fee. A candidate may not take either the NAPLEX or MPJE more than [~~five~~] four consecutive times without passing, and the time limit is three years from the first exam attempt (respectively). Failure to finish an examination is counted as an attempt. Candidates who fail or do not complete the NAPLEX shall wait a period of at least 45 days prior to retaking the examination. Candidates who fail or do not complete the MPJE shall wait a period of at least 30 days prior to retaking the examination.

[04-30-98; 16.19.2.9 NMAC - Rn, 16 NMAC 19.2.9, 03-30-02; A, 06-08-16; A, 06-23-17; A, 5/07/2024]

16.19.2.10 [~~**AGREEMENT OF LICENSURE:** All licensees by examination will be required to sign an agreement of licensure.~~] **[RESERVED]** [04-30-98; 16.19.2.10 NMAC - Rn, 16 NMAC 19.2.10, 03-30-02; A, 06-08-16; Repealed, 5/07/2024]

16.19.2.13 PHOTO REQUIRED: Each applicant for licensure shall furnish [~~two permanent~~] a current photograph[~~s~~], head and shoulders only, approximately 3 x 4 inches [~~and signed and dated on the back~~].

[04-30-98; 16.19.2.13 NMAC - Rn, 16 NMAC 19.2.13, 03-30-02; A, 06-08-16; A, 5/07/2024]

16.19.2.14 REINSTATEMENT EXAMINATIONS:

A. The board may require an applicant for reinstatement of licensure, for any reason, including revocation, to make a passing score on any combination of the NAPLEX and MPJE [~~, or the pharmacist assessment remediation evaluation (PARE) or both~~].

B. The criteria for passing these examinations shall be the same as required by this regulation [~~or as required by the NABP~~].

C. If a pharmacist has not been active in the area of pharmacy practice for greater than [~~one year~~] two years but less than six years, the pharmacist candidate shall complete the following:

(1) submit renewal form;

(2) pay past renewal fees and reinstatement fees;

(3) submit proof of continuing education for each inactive renewal period;

(4) submit proof of completed internship of minimum of 60 hours for each year of inactivity;

(5) sucessfully complete the MPJE; or

D. In lieu of past renewal fees, reinstatement fees and proof of continuing education an inactive pharmacist may successfully complete the internship minimum of 60 hours for each year of inactivity, and
successfully pass the NAPLEX and the MPJE.

E. If a pharmacist has not been active in the area of pharmacy practice for six years or more, the pharmacist candidate shall:

(1) complete the internship minimum of 60 hours for each year of inactivity; and

(2) successfully pass the NAPLEX and the MPJE.

F. The applicant must follow the same rules and procedures as if reciprocating his license as described in 16.19.3 NMAC.
[04-30-98; 16.19.2.14 NMAC - Rn, 16 NMAC 19.2.14, 03-30-02; A, 06-08-16; A, 03-29-17; A, 5/07/2024]

REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF

This is an amendment to 16.19.3 NMAC, Section 1, 8, 9, 10, 11, 12, 13, 14 and 15, and new section 16, effective 5/07/2024

16.19.3.1 ISSUING AGENCY: [~~Regulation and Licensing Department~~] Board of Pharmacy [~~, Albuquerque, NM.~~]
[02-15-96; 16.19.3.1 NMAC - Rn, 16 NMAC 19.3.1, 03-30-02; A, 01-31-07; A, 10-19-16; A, 5/07/2024]

16.19.3.8 RECIPROCAL LICENSURE: Reciprocal licensure shall be granted to those persons licensed by examination as a licensed pharmacist in other states or territories of the United States which grant reciprocal privileges to persons licensed as pharmacists by examination in New Mexico. An applicant must be a graduate of an approved college of pharmacy and have completed required intern training or have worked one year as a licensed pharmacist in the state in which the applicant has licensure by examination.
[08-27-90; 16.19.3.8 NMAC - Rn, 16 NMAC 19.3.8, 03-30-02; A, 10-19-16; A, 5/07/2024]

16.19.3.9 APPLICANT INELIGIBLE:

A. An applicant shall be deemed to be ineligible to reciprocate if licensure in the state of examination is not current; or if the pharmacist has worked less than one year or internship requirements at the time of examination, did not meet New Mexico's internship requirements.

B. [~~An applicant who has not been active in pharmacy for a period of one year or more, shall be required to complete such internship as the board shall deem necessary. The internship period shall be a minimum of 60 hours for each year inactive. The applicant shall be required to successfully complete the North American pharmacist licensure examination (NAPLEX) or multi-state pharmacy jurisprudence examination (MPJE).~~] An applicant who qualifies for and acquired a license in a state that does not grant reciprocal privileges with New Mexico shall be deemed ineligible for reciprocal licensure.
[08-27-90; 16.19.3.9 NMAC - Rn, 16 NMAC 19.3.9, 03-30-02; A, 10-19-16; A, 5/07/2024]

16.19.3.10 [~~LICENSURE REINSTATMENT~~] REINSTATEMENT OF RECIPROCITY LICENSE, ELIGIBLITY: [~~An applicant who qualifies for and acquired a license in a state that does not grant reciprocal privileges with New Mexico shall be deemed ineligible for reciprocal licensure.~~]

A. An applicant must have current pharmacist licensure in the state in which the applicant has licensed by examination.

B. If an applicant has not been active in the area of pharmacy practice for greater than [~~one year~~] two years but less than [~~five~~] six years, the pharmacist candidate shall complete the following:

(1) submit renewal form;

(2) pay past renewal fees and reinstatement fees;

(3) submit proof of continuing education for each inactive renewal period;

(4) submit proof of completed internship a minimum of 60 hours for each year of inactivity;

(5) successfully complete the Multistate Pharmacy Jurisprudence Examination (MPJE); and

(6) submit a current letter of good standing from the state of examination.

C. In lieu of past renewal fees, reinstatement fees and proof of continuing education, an inactive pharmacist shall successfully complete the internship minimum of 60 hours for each year of inactivity, and successfully pass the North American Pharmacist Licensure Examination (NAPLEX) and the MPJE.

D. If a pharmacist has not been active in the area of pharmacy practice for six years or more, the pharmacist candidate shall:

(1) complete the internship minimum of 60 hours for each year of inactivity; and

(2) successfully pass the NAPLEX and the MPJE.
[08-27-90; 16.19.3.10 NMAC - Rn, 16 NMAC 19.3.10, 03-30-02; A, 10-19-16; A, 5/07/2024]

16.19.3.11 JURISPRUDENCE EXAMINATION:

A. An applicant for reciprocity will be required to submit all paperwork required for reciprocity, and take and pass the MPJE [~~and shall make a score of not less than seventy-five percent~~] prior to issuance of a license.

B. Failure to [~~appear and~~] take the [~~jurisprudence examination~~] MPJE within one year

after the application is received shall nullify the application and a refund of fees will not be made.

C. Upon submittal of the proper application and fee, a candidate may repeat the MPJE. A candidate shall take the MPJE no more than [~~five~~] four consecutive times without passing, and the time limit is three years from the first exam attempt. Failure to finish the examination is counted as an attempt. Candidates who fail or do not complete the MPJE shall wait a period of at least 30 days prior to retaking the examination.

[07-28-91; 16.19.3.11 NMAC - Rn, 16 NMAC 19.3.11, 03-30-02; A, 10-19-16; A, 5/07/2024]

16.19.3.12 PHOTO REQUIRED: Each applicant for licensure shall furnish [~~two permanent~~] a current [~~photographs~~] photograph, head and shoulders only, approximately 3 x 4 inches [~~and signed and dated on the back~~].

[07-28-91; 16.19.3.12 NMAC - Rn, 16 NMAC 19.3.12, 03-30-02; A, 10-19-16; A, 5/07/2024]

16.19.3.13 EVIDENCE OF QUALIFICATIONS: The New Mexico board of pharmacy shall deem an applicant ineligible to be licensed by reciprocity if the application that [~~he~~] they [~~submits~~] submit fails to furnish evidence:

A. that the license which applicant acquired by examination in the state from which [~~he~~] they [~~applies~~] apply is in good standing;

B. that applicant completed the NAPLEX examination with a passing score;

[~~**C.** that the applicant is, in fact, competent and qualified to function as a pharmacist;~~]

[~~**D.**~~] **C.** that applicant is [~~of good moral character and is~~] not addicted to the use of alcohol, narcotic or hypnotic drugs;

[~~**E.**~~] **D.** that the applicant has not been charged with, convicted, fined or had [~~his~~] their license suspended or revoked for violation [~~of pharmacy, liquor, narcotic or drug~~] laws pursuant to the provisions of 16.19.4.8 NMAC.

[08-27-90; 16.19.3.13 NMAC - Rn, 16 NMAC 19.3.13, 03-30-02; A, 10-19-16; A, 5/07/2024]

16.19.3.14 PENDING INDICTMENT OR ALLEGED VIOLATIONS: An applicant [~~shall~~] may be ineligible for reciprocal licensure if there is pending an indictment or alleged violation of any [~~pharmacy, liquor, narcotic or drug laws or has been convicted of a felony within five years prior to application~~] law pursuant to the provisions of 16.19.4.8 NMAC.

[08-27-90; 16.19.3.14 NMAC - Rn, 16 NMAC 19.3.14, 03-30-02; A, 10-19-16; A, 5/07/2024]

16.19.3.15 [~~TEMPORARY~~] EXPEDITED LICENSE:

A. Definitions as used in this section.

(1) "expedited license" is a one-year provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board;

(2) "military service member" means a person who is:

(a) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard;

(b) the spouse of 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, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(c) the child of a military service member if the child is also a dependent of that person for federal income tax purposes.

(3) "veteran" means a person who has received an honorable discharge or separation from military serviceof the United States.

B. Alternative licensing procedure. An applicant for expedited licensure who meets all the requirements of this part may be granted a provisional license by reciprocity after completing the National association of boards of pharmacy (NABP) application for pharmacist license by reciprocity (license transfer program application) and submitting an application for pharmacist license by reciprocity to the board, but prior to taking and passing the NM MPJE.

[~~**A.**~~] **C.** Persons who provide acceptable evidence of being currently licensed by examination under the laws of other states in the United States and the District of Columbia, shall be authorized to practice pharmacy for a period of [~~90 days~~] one year from the date of expedited license issuance after [~~on~~] receipt of a complete application in proper form and [~~a $50.00 fee which will go towards the eventual licensing fee~~] license fee as outlined in 16.19.12 NMAC. [~~Persons must become duly licensed in this state within 90 days. The licensing agency in each state in which the applicant holds or has held a license shall submit a statement to the board confirming the applicant to be or have been in good standing in that state.~~]

[~~**B.**~~] **D.** [~~The temporary licensee shall not act as the pharmacist-in-charge (unless there is no other pharmacist in the designated facility), a preceptor, or supervisor of interns or externs.~~] Expedited licenses will be issued no more than 30 days after a complete application meeting all requirements for licensure is received by the board.

