

medication, other than blister packs and unit dose containers, shall be kept in the original container with a pharmacy label that includes the following:

- (1) the resident's name;
- (2) the name of the medication;
- (3) the date that the prescription was issued;
- (4) the prescribed dosage and the instructions for administration of the medication; and
- (5) the name and title of the prescriber.

L. Any medication that is removed from the pharmacy container or blister pack shall be given immediately and documented by the staff that assisted with the medication delivery.

M. The facility shall report all medication errors to the physician, documentation of medication errors and the prescriber's response shall be kept in the resident's record.

N. The facility shall develop and follow a written policy for unused, outdated, or recalled medications kept in the facility in accordance with 16.19.11.10 NMAC. [8.370.14.35 NMAC - N, 7/1/2024]

8.370.14.36 NUTRITION: The facility shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the "recommended daily dietary allowance" of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the "2005 USDA dietary guidelines for Americans." Vending machines shall not be considered a source of snacks.

A. Dietary services policies and procedures: The facility will develop and implement written policies and procedures that are maintained on the premises and that govern the following requirements.

(1) Meal service: The facility shall:

- (a) serve at least three meals or their equivalent each day at regular times with no more than 16 hours between the evening meal and morning meal with snacks freely available;
- (b) provide snacks of nourishing quality and post on the daily menu;
- (c) develop menus enjoyed by the residents and served at normal intervals appropriate to the residents' preferences;
- (d) post the weekly menu, including snacks where residents and families are able to view it; posted menus shall be followed and any substitution shall be of equivalent nutritional value and recorded on the posted menu; identical menus shall not be used within a one week cycle;
- (e) have special menus or meal items following guidelines from the resident's physician for residents who have medically prescribed special diets;
- (f) serve all residents in a dining room except for residents with a temporary illness, or with documented specific personal preference to have meals in their room;
- (g) allow sufficient time for meals to enable residents to eat at a leisurely pace and to socialize; and
- (h) contact the resident's PCP within 48 hours if a resident consistently refuses to eat.

(2) Staff in-service training: The facility shall provide an in-service training program for staff that are involved in food preparation at orientation and at least annually and that includes:

- (a) instruction in proper food storage;
- (b) preparation and serving food;
- (c) safety in food handling;

(d) appropriate personal hygiene; and
(e) infectious and communicable disease control.

B. Dietary records: The facility shall maintain the following documentation onsite:

- (1) a systematic record of all menus and revisions, including snacks, for a minimum of thirty (30) calendar days;
- (2) a systematic record of therapeutic diets as prescribed by a PCP;
- (3) a copy of the most recent licensing inspection and for facilities with 10 or more residents, a copy of the New Mexico environment department inspection with notations made by the facility of action taken to comply with recommendations or citations; and
- (4) a daily log of the recorded temperatures for all facility refrigerators, freezers and steam tables maintained and available for inspection for 30 calendar days.

C. Clean and sanitary conditions: All practices shall be in accordance with the standards of the state environment department, pursuant to 7.6.2 NMAC.

(1) Kitchen sanitation:

- (a) Equipment and work areas shall be clean and in good repair. Surfaces with which food or beverages come into contact shall be of smooth, impervious material free of open seams, not readily corrodible and easily accessible for cleaning.

(b) Utensils shall be stored in a clean, dry place protected from contamination.

(c) The walls, ceiling and floors of all rooms that food or drink is stored, prepared or served shall be kept clean and in good repair.

(2) Washing and sanitizing kitchenware:

- (a) All reusable tableware and kitchenware shall be cleaned in accordance with procedures that include separate steps for prewashing, washing, rinsing and sanitizing.

(b) Proper dishwashing procedures and techniques shall be utilized and understood by the dishwashing staff.

(c) Periodic monitoring of the operation of the detergent dispenser, washing, rinsing and sanitizing temperatures shall be performed and documented.

(d) When a dishwashing machine is utilized, the cleanliness of the machine, its jets and its thermostatic controls shall be monitored and documented by the facility. A monthly log of the recorded temperature of the dishwasher shall be maintained in the facility and available for inspection.

(3) Sinks for hand washing shall include hot and cold running water, hand-washing soap and disposable towels.

(4) All garbage and kitchen refuse that is not disposed of through a garbage disposal unit shall be kept in watertight containers with close-fitting covers and disposed of daily in a safe and sanitary manner.

(5) Cooks and food handlers shall wear clean outer garments and hair nets or caps and shall keep their hands clean at all times when engaged in handling food, drink, utensils or equipment in accordance with the local health authority. Disposable gloves shall be used in accordance with the local health authority.

D. Food management: The facility shall store, prepare, distribute and serve food under sanitary conditions and in accordance with the regulations governing food establishments of local health authority having jurisdiction.

(1) The facility shall ensure that a minimum of a three calendar day supply of perishables and a five calendar day supply of non-perishables or canned foods is available for the residents.

(2) The facility refrigerator and freezer shall have an accurate thermometer which reads within or not more than plus or minus three degrees fahrenheit of the

required temperature, located in the warmest section of the refrigerator and freezer and shall be accessible and easily read.