[~~**C.**~~] **E.** The [~~temporary~~] expedited licensee shall be subject to discipline in the same manner as those holding a full license, and shall be subject to immediate suspension upon reasonable evidence of false or incorrect statements in the documents submitted or if found not to be in good standing in other states.

[~~**D.**~~] **F.** The [~~temporary~~] expedited license shall not be renewed

or extended as a provisional license except as allowed by Section 16 of this part. Before the end of the expedited license term and upon application, a board may renew the license as a regular license after applicant passes the NM MPJE.

G. Military service members, including a spouse, dependent, and veteran, are exempt from the initial license fee and initial license renewal fee paid to the board set forth in 16.19.12 NMAC, and must provide documentation of eligibility:

(1) For a military service member, a copy of the service member's military orders.

(2) For a spouse of a military service member, a copy of the service member's military orders and a copy of the marriage license.

(3) For a spouse of a deceased military service member, a copy of the decedent's DD 214 and a copy of marriage license.

(4) For dependent children of military service members, a copy of military service members orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service federal tax return, or other governmental or judicial documentation establishing dependency.

(5) For veterans, retired or separated, proof of honorable discharge, a copy of DD 214, DD 215, DD 265, DD 257, NGB 22, military ID card, a state-issued driver's license or identification card with veteran's designation, a veteran ID card (VIC) issued by the U.S department of veteran's affairs, or other official documentation verifying the veteran's honorable discharge from military service.

[16.19.3.15 NMAC - N, 01-31-07; A, 10-19-16; A, 5/07/2024]

16.19.3.16 PORTABILITY OF PHARMACIST LICENSE, SERVICE MEMBERS AND SPOUSES:

Service members, as defined in 50 USC § 3911, and their spouses who relocate residency to New Mexico because of military orders for military service, may apply for and be issued a provisional pharmacist license by reciprocity, without taking the NM MPJE, during the duration of such military orders if the:

A. license is in good standing with the authority that issued it;

B. license was actively used during the two years immediately preceding the relocation;

C. applicant meets the requirements of this part and completes the NABP application for pharmacist license by reciprocity and submits an application for pharmacist license by reciprocity to the board;

D. applicant provides documentation of eligibility and a copy of such military orders to the board;

E. applicant remains in good standing with:

(1) the licensing authority that issued the covered license; and

(2) every other licensing authority that has issued to the service member or the spouse of a service member a pharmacist license;

F. applicant submits to the authority of the board for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

[16.19.3.16 NMAC - N, 5/07/2024]

REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF

This is an amendment to 16.19.4 NMAC, Section 7, 9, 10, 11, 12, 15, 16 and 17 effective 5/07/2024

16.19.4.7 DEFINITIONS:

A. "A year" begins with the [~~first day of the~~] pharmacist's birth month and ends the last day of the pharmacist's birth month the following year.

B. "Accredited provider" An institution, organization or agency that has been recognized by the accreditation council for pharmacy education, in accord with its policy and procedures, as having demonstrated compliance with the standards which are indicative of the provider's capability to develop and deliver quality continuing pharmacy education.

[~~B.~~] **C. "Activity"** as used in the ACPE criteria for quality and these regulations, the term refers to an individual educational experience or program such as a lecture, home study course, workshop, seminar, symposium, etc.

[~~C.~~] **D. "Alternate supervising physician"** means a physician who holds a current unrestricted license, is a cosignatory on the notification of supervision, agrees to act as the supervising physician in the supervising physician's absence, or expand the "scope of practice or sites of practice" of the pharmacist clinician and is approved by the board.

[~~**D. "Approved provider"** means an institution, organization or agency that has been recognized by the accreditation council for pharmaceutical education (ACPE) as having met it's criteria indicative of the ability to provide quality continuing pharmaceutical education, and is listed in the ACPE annual publication of approved providers.~~]

E. "Board" means the New Mexico board of pharmacy.

F. "Consultation" means communication in person, telephonically, by two-way radio, by e-mail or by other electronic means.

G. "Contact hour" means a unit of measure equivalent to 60 minutes of participation in an approved organized learning experience or activity.

H. "Continuing education unit (CEU)" means ten contact hours of participation or it's equivalent in an organized continuing education activity sponsored by an [~~approved~~] accredited provider.

I. "Continuing pharmacy education (CPE)" means a structured education activity offered by an [~~approved~~] accredited provider,

designed or intended to support the continuing development of pharmacies or pharmacy technicians to maintain and enhance their competence. Continuing pharmacy education should promote problem-solving and critical thinking and be applicable to the practice of pharmacy.

J. "Continuing professional development (CPD)" means the responsibility of individual pharmacists for systematic maintenance, development and broadening of knowledge, skills and attitudes, to ensure continuing competence as a professional, throughout their careers.

K. "Criteria for quality" means continuing education provider shall show evidence of adherence to the criteria adopted by the American council on pharmaceutical education as indicative of the ability to provide continuing pharmaceutical education activities; areas include: administrative and organization; budget and resources; teaching staff; educational content management of activity; method of delivery; facilities; evaluation mechanism.

L. "Dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a [~~physician~~] provider licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription;" or "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or "Rx only."

M. "Guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a physician or group of physicians that delegates prescriptive authority.

N. "Initial pharmacist licensure" means the license issued shall be valid for no less than 24 months. The license will expire the last date of his/her birth month that immediately follows the minimum 24 month time period.

O. "Live programs" means CPE activities that provide for direct interaction between faculty and participants and may include lectures, symposia, live teleconferences, workshops, etc.

[~~**P. "Mediated forms"** means learning transmitted via intermediate mechanism such as audio and/visual tape, telephonic transmission, etc.~~]

[~~**O.**~~] **P. "Monitor dangerous drug therapy"** means to review the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice [~~to the prescribing physician~~] regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration;

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting and;

(4) evaluating situations that require the immediate attention of the physician and instituting or modifying treatment procedures when necessary.

[~~**R.**~~] **Q. "Oversight committee"** means a joint committee made up of four members to hear issues regarding pharmacist clinicians' prescriptive authority activities and supervising physicians' direction of these activities.

[~~**S.**~~] **R. "Patient safety"** means the prevention of healthcare errors and the elimination or mitigation of patient injury caused by healthcare errors.

[~~**T.**~~] **S. "Pharmaceutical care"** means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems.

[~~**U.**~~] **T. "Pharmacist"** means a person duly licensed by the board to engage in the practice of pharmacy pursuant to the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978.

[~~**V.**~~] **U. "Pharmacist clinician"** means a pharmacist with additional training required by regulations adopted by the board in consultation with the New Mexico medical board and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol.

[~~**W.**~~] **V. "Pharmacist in charge"** means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel.

[~~**X.**~~] **W. "Practice of pharmacy"** means continually optimizing medication safety, patient wellness, and quality of services through the effective use of pharmaceutical care and emerging technologies and competency-based and performance-based training. The practice of pharmacy may include:

(1) Pharmaceutical dispensing including product selection. [~~Practice of pharmacy may include, but is not limited to:~~]

(2) specialty pharmacy practice including pharmacists working for licensed pharmaceutical manufacturers or wholesalers;

(3) practice of telepharmacy within and across state lines;

(4) engaging in health care educational activities;

(5) pharmacy-specific academia;

(6) provision of those acts or services necessary to provide pharmaceutical care in all areas of patient care including patient counseling, prescriptive authority, drug administration, primary care, medication therapy management, collaborative practice, and monitoring dangerous drug therapy;

(7) inspecting on a full time basis to ensure compliance with the practice of pharmacy;

(8) provision of pharmaceutical and drug information services, as well as consultant pharmacy services;

(9) engaging in other phases of the pharmaceutical profession including those with research or investigational or dangerous drugs; [~~or~~]

(10) engaging in functions that relate directly to the administrative, advisory, or executive responsibilities pursuant to the practice of pharmacy in this state;

(11) the responsibility for compounding and labeling of drugs and devices;

(12) the proper and safe storage of drugs and devices; and

(13) the maintenance of proper records.

[~~**Y.**~~] **X. "Practitioner"** means a [~~physician~~] health care provider duly authorized by law in New Mexico to prescribe dangerous drugs including controlled substances in schedules II through V.

[~~**Z.**~~] **Y. "Prescriptive authority"** means the authority to prescribe, administer, monitor or modify dangerous drug therapy.

[~~**AA.**~~] **Z."Professional judgment"** means a cognitive process, by alicensed pharmacist, that takes education, experience and current standards of practice into consideration when drawing conclusions and reaching decisions.

[~~**BB.**~~] **AA. "Renewal period"** means continuing education programs or activities must be completed during the 24 month time period occurring between the [~~first~~] last day of the pharmacist's birth month and the last day of his/her birth month 2 years later.

[~~**CC.**~~] **BB. "Scope of practice"** means those duties and limitations of duties placed upon a pharmacist clinician [~~and/or the alternate supervising physician(s) and the board;~~] and includes the limitations implied by the field of practice of the supervising physician and/or the alternate supervising physician(s) and the board.

[~~**DD.**~~] **CC. "Supervising physician"** means a doctor, or group of doctors, of medicine or osteopathy approved by the respective board to supervise a pharmacist clinician; [~~"supervising physician~~] and includes a physician approved by the [~~respective~~] medical board as an alternate supervising physician.

[2/15/1996; 16.19.4.7 NMAC - Rn, 16 NMAC 19.4.7, 3/30/2002; A, 1/31/2007; A, 8/16/2010; A, 10/25/2012; A, 11/13/2018; A, 5/07/2024]

16.19.4.9 DEFINING UNPROFESSIONAL OR DISHONORABLE CONDUCT:

A. Preamble: In defining "unprofessional conduct" the definitions of professional conduct and a pharmacist's duty should be considered.

B. Professional conduct may be defined as complying with all the laws and regulations that apply to a given professional activity.

C. Definition: Unprofessional or dishonorable conduct by a pharmacist shall mean, among other things, but not be limited to[~~.~~]:

(1) Violation of any provision of the Pharmacy Act as determined by the board.

(2) Violation of the board of pharmacy regulations as determined by the board.

(3) Violation of the Drug and Cosmetic Act as determined by the board.

(4) Violation of the Controlled Substances Act as determined by the board.

(5) Failure of the pharmacist to conduct [~~himself~~] theirself professionally in conformity with all applicable federal, state and municipal laws and regulations to [~~his~~] their relationship with the public, other health professions and fellow pharmacists.

(6) Failure to keep [~~his~~] their pharmacy and/or area of professional practice clean, orderly, maintained and secured for the proper performance of [~~his~~] their professional duties.

(7) Acquiring prescription stock from unlicensed sources.

(8) Failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions, and other confidence entrusted or acquired of by [~~him~~] them; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities.

(9) Participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare.

(10) The solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon.

(11) The solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or

(b) a request for therapeutic interchange of a medication prescribed for the patient;

(12) The solicitation of a prescription whereby the initial prescription request was not

initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient.

(13) Failure to report a theft or loss of controlled substances in accordance with 16.19.20.36 NMAC.

(14) Failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.19.4.12 NMAC.

(15) Failure to train or supervise adequately supportive personnel or the use of supportive personnel in activities outside the scope of their permitted activities.

(16) Conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States.

(17) Suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

(18) Dispensing a prescription for a dangerous drug to a patient without an established practitioner-patient relationship:

(a) except for the provision of treatment of partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health;

(b) except for on-call practitioners providing services for a patient's established practitioner;

(c) except for delivery of dangerous drug therapies to patients ordered by a New Mexico department of health physician as part of a declared public health emergency;

(d) except for dispensing the dangerous drug naloxone or other opioid antagonist as authorized in Section 24-23-1 NMSA 1978;

(e) except for the prescribing or dispensing and administering for immunizations programs.

(19) Dispensing a prescription [~~order~~] for a dangerous drug to a patient if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription [~~order~~] was issued on the basis of an internet-based questionnaire or an internet-based consultation without a valid practitioner-patient relationship.

(20) Failure to perform a prospective drug review as described in Subsection D of [~~16.19.4.17~~] 16.19.4.16 NMAC and document steps taken to resolve potential problems.

[3/1/1993; 16.19.4.9 NMAC - Rn, 16 NMAC 19.4.9, 3/30/2002; A, 7/15/2002; A, 1/15/2008; A, 9/16/2011; A, 8/31/2012; A, 3/23/2016; A, 10/19/2019; A, 11/13/2018; A, 9/13/2022; A, 5/07/2024]

16.19.4.10 CONTINUING PHARMACY EDUCATION REQUIREMENTS:

A. Continuing pharmacy education (CPE) shall include study in one or more of the general areas of socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology; characteristics and therapeutics of the disease state, or such other subjects as the board may from time to time approve. Continuing pharmacy education approved in New Mexico shall be limited to programs and activities offered by the accreditation council for pharmacy education (ACPE), [~~approved~~] accredited provider, programs or courses approved by the board or other state boards of pharmacy and pharmacy law programs offered by the [~~New Mexico~~] board [~~of pharmacy~~].

B. Continuing pharmacy education, certified as completed by an approved provider will be required of a registered pharmacist who applies for renewal of New Mexico registration as follows: 3.0 CEU (30 contact hours) every two years. Effective January 1, 2013, pharmacist and pharmacist clinician renewal applications shall document.

(1) A minimum of 1.0 CEU (10 contact hours) excluding the law requirement, per renewal period shall be obtained through "live programs" that are approved as such by the ACPE or the accreditation council for continuing medical education (ACCME). Live programs provided by other providers (such as continuing nursing education) may be acceptable based on review and approval of the board.

(2) A minimum of 0.2 CEU (two contact hours) per renewal period shall be in the area of patient safety as applicable to the practice of pharmacy.

(3) A minimum of 0.2 CEU (two contact hours) per renewal period shall be in the subject area of pharmacy law offered by the New Mexico board of pharmacy.

(4) Effective January 1, 2015, a minimum of 0.2 CEU (two contact hours) per renewal period shall be in the area of safe and appropriate use of opioids. An educational program consisting of a minimum of 0.2 CEU (2 contact hours) that addresses both patient safety as applicable to the practice of pharmacy and the safe and appropriate use of opioids will satisfy requirements of Paragraphs (2) and (4) of Subsection B of this section.

C. The number of CEU's to be awarded for successful completion shall be determined by the [~~approved~~] accredited provider in advance of the offering of the activity.

D. The board [~~of pharmacy~~]will accept CPE education units for programs or activities completed outside the state; provided, the provider has been approved by the ACPE under its' criteria for quality at the time the program was offered.

E. Continuing pharmacy education will be required of all registrants holding an in-state

status and out-of-state active status license. (61-11-13D). Pharmacists granted New Mexico initial licensure are exempt from CPE requirements. Inactive status licensees will be required to furnish CPE for the current licensing period, 1.5 CEU for each year the licensee was inactive, only for the purpose of reinstating to active status.

F. Not less than ten percent of the registrants will be randomly selected each year by the board [~~of pharmacy~~] for audit of certificates by the state drug inspectors. Pharmacists and pharmacist clinicians without sufficient documentation of completion of CPE requirements shall.

(1) Be subject to a fine of not less that $1000.00.

(2) Be required to complete the deficient CPE in a satisfactory time period as determined by the board.

G. In the event a pharmacist makes an application for renewal and does not furnish necessary proof of compliance upon request, the board will afford the applicant opportunity for hearing pursuant to the Uniform Licensing Act.

H. [**RESERVED**]

I. [**RESERVED**]

J. Pharmacy law requirement [~~for.~~] :

(1) Active status: A minimum of 0.2 CEU (two contact hours) of the 3.0 CEU (30 contact hours) required for registration renewal, shall be in the subject area pharmacy law as offered by the [~~N.M.~~] board [~~of pharmacy~~]. In lieu of a board program, pharmacists not residing and not practicing pharmacy in New Mexico, may complete an ACPE accredited course, in the subject area pharmacy law, meeting the CEU requirements of this paragraph.

[~~**(2)** Effective date. Registration renewals due June 1996 and thereafter.~~]

[~~**(3)**~~] **(2)** Licensees may obtain 0.1 CEU (one contact hour) per year, in the subject area pharmacy law, by attending one full day of a regularly scheduled New Mexico board of pharmacy board meeting or serving on a board approved committee.

[~~**(4)** Licensees who successfully complete an open book test, administered by the board, shall receive credit for 0.2 CEU (two contact hours) in the subject area pharmacy law.~~]

K. Board of pharmacy law programs shall offer 0.2 CEU and be two contact hours in length.

[~~**(1)** Pharmacy law programs shall be offered in each of the five pharmacy districts, as defined in 61-11-4.E NMSA 1978, a minimum of once every calendar year (January through December).~~

~~**(2)** Pharmacy law programs shall offer 0.2 CEU and be two contact hours in length.~~]

[02/26/1995; 16.19.4.10 NMAC - Rn, 16 NMAC 19.4.10, 3/30/2002; A, 12/15/2002; A, 1/31/2007; A, 8/16/2010; A, 3/23/2013; A, 8/12/2013; A, 5/07/2024]

16.19.4.11 CONSULTANT PHARMACIST:

A. Duties and responsibilities:

(1) To abide by the code of ethics of the *American* [~~*society of consultant pharmacists*~~] *Society of Consultant Pharmacists*. Must be qualified to practice as a consultant pharmacist and is to be aware of all federal and state drug laws, rules and regulations related to pharmacy services, and to provide the facility with current information pertaining to drug service.

(2) Ensure that drugs are handled in the facility in which he/she is the consultant pharmacist, in a manner that protects the safety and welfare of the patient.

(3) Set the [~~policy~~] policies and procedures in the facility as related to all facets of drug handling and distribution; these policies and procedures to be reviewed and updated on an annual basis.

(4) To visit the facility, commensurate with [~~his~~] their duties, as specified by board regulations relative to the facility or by written contract with the administration of the facility not inconsistent with board regulations.

(5) His/her primary goal and objective shall be the health and safety of the patient, and he/she shall make every effort to assure the maximum level of safety and efficacy in the provision of pharmaceutical services.

(6) The consultant pharmacist shall not condone or participate in any transaction with any practitioner of another health profession, or any other persons whosoever under which fees are divided, or rebates or kickbacks paid or caused to be paid, or which may result in financial exploitation of patients or their families in connection with the provision of drugs and medication or supplies or pharmaceutical services.

B. Consultant pharmacist serving skilled nursing facilities and intermediate care facilities - upper level care - long term care facilities by any other title:

(1) The consultant pharmacist's agreement with the facility shall include but is not limited to the following duties and responsibilities.

(a) Serve as a member of appropriate committees, and attend these meetings.

(b) Development of the drug control procedures manual.

(c) Monitor on a routine basis all aspects of the total drug distribution system - to be accomplished in a manner designed to monitor and safeguard all areas of the drug distribution system.

(d) Maintain active pharmacist status registration in the state.

(e) Assume responsibility for the destruction or removal of unwanted dangerous drugs and any controlled substances as prescribed by law and regulations.

(f) Maintain a log of all visits and activities in the facility indicating dates and other pertinent data; such logs are to be available to inspection by state drug inspectors upon request.

(g) Furnish and replenish emergency drug supply in acceptable containers. Maintain a log of use and replacement of drugs in the emergency tray.

(h) Make routine inspections of drug storage areas, patient health records, and review drug regimen of each patient at least once a month. Report irregularities, contraindication, drug interactions, etc., to the medical staff.

(i) Provide or make arrangements for provision of pharmacy services to the facility on a 24-hour, seven days a week basis, including stat orders.

(j) Provide in-service training of staff personnel as outlined in the procedures manual.

(k) Meet all other responsibilities of a consultant pharmacist as set forth in the board regulations and federal or state laws and which are consistent with quality patient care.

(l) The contract consultant pharmacist to a SNF or ICF facility, that is required to review patients' drug regimen as set forth in Subparagraph h of Paragraph (1) of Subsection B of 16.19.4.11 NMAC, who is under contract as sole supplier of unit-doses/state of the art medications, shall be exempt from charges of unprofessional conduct under Paragraph (10) of Subsection B of 16.19.4.9 NMAC.

(m) The consultant pharmacist to a SNF or ICF facility who delivers drugs in a unit-dose system, approved by an agent of the board, which is a tightly sealed, unopened, individual dose, shall be exempt from the requirements of 16.19.6.14 NMAC. The regulation shall not prohibit the return to the pharmacy stock, where partial credit may be given in accordance with any federal or state law or regulation, to the patient for such medication, when the physician discontinues the drug therapy, the patient expires or for any other reason, other than an outdated drug.

(n) **Customized patient medication packages**[~~;~~] : In lieu of dispensing one, two, or more prescribed drug products in separate containers or standard vial containers, a pharmacist may, with the consent of the patient, the patient's care-giver, the prescriber, or the institution caring for the patient, provide a customized patient medication package. The pharmacist preparing a patient medication package must abide by the guidelines as set forth in the current edition of the [~~U.S. pharmacopoeia~~] United States Pharmacopoeia for labeling, packaging and record keeping.

(o) **Repackaging of patient medication packages**: In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient medication package has more than one drug within it, the pharmacist may repackage the patient's patient medication package and either add to or remove from the patient medication packaged as ordered by the physician. The same drugs returned by the patient for repackaging must be reused by the pharmacist in the design of the new patient medication package for the new regimen, and any drug removed must either be destroyed, returned to the DEA or returned to the patient properly labeled. [~~Under no circumstances may a drug within a container of a patient medication package which contains more than one drug be returned to the pharmacy stock.~~]

(p) Return of patient medication package drugs.