(a) The temperature of the refrigerator shall be 35 - 41 degrees fahrenheit.

(b) Freezer temperatures shall be maintained at zero degrees fahrenheit or below.

(3) Refrigerators and freezers shall be kept clean and sanitary at all times. Food stored in refrigerators and freezers shall be covered, dated and labeled. Unused leftover food shall be discarded after three calendar days.

(4) Steam tables, hot food tables, slow cookers, crock pots and other hot food holding devices shall not be used in heating or reheating food. Hot food temperatures shall be checked periodically to insure that a minimum of 140 degrees fahrenheit is maintained.

(5) Medication, biological specimens, poisons, detergents and cleaning supplies shall not be kept in the same storage areas used for storage of foods. Medications shall not be stored in the refrigerator with food; an alternate refrigerator for medication shall be used.

(6) Canned or preserved foods shall be procured from sources that process the food under regulated quality and sanitation controls. This does not preclude the use of local fresh produce. The facility shall not use home-canned foods.

(7) Dry or staple food items shall be stored at least six inches off the floor in a ventilated room that is not subject to sewage, waste water back-flow or contamination by condensation, leakage, rodents or vermin.

(8) The facility shall ensure the following:

(a) all perishable food is refrigerated and the temperature is maintained no higher than 41 degrees fahrenheit;

(b) the temperature for all hot foods is maintained at 140 degrees fahrenheit; and

(c) all displayed or transported food is protected from environmental contamination and maintained at proper temperatures in clean containers, cabinets or serving carts.

E. Milk:
(1) Raw milk shall not be used.

(2) Condensed, evaporated, or dried milk products that are nationally recognized may be employed as "additives" in cooked food preparation but shall not be substituted or served to residents in place of milk.

F. Collateral requirements: Compliance with this rule does not relieve a facility from the responsibility of meeting more stringent municipal regulations, ordinances or other requirements of state or federal laws governing food service establishments. Local health authority having jurisdiction means municipal, county, state or federal agency(s) that have laws and regulations governing food establishments, liquid waste disposal, treatment facilities and private wells. [8.370.14.36 NMAC - N, 7/1/2024]

8.370.14.37 LAUNDRY SERVICES:

A. General requirements: The facility shall provide laundry services for the residents, either on the premises or through a commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Staff shall handle, store, process and transport linens with care to prevent the spread

of infectious and communicable disease.

(4) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas. An exterior route to the laundry room is not an acceptable alternative, unless it is completely enclosed.

(5) In new construction or newly licensed facilities with more than 15 residents, washers shall be in separate rooms from dryers. The rooms with washers shall have negative air pressure from the other facility rooms.

(6) All linens shall be changed as needed and at least weekly or when a new resident is to occupy the bed.

(7) The mattress pad, blankets and bedspread shall be laundered as needed and at least once per month or when a new resident is to occupy the bed.

(8) Bath linens consisting of hand towel, bath towel and washcloth shall be changed as needed and at least weekly.

(9) There shall be a clean, dry, well ventilated storage area provided for clean linen.

(10) Facility laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage and shall be kept in a secured room or cabinet.

B. Residents may do their own laundry, if it is their preference and they are capable of doing so, or if it is part of their skill-building for independent living and is documented as part of their ISP. [8.370.14.37 NMAC - N, 7/1/2024]

8.370.14.38 HOUSEKEEPING SERVICES: The facility shall maintain the interior and exterior of the facility in a safe, clean, orderly and attractive manner. The facility shall be free from offensive odors, safety hazards, insects and rodents and accumulations of dirt, rubbish and dust.

A. All common

living areas and all bathrooms shall be cleaned as often as necessary to maintain a clean and sanitary environment.

B. Combustibles such as cleaning rags or flammable substances shall be stored in closed metal containers in approved areas that provide adequate ventilation. Combustibles shall be stored away from the food preparation areas and away from the resident rooms.

C. Poisonous or flammable substances shall not be stored in residential areas, food preparation areas or food storage areas. If hazardous chemicals are stored on the property, material safety data sheets shall be maintained and stored in the same area as the chemicals, pursuant to state environment department requirements, 11.5.2.9 NMAC. [8.370.14.38 NMAC - N, 7/1/2024]

8.370.14.39 SITE REQUIREMENTS: The facility shall be located and maintained free from environmental and other factors that are detrimental to the residents and staff's health, safety or welfare. The facility site shall be designed and maintained to encourage outdoor activities by the residents. [8.370.14.39 NMAC - N, 7/1/2024]

8.370.14.40 CAPACITY OF BUILDING(S): No facility shall house more residents than the maximum bed capacity for which it is licensed.

A. Each individual building containing resident activities, services or sleeping rooms on the premises shall be separately licensed.

B. Buildings on the grounds of the licensed facility and all rooms within the licensed buildings that are used by the residents of the facility shall be subject to inspection for health and safety standards.

C. All facilities shall comply with the state building code and fire codes, pursuant to 14.7 NMAC.

(1) Facilities with 16 residents or fewer are classified as "group R."

(2) Facilities with more than 16 residents are classified as "group I-1."