(i) [~~Patient medication packages with more than one drug within a container:~~] Patient medication packages with more than one drug within a container may not under any circumstances be returned to a pharmacy stock.

(ii) Patient medication packages with only one drug within a container: 1 Non-Institutional: A patient medication package stored in a non-institutional setting where there is no assurance of storage standards may not be returned to pharmacy stock. 2 Institutional: A patient medication package stored in an institutional setting where the storage and handling of the drugs are assured and are consistent with the compendia standards may be returned to the pharmacy stock provided the following guidelines are followed: (1) the drug is to be kept within the patient medication package and it is to remain sealed and labeled until dispensed; (2) the expiration date of drug shall become fifty percent of the time left of the expiration for the drug; and (3) no schedule II - V drugs may be returned to inventory; and (4) proper record keeping for the addition of drugs into inventory must be done.

(2) When a consultant pharmacist enters into a written contractual agreement with a facility to which he/she will provide service.

(a) The consultant pharmacist whose practice is not in the immediate vicinity of the facility for which he has entered into a written service agreement, shall have a written agreement with a local pharmacist to be available on any emergency basis. The consultant pharmacist shall be responsible for the proper training and instruction of such local pharmacist. Said local pharmacist shall be known as a "co-consultant". The vendor shall be responsible for the safety and efficacy of back-up pharmaceutical services he provides.

(b) A copy of these agreements must be filed with [~~the board of pharmacy and~~] the facility and a copy maintained by the consultant pharmacist. Any termination of such agreement shall be reported in writing, within 10 days, of termination [~~to the board and~~] to the administrator.

(c) Should a local pharmacist (co-consultant) not be available, the

consultant pharmacist must provide an alternative procedure approved by the board. If the consultant is also the vendor, then such alternative procedure must reasonably assure rapid delivery of drugs; medical supplies and pharmacy service to the facility.

C. Consultant pharmacist - clinic facility:

(1) The consultant pharmacist providing services to a clinic shall.

(a) Assume overall responsibility for clinic [~~pharmacy~~] pharmaceutical services, for clinic facility [~~pharmacy~~] supportive personnel, and for procedures as outlined in the procedures manual, including all records of drugs procured, administered, transferred, distributed, repackaged or dispensed from the clinic.

(b) Assume responsibility for the destruction or removal of unwanted or outdated dangerous drugs, including controlled substances, as required by laws and regulations.

(c) Develop the [~~pharmacy~~] pharmaceutical services procedures manual for the clinic establishing the system for control and accountability of pharmaceuticals.

(d) Provide in-service education and training to clinic staff, as applicable.

(e) Report in writing to the board within 10 days, any termination of services to the clinic. [~~Report in writing to the board the names and places of employment of any pharmacy technicians under the supervision of the consultant pharmacist.~~]

(f) Comply with all other provisions of Part 10, limited drug clinics, as applicable to the individual clinic facility.

(g) The consultant pharmacist shall personally visit the clinic on the minimum basis described in Items (i) through [~~(iv)~~] (v) of [~~Subparagraphs (a) through (c)~~] this Subparagraph to ensure that the clinic is following set policies and procedures. Visitation schedules are as follows.

(i) Class A clinics shall have the on-site services of a consultant pharmacist for the dispensing or distribution of dangerous drugs. The consultant pharmacist shall comply with Paragraphs (4), (5) and (7) of Subsection A of 16.19.4.16 NMAC of this regulation.

(ii) Class B clinics shall have the services of a consultant pharmacist as listed below: 1. Category 1 clinics shall be visited by the consultant pharmacist at least [~~bi-monthly~~] every other month. 2. Category 2 clinics shall be visited by the consultant pharmacist at least monthly. 3. Category 3 clinics shall be visited by the consultant pharmacist at least [~~bi-weekly~~] every other week.

(iii) Class C clinics shall be visited by the consultant pharmacist at least every three months.

(iv) Class D clinic shall be reviewed at least once yearly during school session.

(v) Class E clinic shall be visited by the consultant pharmacist at least weekly for a clinic with a patient census of 150 or more or with a mobile narcotic treatment program, and at least [~~bi-weekly~~] every other week for a clinic with a patient census of less than 150.

(h) The consultant pharmacist shall review the medical records of not less than five percent of a Class B clinics patients who have received dangerous drugs (as determined by the dispensing or distribution records) since the consultant pharmacist's last visit. Such review shall be for the purpose of promoting therapeutic appropriateness, eliminating unnecessary drugs, and establishing the medical necessity of drug therapy, by identifying over-utilization or under-utilization, therapeutic duplication, drug-disease contraindications, drug-drug contraindications, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, appropriate medication indication, and/or clinical abuse/misuse. Upon recognizing any of the above, the consultant pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

(i) The consultant pharmacist shall maintain a log or record of all visits and activities in the clinic. Such record shall include a log of all medical records reviewed, along with a record of all consultant pharmacist interventions and/or consultations. This log or record shall be available for inspection by state drug inspectors upon request.

(j) Consultant pharmacist serving a Class D school based emergency medicine clinic shall:

(i) review records at least annually; this review shall include a review of the *self-assessment form*, receipt and disposition records, and storage records; this annual review does not require an on-site visit by the consultant pharmacist;

(ii) oversee the removal of expired or unwanted dangerous drugs; removal options are transfer to another licensed location, return to the legitimate source of supply or to a reverse distributor; remaining portions of used dangerous drugs may be destroyed by the consultant pharmacist;

(iii) review dangerous drug administration records within 72 hours of administration; this review shall be documented and available for inspection at the licensed location for three years; review shall include verification of compliance with procedures and protocols, including administration by properly trained personnel.

(iv) ensure required records are available for inspection at the licensed location for three years, including a log of comments and activities of consultant pharmacist;

(v) verify a current list of trained staff, in accordance with New Mexico department of health requirements, is maintained at the licensed location and available for inspection;

(vi) approve a policy and procedures manual outlining procedures for the receipt, storage, record keeping, administration and accountability of all dangerous drugs; this includes policies and procedures for the removal and destruction of unwanted, unused, outdated or recalled dangerous drugs; must verify compliance with all training and protocols required by the NewMexico department of health.

(k) The consultant pharmacist of a Class E clinic shall review dispensing, distribution, and supplying records since the consultant pharmacist's last visit, to ensure records are maintained accurately and in proper form. The consultant pharmacist shall also review the medical records of all clinic patients prior to initiation of take home dosing, and medical records of not less than five percent of clinic patients who have received dangerous drugs (as determined by the dispensing, distribution, or supplying records) since the consultant pharmacist's last visit. Such review shall be for the purpose of promoting therapeutic appropriateness, eliminating unnecessary drugs, and establishing the medical necessity of drug therapy, by identifying over-utilization or under-utilization, therapeutic duplication, drug-disease contraindications, drug-drug contraindications, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, appropriate medication indication, and/or clinical abuse/misuse. Upon recognizing any of the above, the consultant pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber. A log or record will be maintained in accordance with Subparagraph (i) of Paragraph (1) of Subsection C of 16.19.4.11 NMAC.

(2) A clinic may petition the board for an alternative visitation schedule as set forth in Subsection R of 16.19.10.11 NMAC

D. Consultant pharmacists serving custodial care facilities:

(1) Custodial care facility as used in this regulation includes: Any facility which provides care and services on a continuing basis, for two or more in-house residents, not related to the operator, and which maintains custody of the residents' drugs.

(2) Any facility which meets the requirements outlined in Paragraph (1) of Subsection D of 16.19.4.11 NMAC shall be licensed by the board [~~of pharmacy~~], engage a consultant pharmacist, whose duties and responsibilities are indicated in 16.19.4 and 16.19.11 NMAC.

(3) Procurement of drugs or medications for residents will be on the prescription order of a licensed [~~physician written or by oral communication, which order shall be reduced to writing by the pharmacist as required by law~~] practitioner. Refills shall be as authorized by the [~~physician~~] practitioner. When refill authorization is indicated on the original prescription, a refill for a resident may be requested by the administrator of the licensed facility or his designee [~~by telephone to the consultant pharmacist, or~~] to the providing pharmacy.

(4) The administrator or a designated employee of the facility will sign a receipt for prescription drugs upon delivery.

(5) All prescription drugs will be stored in a locked cabinet or room and the key will be assigned to a designated employee or the administrator as indicated in the procedures manual.

(6) Proper storage as stipulated in the official compendium USP/NF will be the responsibility of the licensed facility.

(7) Records - the consultant pharmacist shall be responsible for the following records:

(a) incoming medications - including refills;

(b) record of administration;

(c) waste or loss; This accountability record shall be maintained on a patient log, on forms [~~provided to the consultant pharmacist by~~] meeting requirements of the board of pharmacy.

(8) All prescription containers shall be properly labeled as required in 16.19.11 NMAC. No bulk containers of legend drugs will be kept on the premises, except in a facility with a 24-hour per day and 365 day per year on-site licensed nurse. Only the following stock dangerous drugs may be kept:

(a) tuberculin testing solution; and

(b) vaccines as recommended by the centers for disease control (CDC) and prevention's advisory committee on immunization practices and appropriate for the facility population served; and

(c) naloxone for opioid overdose.

(9) Consultant pharmacist shall include in the procedures manual the name of individual(s) responsible for the assistance with [~~the medication~~] medications.

(10) It shall be the responsibility of the pharmacist to give proper training/instruction to the person(s) at the facility who have day-to-day responsibility for receipt and administration of medications to resident when adverse reactions, special diet, or any other information relative to the administration of a drug is needed by the staff.

(11) The consultant pharmacist shall be required to maintain a patient profile on each individual, if applicable to the facility and individual.

(12) The consultant pharmacist shall visit the facility no less than once a quarter or more often, commensurate with patient drug regimen review and shall be available in emergencies, when needed. A log shall be maintained indicating all visits to the facility and noting any activities or irregularities to be recorded or reported. This log shall be available for state drug inspectors' review upon request.

(13) The consultant shall be responsible for the preparation of a procedures manual outlining procedures for the receipt, storage, record keeping, maintenance of patient profiles, administration and accountability of all legend drugs and procedures for the removal and destruction of unwanted, unused, outdated or recalled drugs - controlled substances shall be handled pursuant to state and federal regulations.

E. No drug that has been dispensed pursuant to a prescription and has left the physical premises of the facility licensed by the board shall be dispensed or reused again except the re-labeling and reuse of pharmaceuticals may be permitted in the following situations: in a correctional facility, licensed by the board, under the following circumstances dangerous drugs, excluding controlled substances, may be re-used:

(1) the patients must reside in the same facility;

(2) the reused medication must have been discontinued from the original patient's drug regimen;

(3) the drug was never out of the possession of the licensee "keep on person" pharmaceuticals may never be reused;

(4) the drugs were originally dispensed in packaging that is unopened, single-dose or tamper-evident containers;

(5) the patient receiving the re-labeled medication must have a valid prescription/order for the medication that is to be reused;

(6) repackaging and re-labeling may only be completed on site by the consultant pharmacist designated for that facility.

F. The consultant pharmacist must maintain records at the facility for three years containing the following information:

(1) date when the re-labeling occurred;

(2) the name and ID of the patient for whom the medication was originally intended for and the date in which it was discontinued from his or her drug regimen;

(3) the name and ID of the patient who will receive the reused medication;

(4) the name, strength and amount of the medication being reused;

(5) the name of pharmacist re-labeling the medication;

(6) pursuant to 16.19.10.11 NMAC the pharmacist must label the reused pharmaceutical and maintain a dispensing log for all such re-issued pharmaceuticals and the expiration date for such re-issued drugs shall be no greater than fifty percent of the time remaining from the date of repackaging until the expiration date indicated on the original dispensing label or container.

[8/27/1990; 16.19.4.11 NMAC - Rn, 16 NMAC 19.4.11, 3/30/2002; A, 6/30/2006; A, 10/24/2014; A, 15/07/2015; A, 11/30/2021; A, 9/13/2022; A, 5/07/2024]

16.19.4.12 IMPAIRED [~~PHARMACIST~~] LICENSEE OR REGISTRANT:

A. Definitions; For the purpose of this section:

(1) Chemical dependence - repeated use of alcohol or drugs culminating in a pattern of chemical need.

(2) Disciplinary authority - the board which may discipline pharmacists.

(3) Diversion - illicit dispensing, distribution or administration of a scheduled controlled substance not in the normal course of professional practice.

(4) Drug - a chemical substance alone or in combination including alcohol.

(5) Drug abuse - improper or excessive use of a drug to the detriment of the individual and/or society.

(6) Impaired pharmacist - a pharmacist who is unable to practice pharmacy with reasonable skill, competence or safety to the public because of drug abuse, physical illness, [~~and/or~~] mental illness, the aging process or loss of motor skills, sight or hearing.

(7) Licensing authority - authority that licenses/registers pharmacists.

(8) Recovering - a term used to describe an impaired pharmacist who has successfully completed the approved treatment program and is being rehabilitated in accordance with a professionally prescribed aftercare treatment. (Use of "recovering" rather than "recovered" is intended to indicate that recovery is a continuous process with no finite end point).

(9) Reinstatement - the process whereby the recovering impaired pharmacist is permitted to resume the practice of pharmacy.

(10) Treatment - the therapeutic interruption of the disease process by competent and skilled professional resources.

B. Applicability: This [~~regulation~~] section is applicable to all licensed/registered externs, interns, pharmacists, and any other board licensee/registrant, and applicants for licensure or registration. For the purpose of this [~~regulation~~] section, the word "licensee" shall include all persons licensed/registered by the board of pharmacy and applicants for license or registration.

C. Procedures:

(1) Impaired [~~pharmacist~~] licensee reporting:

(a) If any person knows [~~or suspects~~] that a licensee is impaired, that person shall report any relevant information either to the [~~impaired pharmacist~~] board-contracted treatment program or to the board [~~of pharmacy ("board")~~].

(b)
When the board receives an initial report relating to an alleged impaired board licensee, [~~that authority may~~] the board may:

(i)
refer the licensee to the [~~impaired pharmacist program for verification, intervention and subsequent evaluation and/or treatment~~] examining committee who may require evaluation by the board-contracted program and require enrollment if recommended; or

(ii)
[~~verify the information provided on the alleged impaired licensee and assume the responsibility for intervention and referral for evaluation and/or treatment;~~] refer the licensee to the board-contracted program with required enrollment if recommended; or

(iii)
file a complaint to initiate disciplinary action.

[~~**(2)**~~
~~Intervention: board approved intervenors shall:~~

~~**(a)**~~
~~Respond to information from concerned individuals.~~

~~**(b)**~~
~~Ascertain validity of the information received.~~

~~**(c)**~~
~~Perform additional necessary investigations to arrive at an accurate position prior to contacting the alleged impaired licensee; and, if necessary, to perform intervention.~~

~~**(d)**~~
~~Contact the alleged impaired licensee. After intervention, referral may be made to evaluation/treatment center at licensee's expense. (Contact shall be made as planned intervention).~~

~~**(e)**~~
~~Reduce all reports in writing and place in permanent file for preservation of the report until the situation is satisfied.~~

~~**(3)** Treatment:~~

~~**(a)**~~
~~Structured treatment - an approved treatment plan which shall include inpatient and/or outpatient therapy as recommended/required. With the consent of the treatment provider, the plan may include, but is not limited to, individualized inpatient and/or outpatient care. Following either an intensive inpatient or outpatient care, after treatment may be prescribed by the provider with the approval of the board and/or Impaired Pharmacist Committee.~~

~~**(b)**~~
~~Supervised treatment - treatment which is prescribed by the treatment provider and approved by the board and/or impaired pharmacist program.~~]

[~~**(4)**~~] **(2)**
Disciplinary sanctions: board [~~authority~~] referral to the [~~impaired pharmacist~~] board-contracted program - when [~~an impaired~~] a licensee whose license or registration is suspended or revoked [~~who has been reported to the board~~] successfully completes a board [~~/committee~~] approved treatment program, that licensee must appear before the board as a condition of consideration for reinstatement. The licensee must provide documentary evidence from the [~~approved~~] contracted treatment program, stating that the licensee has reached recovery and may be allowed to practice without endangering the public. [~~The board may suspend the registration/license, stay the execution of the suspension and impose a period of probation during which the following conditions shall be met:~~

~~**(a)**~~
~~the licensee shall strictly adhere to the aftercare program; and~~

~~**(b)**~~
~~during the probationary period, the licensee shall comply with the general and special conditions of probation imposed by the board, including but not limited to, monitoring and drug screens where applicable.~~]

[~~(5)~~] (3)
Confidentiality: The names of voluntary participants in the program and records relating to their referral and treatment are confidential [~~pursuant to Section 61-11A-3 and Section 61-11A-7 NMSA 1978~~] provided, however, that this information may be disclosed:

(a)
in a disciplinary hearing before the board and in court proceedings arising therefrom;

(b)
to the board and to the pharmacist's licensing/disciplinary authorities of other jurisdictions in accordance with law;

(c)
pursuant to an order of a court of competent jurisdiction;

(d) in injunctive proceedings brought by the board; and

(e) as otherwise provided by law.

[~~(6)~~] (4) Civil immunity: No member of the board or the committee or any board-approved intervenor shall be liable for any civil damages because of acts or omissions which may occur while acting in good faith pursuant to the Impaired [~~Pharmacists Act (61-11A-1 to 61-11A-8 NMSA, 1978)~~] Health Care Provider Act 61-7-1 through 61-7-12 NMSA 1978.

[8/27/1990; 16.19.4.12 NMAC - Rn, 16 NMAC 19.4.12, 3/30/2002; A, 9/13/2022; A, 5/07/2024]

16.19.4.15 INACTIVE STATUS:

A. A pharmacist not engaged or ceasing to be engaged in the practice of pharmacy for [~~more than one year~~] two or more years shall be issued an inactive status license upon proper application and payment of fees.

B. Pursuant to Section 61-11-13.B, an inactive status pharmacist applying for an active status license, who has not been actively engaged in pharmacy for [~~over one year~~] two or more years, may be required to serve an internship training program and submit evidence of continuing education relating to the practice of pharmacy, as required by Section 61-11-6 and Section 61-11-13 and the board regulations.

[8/27/1990; 16.19.4.15 NMAC - Rn, 16 NMAC 19.4.15, 3/30/2002; Repealed, 12/15/2002; 16.19.4.15 NMAC - Rn, 16.19.4.16 NMAC, 12/15/2002; A, 5/07/2024]

16.19.4.16 RESPONSIBILITIES OF PHARMACIST AND PHARMACIST INTERN:

A. The following responsibilities require the use of professional judgment and therefore shall be performed only by a pharmacist or pharmacist intern:

(1) receipt of all new verbal prescription orders and reduction to writing;

(2) initial identification, evaluation and interpretation of the prescription order and any necessary clinical clarification prior to dispensing;

(3) professional consultation with a patient or his agent regarding a prescription;

(4) evaluation of available clinical data in patient medication record system;

(5) oral communication with the patient or patient's agent of information, as defined in this section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;

(6) professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized agent regarding a patient and any medical information pertaining to the prescription;

(7) drug regimen review, as defined in Section 61-11-2L NMSA 1978;

(8) professional consultation, without dispensing, will require that the patient be provided with the identification of the pharmacist or pharmacy intern providing the service.

B. Only a pharmacist shall perform the following duties:

(1) final check on all aspects of the completed prescription including sterile products and cytotoxic preparations, and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container;

(2) evaluation of pharmaceuticals for formulary selection within the facility;

(3) supervision of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications;

(4) ensure that supportive personnel have been properly trained for the duties they may perform;

(5) any verbal communication with a patient or patient's representative regarding a change in drug therapy or performing therapeutic interchanges (i.e. drugs with similar effects in specific therapeutic categories); this does not apply to substitution of generic equivalents;

(6) any other duty required of a pharmacist by any federal or state law.

C. Patient records.

(1) A reasonable effort must be made to obtain, record and maintain at least the following information:

(a) name, address, telephone number, date of birth (or age) and gender of the patient;

(b) individual medical history, if significant, including disease state or states, known allergies and drug reactions and a comprehensive list of medications and relevant devices; and

(c) pharmacist's comments relevant to the individuals drug therapy.

(2) Such information contained in the patient record should be considered by the pharmacist or pharmacist intern in the exercise of their professional judgment concerning both the offer to counsel and the content of counseling.

D. Prospective drug regimen review.

(1) Prior to dispensing any prescription, a pharmacist shall review the patient profile for the purpose of identifying:

(a) clinical abuse/misuse;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage;

(f) incorrect duration of drug treatment;

(g) drug-allergy interactions;

(h) appropriate medication indication.

(2) Upon recognizing any of the above, a pharmacist, using professional judgment, shall take appropriate steps to avoid or resolve the potential problem. These steps may include requesting and reviewing a controlled substance prescription monitoring report or another states' reports if applicable and available, and consulting with the prescriber and counseling the patient. The pharmacist shall document steps taken to resolve the potential problem.

E. Prescription monitoring program (PMP) report for opioid prescriptions. When presented with an opioid prescription for a patient, obtaining and reviewing a PMP report for that patient can be an important tool that assists the pharmacist in identifying issues or problems that put his or her patient at risk of prescription drug abuse, overdose, or diversion. A pharmacist shall use professional judgment based on prevailing standards of practice in determining whether to obtain and review a PMP report before dispensing an opioid prescription to that patient, and shall document his or her action regarding such reports.

(1) A pharmacist shall request and review a PMP report covering at least a one year time period and another states' report, where applicable and available if;

(a) a pharmacist becomes aware of a person currently exhibiting potential abuse or misuse of opioids (i.e. over-utilization, early refills, multiple prescribers, appears [~~overly~~] sedated

or intoxicated upon presenting a prescription for an opioid or an unfamiliar patient requesting an opioid by specific name, street name, color, or identifying marks, or paying cash when the patient has prescription insurance);

(b) a pharmacist receives an opioid prescription issued by a prescriber with whom the pharmacist is unfamiliar (i.e. prescriber is located out-of-state or prescriber is outside the usual pharmacy geographic prescriber care area);

(c) a pharmacist receives an opioid prescription for an unfamiliar patient who resides outside the usual pharmacy geographic patient population area;

(d) a pharmacist receives an initial prescription for any long-acting opioid formulations, including oral and transdermal dosage forms (e.g fentanyl or methadone);

(e) a pharmacist becomes aware of a patient receiving an opioid concurrently with a benzodiazepine or carisoprodol;

(2) The pharmacist shall document the review of these PMP reports.

(3) Upon recognizing any of the above conditions described in Paragraph (1) of Subsection E of 16.19.4.16 NMAC, a pharmacist, using professional judgment, shall take appropriate steps to avoid or resolve the potential problem. These steps may include consulting with the prescriber and counseling the patient. The pharmacist shall document steps taken to resolve the potential problem.

(4) After obtaining an initial PMP report on a patient, a pharmacist shall use professional judgment based on prevailing standards of practice, in deciding the frequency of requesting and reviewing further prescription monitoring reports and other states' reports for that patient. Except that PMP reports shall be reviewed a minimum of once every three months during the continuous use of opioids for each established patient. The pharmacist shall document the review of these reports.

(5) In the event a report is not immediately available, the pharmacist shall use professional judgment in determining whether it is appropriate and in the patient's best interest to dispense the prescription prior to receiving a report.

(6) A prescription for an opioid written for a patient in a long term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness is exempt from Subsection E of 16.19.4.16 NMAC. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner. The pharmacist shall document whether the patient is "terminally ill" or an "LTCF patient".

F. Counseling.

(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist or pharmacist intern shall personally offer to counsel on matters which will enhance or optimize drug therapy with each patient or the patient's agent. Upon receipt of a refill prescription drug order a pharmacy technician may query the patient or patient's agent regarding counseling by the pharmacist or pharmacist intern concerning drug therapy. Such counseling shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling which may include, in their professional judgment, one or more of the following:

(a) the name and description of the drug;

(b) the dosage form, dosage, route of administration, and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription's refill information;

(i) action to be taken in the event of a missed dose;

(j) the need to check with the pharmacist or practitioner before taking other medication; and

(k) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

(2) [**RESERVED**]

(3) Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information leaflets, pictogram labels and video programs.

(4) Patient counseling, as described above and defined in this regulation shall not be required for in-patients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(5) A pharmacist shall in no way attempt to circumvent or willfully discourage a patient or patient's agent from receiving counseling. However, a pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(6) When the patient or agent is not present when the prescription is dispensed including, but not limited to, a prescription that was shipped by the

mail, the pharmacist shall ensure that the patient receives written notice of available counseling. Such notice shall include days and hours of availability, and: (a) of his or her right to request counseling; and (b) a toll-free telephone number in which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record. For pharmacies delivering more than fifty percent of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than six days per week. The facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

(7) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice concerning available counseling.

G. [**RESERVED**]

H. Regulatory assessment. Profiles, either electronic or hard copy, shall be available for inspection, and shall provide the capability of storing the described historical information. The profiles must demonstrate that an effort is being made to fulfill the requirements by the completion of the detail required. A patient record shall be maintained for a period of not less than three years from the date of the last entry in the profile record. [8/27/1990; 16.19.4.16 NMAC - Rn, 16 NMAC 19.4.16, 3/30/2002; 16.19.4.16 NMAC - Rn, 16.19.4.17 NMAC, 12/15/2002; A, 2/1/2004; A, 11/30/2004; A, 1/15/2005; A, 1/31/2007; A, 8/31/2012; A, 10/25/2012; A, 10/19/2019; A, 9/13/2022; A, 5/7/2024]

16.19.4.17 PHARMACIST CLINICIAN:

A. Purpose: The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, registration, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 NMSA 1978 of the Pharmacist Prescriptive Authority Act.

B. Initial certification and registrants.

(1) The board may certify and register a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for certification and registration as a pharmacist clinician shall complete application forms as required by the board and shall pay a fee. The fee shall be set by the board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification and registration as a pharmacist clinician, the following must be submitted:

(a) proof of completion of 60 hour board approved physical assessment course, followed by a 150 hour, 300 patient contact preceptorship supervised by a physician or other practitioner with prescriptive authority, with hours counted only during direct patient interactions;

(b) the applicant will submit a log of patient encounters as part of the application;

(c) patient encounters must be initiated and completed within two years of the application;

(d) a pharmacist clinician requesting a controlled substance registration to prescribe controlled substance in schedule II or schedule III shall be trained in responsible opioid prescribing practices. Educational programs shall include an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction, and diversion, and awareness of the state and federal regulations of the prescribing of controlled substances.

(4) The board shall register each pharmacist certified as a pharmacist clinician.

(5) Upon certification and registration by the board, the name and address of the pharmacist clinician, (name of the supervising physician if applicable), and other pertinent information shall be enrolled by the board on a roster of pharmacist clinicians.

C. Biennial renewal of registration.

(1) Renewal applications shall be submitted prior to the license expiration.

(2) Applications for renewal must include:

(a) [~~after January 1, 2013,~~] documentation of continuing education hours, including proof of completion of 2.0 CEU 20 contact hours, [~~of~~] at least 10 of which will be live CPE or continuing medical education (CME) approved by (ACPE) or ACCME (live programs provided by other continuing education providers may be submitted for review and approval to the board), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the board; and

(b) [~~effective January 1, 2015~~], a pharmacist clinician with a controlled substance registration to prescribe controlled substances listed in schedule II or schedule III shall complete a minimum of 0.2 CEU (two contact hours) per renewal period in the subject area of responsible opioid prescribing practices, and

(c) a current protocol of collaborative practice signed by the supervising physician (if prescriptive authority is sought); and

(d) a copy of the pharmacist clinician's registration with the supervising physicians board (if prescriptive authority is sought); and

(e) other additional information as requested by the board.

D. Prescriptive authority, guidelines or protocol.

(1) Only a registered pharmacist clinician with current protocols, registered with the New Mexico medical board may exercise prescriptive authority.

(2) A pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the board. The application must include the supervising physicians' name and current medical license, protocol of collaborative practice and other information requested by the board. A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified and registered as a pharmacist clinician.

(3) The protocol will be established and approved by the supervising physician as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the board.

(4) The protocol must include:

(a) name of the physician(s) authorized to prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) ordering lab tests and other tests appropriate for monitoring of drug therapy;

(iii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing physician concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for consulting with the supervising physician, including a quality assurance program for review of medical services provided by the pharmacist clinician, (this quality assurance program will be available for board review); and

(e) description of the scope of practice of the pharmacist clinician.

(5) Pharmacist clinicians shall not prescribe dangerous drugs including controlled substances for self-treatment or treatment of immediate family members, except under emergency situations. This will not apply to medications that may be prescribed under 16.19.26 NMAC.

E. Scope of practice.

(1) A pharmacist clinician shall perform only those services that are delineated in the protocol and are within the scope of practice of the supervising physician or alternate supervising physician(s).

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician:

(a) has obtained a New Mexico controlled substances registration and a drug enforcement agency registration, and

(b) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Subsection A of 61-11B-3 NMSA 1978 of the Pharmacist Prescriptive Authority Act.

(4) The board may, in its discretion after investigation and evaluation, place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising physician or alternate supervising physician(s).

F. Prescription monitoring program:

(1) A pharmacist clinician exercising prescriptive authority in the prescribing of a controlled substance;

(a) shall register with the board to become a regular participant in PMP inquiry and reporting;

(b) may authorize delegate(s) to [~~acccess~~] access the PMP report consistent with 16.19.29 NMAC; while a pharmacist clinician's delegate may obtain a report from the states' PMP, the pharmacist clinician is solely responsible for reviewing the PMP report and documenting the receipt and review of a report in the patient's medical record;

(c) before a pharmacist clinician prescribes for the first time, a controlled substance in schedule II, III or IV to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the pharmacist clinician shall review a PMP report for the patient for the [~~prececeding~~] preceding 12 months; when available, the pharmacist clinician shall review similar reports from adjacent states; the pharmacist clinician shall document the receipt and review of such reports in the patient's medical record;

(d) a PMP report shall be;

(i) reviewed a minimum of once every three months during the continuous use of an opioid, benzodiazepine, or carisoprodol for each patient; and

(ii) reviewed a minimum of once every six months during the continuous use of a controlled substance in schedule II, III or IV which is not an opioid,

benzodiazepine, or carisoprodol for each patient; and

(iii) the pharmacist clinician shall document the review of these reports in the patient's medical record; nothing in this section shall be construed as preventing a pharmacist clinician from reviewing PMP reports with [~~geater~~] greater frequency than that required by this section;

(e) a pharmacist clinician does not have to obtain and review a PMP report before prescribing, ordering, or dispensing a controlled substance in schedule II, III or IV;

(i) to a patient in a nursing facility; or

(ii) to a patient in hospice care.

(f) upon review of a PMP report for a patient, the pharmacist clinician shall identify and be aware of a patient currently receiving:

(i) opioids from multiple prescribers;

(ii) opioids and benzodiazepines concurrently;

(iii) opioids for more than 12 consecutive weeks;

(iv) more than one controlled substance analgesic;

(v) opioids totaling more than 90 morphine milligram equivalents per day;

(vi) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

(g) upon recognizing any of the above conditions described in Subparagraph (f) of Paragraph (1) of Subsection F of 16.19.4.17 NMAC, the pharmacist clinician using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose; these steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, offering or arranging treatment for opioid or substance use disorder; the pharmacist clinician shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(2) Pharmacist clinician[~~,~~]s licensed to practice in an opioid treatment program, [~~as defined in 7.32.8 NMAC~~], shall review a PMP report upon a patients' initial enrollment into the opioid treatment program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in schedule II or III for the purpose of treating opioid use disorder. The pharmacist clinician shall document the receipt and review of a report in the patients' medical record.

G. Complaints and appeals.

(1) The chair of the board will appoint two members of the board, and the [~~president~~] chair of the supervising physician [~~respective~~] board will appoint two members of the [~~respective~~] board to the oversight committee; the oversight committee will review complaints concerning the pharmacist clinician practice; the oversight committee will make a report that may include non-binding recommendations to [~~both~~] the board [~~and respective board(s)~~] regarding disciplinary action. [~~Each~~] The board can accept or reject the recommendations.

(2) Any applicant for certification or any pharmacist clinician may appeal a decision of the board in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 to [~~61-1-3~~] 61-1-7 NMSA 1978.

[3/14/1998; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 3/30/2002; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12/15/2002; A, 9/30/2003; A, 1/31/2007; A, 5/14/2010; A, 8/16/2010; A, 10/25/2012; A, 3/23/2013; A, 6/29/2013; A, 8/12/2013; A, 10/19/2019; A 9/14/2021; A, 9/13/2022; A, 5/07/2024]

REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF

This is an amendment to 16.19.6 NMAC, Section 30 effective 5/07/2024

16.19.6.30 REPACKAGING AND DISTRIBUTION BY A PHARMACY

A. Scope: This section applies only to repackaging by a pharmacy licensed by the board under the conditions specified in this section.

B. Definitions as used in this section:

(1) "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

(2) "board" means the New Mexico Board of Pharmacy;

(3) "distribute" means the delivery of a drug or device other than by administering or dispensing;

(4) "finished drug product" of a prescription drug is defined as that form of the drug which is, or is intended, to be dispensed or administered to the patient and requires no further manufacturing or processing other than packaging and labeling;

(5) "FD&C Act" means the Federal Food Drug and Cosmetic Act;

(6) "repackaging" means the of taking a finished drug product from the container in which it was distributed by the original manufacturer and

placing it into a different container without further manipulation of the drug, excluding:

(a) placing medication in a different container to dispense directly to the patient pursuant to a patient-specific prescription;

(b) removing a drug product from the original container at the point of care for immediate administration to a single patient after receipt of a valid patient-specific prescription or order for that patient.

(7) "USP" means United States Pharmacopoeia;

(8) "USP standards" means standards published in the current official United States pharmacopoeia-national formulary.

C. A pharmacy licensed by the board may repackage under the following conditions:

(1) The pharmacy must qualify for an exemption from registration and listing requirements under Section 510 of the FD&C Act. Specifically, under Section 510(g)(1), the registration and listing requirements of Section 510 do not apply to: pharmacies which maintain establishments in conformance with any applicable local laws regulating the practice of pharmacy and medicine and which are regularly engaged in dispensing prescription drugs or devices, upon prescriptions of practitioners licensed to administer such drugs or devices to patients under the care of such practitioners in the course of their professional practice, and which do not manufacture, prepare, propagate, compound, or process drugs or devices for sale other than in the regular course of their business of dispensing or selling drugs or devices at retail.

(2) The drug product is not sold or transferred by an entity other than the entity that repackaged such drug product. For purposes of this condition, a sale or transfer does not include administration of a repackaged drug product in a health care setting.

(3) The drug repackaged is a finished drug product of a prescription drug that is:

(a) a non-sterile solid or liquid oral dosage form;

(b) approved under Section 505 of the FD&C Act;

(c) repackaged by or under the direct supervision of a pharmacist, and undergoes a final check by a pharmacist;

(d) handled and repackaged in accordance with all applicable USP chapters numbered less than <1000>;

(e) assigned a beyond use date in accordance with USP standards;

(f) repackaged, stored, and shipped in a way that does not conflict with approved drug product labeling;

(g) not adulterated by preparing, packing, or holding the drug product under insanitary conditions; and

(h) repackaged into a sealed unit-dose container, unless distributed in an appropriately labeled and packaged form to a contracted correctional facility for distribution to an inmate upon release.

(4) The repackaged drug product is distributed under the following conditions:

(a) by a managing pharmacy for use in an automated drug distribution system to supply medications for patients of a health care facility licensed under 16.19.11 NMAC, or inpatient hospice facility licensed under 16.19.10.12 NMAC, in accordance with 16.19.6.27 NMAC, or emergency kit;

(b) to a correctional facility, licensed by the board under 16.19.10.11 NMAC, for administration to an inmate, or for distribution of a properly labeled take home supply to an inmate upon release to avoid interruption in prescribed treatment, pursuant to a patient-specific prescription or order;

(c) to a clinic licensed by the board under 16.19.10.11 NMAC, and under the same ownership as the repackaging pharmacy, for administration to a patient of the clinic pursuant to a patient-specific prescription or order.

(5) All units of repackaged medication must be labeled with the following information:

(a) name, address, and telephone number of repackaging pharmacy, unless the repackaged drug is used in an automated drug distribution system in accordance with 16.19.6.27 NMAC;

(b) name, strength, and quantity of the drug;

(c) lot number or control number;

(d) name of manufacturer;

(e) beyond use date;

(f) date drug was repackaged;

(g) name or initials of repackager; and

(h) federal caution label, if applicable.

(6) A record of drugs repackaged must be maintained, and include the following:

(a) date of repackaging;

(b) name and strength of drug;

(c) manufacturer assigned drug lot number, and expiration date;

(d) name of drug manufacturer;

(e) assigned beyond-use date and lot number or control number;

(f) total number of dosage units (tabs, caps) repackaged;

(g) quantity per each repackaged unit container;

(h) number of dosage units wasted; and

(i) initials of repackager, and of pharmacist performing final check.

(7) Records as required by the Pharmacy Act including the Drug, Device, and Cosmetic Act; the Controlled Substance Act; and board regulations shall be maintained.

[16.19.6.30 NMAC - N, 11/28/2017; A, 5/07/2024]

REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF

This is an amendment to 16.19.11 NMAC, Section 7 effective 5/07/2024

16.19.11.7 DEFINITIONS:

A. Licensed Facility - Any facility, skilled nursing facility, intermediate care or any other upper level of care facility as defined by Health and Human Services Department that is required to maintain custody of patients drugs in a drug room, and such drugs are administered by the facilities' designated personnel.

B. Licensed Custodial Care Facility - Any facility or business, including non-profit entity which provides [~~care and services on a continuing basis, for two or more in-house residents, not related to the operator, and which maintains custody of the residents' drugs~~] retirement care, mental care or other facility that provides extended health care to patients.

C. Consultant pharmacist - means a pharmacist who is responsible to the administrator of the facility and the Board of Pharmacy for the development of the drug storage and distribution and record keeping requirements of a licensed nursing home facility, and as further defined in 16.19.4.11 NMAC.

D. Designated agent - A licensed nurse, certified nurse practitioner, physician assistant, pharmacist or pharmacist clinician authorized by a practitioner and employed in a facility to whom the practitioner communicates a prescription drug order.

E. Prescription drug order - An order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed.

[16.19.11.7 NMAC - Rp 16 NMAC 19.11.7, 12-15-02; A, 5/07/2024]

REGULATION AND LICENSING DEPARTMENT
PHARMACY, BOARD OF

This is an amendment to 16.19.12 NMAC, Section 9 and 13 effective 5/07/2024

16.19.12.9 REGISTRATION FEES:

A. Registration by examination $200.00

B. Registration by reciprocity $200.00

C. Registration as an intern $25.00

D. Registration as a pharmacy technician $25.00

E. Waiver of registration fees: The board of pharmacy waives the registration fee set forth in regulation 16.19.12.9 for change of duty location to New Mexico for individuals who are currently serving in the United States military, and for those service member spouses [~~, for change of duty location to New Mexico~~].

F. Registration fees are waived for United States military service members, spouses (includes surviving spouse of a member who at the time of member's death was serving on active duty), dependent children, and veterans who are applying for pharmacist licensure by reciprocity.

[3/7/1980…8/27/1990; A, 7/15/1997; A, 7/31/1998; 16.19.12.9 NMAC - Rn, 16 NMAC 19.12.6, 3/30/2002; A, 12/15/2002; A, 9/30/2003; A, 3/22/2015; A, 8/2/2019; A, 11/30/2021; A, 5/07/2024]

16.19.12.13 LICENSE FEES:

A. Drug manufacturer $1000.00 bi-ennially

B. Wholesale drug distributor $1000.00 bi-ennially

C. Drug manufacturer/ re-packager $1000.00 bi-ennially

D. Re-packager $1000.00 bi-ennially

E. Retail pharmacy $300.00 bi-ennially

F. Hospital pharmacy $300.00 bi-ennially

G. Nonresident pharmacy $400.00 bi-ennially

H. Nonresident pharmacy, sterile compounding $600.00 bi-ennially

I. Seller or dispenser of contact lenses $200.00 bi-ennially

J. Dangerous drug research $200.00 bi-ennially

K. Drug warehouse $200.00 bi-ennially

L. Duplicate license or permit(for all types) $10.00 per each request

M. Letter of good standing, verification, and certification $10.00 per each request

[~~**N.** Roster of board of pharmacy facility license $30.00 per license category~~]

[~~**O.**~~] **N.** Outsourcing facility $2000.00 bi-ennially

[~~**P.**~~] **O.** Third party logistics provider $1000.00 bi-ennially

[~~**Q.**~~] **P.** Medical gas repackager, or seller $200 bi-ennially

[3/7/1980...5/1/1993; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 3/30/2002; A, 9/30/2003; A, 7/15/2004; A, 1/15/2005; A, 12/15/2005; A, 1/31/2007; A, 11/15/2010; A, 12/13/2015; A, 3/23/2016; A, 11/28/2017; A, 8/2/2019, A, 12/15/2020, A, 2/28/2023; A, 5/07/2024]

SUPERINTENDENT OF INSURANCE, OFFICE OF

TITLE 13 INSURANCE
CHAPTER 2 INSURANCE COMPANY LICENSING AND OPERATION
PART 12 HEALTH CARE CONSOLIDATION OVERSIGHT

13.2.12.1 ISSUING AGENCY: Office of Superintendent of Insurance
[13.2.12.1 NMAC – N/E, 05/15/2024]

13.2.12.2 SCOPE: This rule applies to any proposed transactions that involve a New Mexico hospital as regulated by the Health Care Consolidation Oversight Act, Chapter 59A, Article 63 NMSA 1978.
[13.2.12.2 NMAC – N/E, 05/15/2024]

13.2.12.3 STATUTORY AUTHORITY: Authority for this rule derives from the superintendent's powers under Sections 59A-2-9 and from 59A-63-1 *et seq*., the Health Care Consolidation Oversight Act.
[13.2.12.3 NMAC – N/E, 05/15/2024]

13.2.12.4 DURATION: This emergency rule expires 180 days from the effective date unless a permanent rule is adopted before that time.
[13.2.12.4 NMAC – N/E, 05/15/2024]

13.2.12.5 EFFECTIVE DATE: May 15, 2024 unless a later date is cited at the end of a section.
[13.2.12.5 NMAC – N, 05/15/2024]

13.2.12.6 OBJECTIVE: The purpose of this rule is to establish the standards for meeting the requirements of the health care consolidation oversight act and to provide details related to the superintendent's oversight of proposed transactions.
[13.2.12.6 NMAC – N/E, 05/15/2024]

13.2.12.7 DEFINITIONS: For the purpose of this rule, the following terms have the following meanings:

A. "acquisition" has the same meaning as defined in Subsection A of Section 59A-63-2 NMSA 1978;

B. "act" means the health care consolidation oversight act, Chapter 59A, Article 63 NMSA 1978;

C. "affiliation" has the same meaning as defined in Subsection B of Section 59A-63-2 NMSA 1978;

D. "authority" has the same meaning as defined in Subsection C of Section 59A-63-2 NMSA 1978;

E. "control" has the same meaning as defined in Subsection D of Section 59A-63-2 NMSA 1978;

F. "essential services" has the same meaning as defined in Subsection E of Section 59A-63-2 NMSA 1978;

G. "health care provider" has the same meaning as defined in Subsection F of Section 59A-63-2 NMSA 1978;

H. "health insurer" has the same meaning as defined in Subsection G of Section 59A-63-2 NMSA 1978;

I. "hospital" has the same meaning as defined in Subsection H of Section 59A-63-2 NMSA 1978;

J. "insurance holding company law" means Chapter 59A, Article 37 NMSA 1078;

K. "management services organization" has the same meaning as defined in Subsection I of Section 59A-63-2 NMSA 1978;

L. "notice" means a notification to the superintendent of a proposed transaction on a form provided by the superintendent, and when completed provides all the information required by Subsection E of 59A-63-2 NMSA 1978;

M. "office" or **"OSI"** has the same meaning as defined in Subsection J of Section 59A-63-2 NMSA 1978;

N. "office of general counsel" means the office of general counsel of the office of superintendent of insurance;

O. "party" or **"parties"** has the same meaning as defined in Subsection K of Section 59A-63-2 NMSA 1978;

P. "person" has the same meaning as defined in Subsection L of Section 59A-63-2 NMSA 1978;

Q. "proposed transaction" means a transaction as defined in Subsection N of Section 59A-63-2 NMSA 1978, that is subject to the review of the superintendent under the act;

R. "significantly modified" means a material change, alteration, or amendment to the scope of the proposed transaction from that outlined in the initial notice, that is significant enough to affect the outcome of the superintendent's determination;

S. "superintendent" has the same meaning as defined in Subsection M of Section 59A-63-2 NMSA 1978;

T. "toll" or **"tolled"** means a suspension of the 120-day time period that begins when the notice of proposed transaction is deemed complete by the superintendent or designee; and

U. "transaction" has the same meaning as defined in Subsection N of Section 59A-63-2 NMSA 1978.
[13.2.12.7 NMAC – N/E, 05/15/2024]

13.2.12.8 APPLICABILITY, OVERSIGHT PROVISIONS AND PRESUMPTION OF CONTROL:

A. The oversight power of the office pursuant to the act applies to proposed transactions that involve a New Mexico hospital.

B. Being subject to the act does not preclude or negate any person regulated pursuant to the insurance hold company law.

C. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds fifteen percent or more of the power to vote or holds proxies representing fifteen percent or more of the voting securities of any other person.

D. The presumption may be rebutted by a showing in the manner provided by Section 59A-37-19 NMSA 1978 that control does not in fact exist.
[13.2.12.8 NMAC – N/E, 05/15/2024]

13.2.12.9 NOTICE OF PROPOSED TRANSACTION:

A. Parties to a proposed transaction may submit a written request to the office of general counsel via the email provided on the office's website, for a pre-notice

conference to determine if they are required to file a notice or to discuss the potential extent of the review with the superintendent or designee.

B. At least one person that is a party to a proposed transaction shall submit to the office via the email provided on the office's website, a written notice of the proposed transaction on the notice of proposed transaction form provided by the superintendent.

C. The notice of the proposed transaction shall include:

(1) a list of the parties, the terms of the proposed transaction and copies of all transaction agreements between any of the parties;

(2) a statement describing the goals of the proposed transaction and whether and how the proposed transaction affects health care services in New Mexico;

(3) the geographic service area of any hospital affected by the proposed transaction;

(4) a description of the groups or individuals likely to be affected by the transaction; and

(5) a summary of the health care services currently provided by any of the parties and any health care services that will be added, reduced or eliminated, including an explanation of why any services will be reduced or eliminated in the service area in which they are currently provided.

D. If a party to the proposed transaction is a health insurer, the notice shall be submitted as an addendum to any filing required by the insurance holding company law, Sections 59A-37-4 through 59A-37-10 NMSA 1978.

[13.2.12.9 NMAC – N/E, 05/15/2024]

13.2.12.10 PAYMENT OF COSTS, REQUIREMENTS FOR CONSULTATION AND EXPERTS:

A. The office shall consult with the authority about the potential effect of the proposed transaction and incorporate the authority's recommendations into the office's final determination.

B. The office may retain actuaries, accountants, attorneys, or other professionals who are qualified and have expertise in the type of transaction under review as necessary to assist the office in conducting its review of the proposed transaction.

C. The office shall notify parties before any costs are incurred when a transaction review requires the use of outside experts, including the estimated cost of the outside expert's services.

D. The parties shall pay the reasonable costs and expenses incurred by the office in the performance of the office's or authority's duties pursuant to the act for costs associated with the office's contracts with experts, unless determined otherwise by the superintendent.

E. The parties shall not effectuate a transaction without the written approval of the superintendent. The submitting party shall notify the office of general counsel in writing via the email address located on the office's website, when the transaction has been effectuated.

[13.2.12.10 NMAC – N/E, 05/15/2024]

13.2.12.11 REVIEW OF NOTICE AND TOLLING:

A. Upon receipt of a complete notice of a proposed transaction:

(1) the office shall determine if the transaction is urgently necessary to maintain the solvency of a hospital or if there is an emergency that threatens the continued provision of immediate health care services;

(2) in such circumstances, the office may agree to an immediate approval of a transaction with or without conditions;

(3) the office shall inform the authority of the filing of the notice of proposed transaction.

B. Entry into a binding agreement before a transaction is effectuated is not a violation of the act if the transaction remains subject to regulatory review and approval.

C. A notice of a proposed transaction shall be deemed completed by the office on the date when all the information required by the act or requested by the office is submitted by all parties to the transaction, as applicable.

D. The superintendent or designee shall inform the parties and the authority in writing of the date when the notice of a proposed transaction is complete and the 120-day time period for review by the superintendent of designee begins.

E. If the scope of the proposed transaction is determined by the superintendent or designee to be significantly modified from that outlined in the initial notice, the 120-day time period set out in the act shall be restarted by the office.

F. The parties must notify the superintendent in writing via the email provided on the office's website, if the scope of the proposed transaction is significantly modified.

G. The time periods shall be tolled during any time in which the office has requested and is awaiting further information necessary to complete a review, from the parties to a transaction.

[13.2.12.11 NMAC – N/E, 05/15/2024]

13.2.12.12 REVIEW OF PROPOSED TRANSACTION BY THE OFFICE:

A. Within 120-days of receiving a completed notice of a proposed transaction, the office shall complete a review, confer with the authority and either:

(1) approve the proposed transaction;

(2) approve the proposed transaction with conditions; or

(3) disapprove the proposed transaction.

B. In conducting a review of a proposed transaction, the office may consider the likely effect in New Mexico of the proposed transaction on:

(1) the potential reduction or elimination in access to essential services;

(2) the availability, accessibility and quality of health care services to any community affected by the transaction;

(3) the health care market share of a party and whether the transaction may foreclose competitors of a party from a segment of the market or otherwise increase barriers to entry in a health care market;

(4) changes in practice restrictions for licensed health care providers who work at the hospital;

(5) patient costs, including premiums and out-of-pocket costs;

(6) health care provider networks; and

(7) the potential for the proposed transaction to affect health outcomes for New Mexico residents.

C. The review period may be extended if the parties agree to an extension.

[13.2.12.12 NMAC – N/E, 05/15/2024]

12.2.13.13 NOTIFICATION OF DETERMINATION:

A. The superintendent shall notify the submitting party in writing of the office's determination and the reasons for the determination.

B. The office shall approve the proposed transaction after the comprehensive review if the office determines:

(1) the parties to the proposed transaction have demonstrated that the transaction will benefit the public by:

(a) reducing the growth in patient costs, including premiums and out-of-pocket costs; or

(b) maintaining or increasing access to services, especially in medically underserved areas;

(2) the proposed transaction will improve health outcomes for New Mexico residents; and

(3) there is no substantial likelihood of:

(a) a significant reduction in the availability, accessibility, affordability or quality of care for patients and consumers of the health care services; or

(b) anti-competitive effects from the proposed transaction that outweigh the benefits of the transaction.

[13.2.12.13 NMAC – N/E, 05/15/2024]

13.2.12.14 CONFIDENTIALITY:

A. All documents, materials or other information in the possession or control of the office that are obtained by or disclosed to the office or the authority in the course of a review under the act, are confidential.

B. Pursuant to Subsection B of Section 59A-2-12 NMSA 1978:

(1) upon receipt of a written request for a pre-notice conference or a notice of a proposed transaction, the superintendent shall open a confidential case in the office's docketing system to file any and all documents, materials, or other information pertaining to the notice of proposed transaction received by the office;

(2) the superintendent shall open a case in a file hosting service for the parties to produce and share documents in a secure trusted platform for the duration of the review of the proposed transaction, through the post-transaction reporting period;

(3) any written communication related to a proposed transaction shall be deemed confidential by the superintendent; and

(4) a case opened as confidential pursuant to the act, will be closed as confidential by the superintendent after the reporting period has concluded.

[13.2.12.14 NMAC – N/E, 05/15/2024]

13.2.12.15 POST-TRANSACTION REPORTING AND OVERSIGHT :

A. The person that acquired control over the hospital through an approved or conditionally approved transaction shall submit annual reports for three years from the date the transaction is approved, to the office and to the authority on a form provided by the office and via the email provided on the office's website.

B. The report shall:

(1) describe compliance with conditions placed on the transaction, if any;

(2) describe any growth, any decline, and other changes in services provided by the person; and

(3) provide analyses of cost trends and cost growth trends of the hospital.

C. The requirements of this section are not affected by the delayed repeal in Section 59A-63-9 NMSA 1978.

[13.2.12.15 NMAC – N/E, 05/15/2024]

History of 13.2.12 NMAC: [RESERVED]

End of Adopted Rules

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Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
Issue 10	May 9	May 21
Issue 11	May 23	June 11
Issue 12	June 13	June 25
Issue 13	July 8	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
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Issue 20	October 10	October 22
Issue 21	October 24	November 5
Issue 22	November 7	November 19
Issue 23	November 26	December 10
Issue 24	December 12	December 23

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