(3) Facilities with more than five residents who are not capable of self-preservation are classified as "group I-2."

D. Facilities shall provide separate sleeping quarters for male and female residents unless they are married or the arrangement is consensual.

[8.370.14.40 NMAC - N, 7/1/2024]

8.370.14.41 BUILDING CONSTRUCTION: All building construction shall be based upon the facility occupancy in accordance with the state building code and fire codes, pursuant to 14.7 NMAC.

A. New facilities: All new facilities, relocated into existing building(s) or remodeled facilities shall conform to the current edition of the state building code, accessibility code, mechanical code, plumbing code, fire code and the electrical code.

(1) With regard to building height, allowable area or construction type, the state building code shall prevail.

(2) Minimum construction requirements shall comply with all applicable state building codes.

(3) A facility may share a building with another health care facility licensed by the authority or other suitable facility with prior approval from the licensing authority.

(4) Where there are conflicts between the requirements in the codes and the provisions of this rule, the most restrictive condition shall apply.

B. Access for persons with disabilities; Facilities with four or more residents shall provide accessibility to residents with disabilities in accordance with the state building code and the American Disabilities Act. Areas of specific concern are as follows:

(1) the main entry into the facility and all required exits shall provide access to persons with disabilities;

(2) the building shall allow access to persons with disabilities to all common areas;

(3) at least one bedroom, for every eight residents, shall have a door clearance of 36 inches for access by persons with disabilities;

(4) at least one toilet and bathing facility, for every eight residents, shall have a minimum door clearance of 36 inches for access by persons with disabilities; this toilet and bathing room shall provide a minimum 60 inch diameter clear space to accommodate the turning radius of a wheelchair;

(5) when ramps are used, each ramp shall have a minimum slope of 12 inches horizontal run for each one inch of vertical rise; ramps exceeding a six inch rise shall be provided with handrails on both sides of the ramp;

(6) landings at doorways shall have a level area, at a minimum of five feet by five feet, to provide clear space for wheelchair maneuvering;

(7) parking spaces shall provide access aisles with a minimum width of 60 inches and 96 inches for van parking; a minimum of one van-accessible parking space with a minimum width of 96 inches shall be provided;

(8) an accessible route for persons with disabilities from the parking area to the main entrance(s) shall be provided; and

(9) changes in elevation of one half inch or greater shall be sloped to a minimum of 12 inches horizontal run for each one inch of vertical rise.

C. Construction drawings: Prior to commencement of all new construction, remodeling, relocations, additions or renovations to existing buildings; the facility shall submit preliminary plans and final construction drawings with specifications to the licensing authority for review and approval.

(1) Building plans and specifications shall be

submitted and approved by the authority when:

- (a) construction for a new facility is proposed;
- (b) a building that has not previously licensed as a facility is proposed as a location for a facility;
- (c) any renovation that increases the number of beds is proposed;
- (d) any addition to an existing structure is proposed; or
- (e) any renovation to the existing structure is proposed, regardless of the size of the facility.

(2) The codes that are in effect at the time of the submittal of building plans shall be the codes used through the end of the project.

(3) Drawings and specifications shall be prepared for the architectural, structural, mechanical and electrical branches of work for each construction project and shall include the following:

- (a) **the site plan(s)** showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;
- (b) **the floor plan(s)** showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;
- (c) **the separate life safety plans** showing the fire and smoke compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units, all fire and smoke walls shall be graphically coded;

- (d) the exterior elevation of each facade;
- (e) the typical sections throughout the building;
- (f) the schedule of finishes;

- (g) the schedule of doors and windows;
- (h) the roof plans; and
- (i) the building code analysis.

(4) **For facilities with more than 15 residents:** architectural drawings shall be stamped, signed and dated by a licensed architect registered in New Mexico. In addition to items listed in section (3) above, the drawings shall include the following:

- (a) the building code analysis; and
- (b) when an elevator is required, the details and dimensions of the elevator.

(5) **Structural drawings** shall include the following:

- (a) a certification that all structural design and work are in compliance with all applicable local codes;
- (b) the plans of foundations, floors, roofs and intermediate levels that show a complete design with sizes, sections and the relative location of the various members; and
- (c) the schedules of beams, girders and columns.

(6) **Mechanical drawings** shall include the following:

- (a) a certification that all mechanical work and equipment are in compliance with all applicable local codes and laws and that all materials are listed by recognized testing laboratories;
- (b) the water supply, sewage and heating, ventilation and air conditioning piping systems;
- (c) the heating, ventilating, HVAC piping and air conditioning systems with all related piping and auxiliaries, if any, to provide a satisfactory installation;
- (d) the water supply, sewage and drainage with all lines, risers, catch-basins, manholes and cleanouts clearly indicated as to location, size, capacities and location and

dimensions of septic tank and disposal field;

(e) the sprinkler head layout; and

(f) the graphic coding (with a legend) to show supply, return and exhaust systems.

(7) **Electrical drawings** shall include the following:

(a) a certification that all electrical work and equipment are in compliance with all applicable local codes and laws and that all materials are currently listed by recognized testing laboratories;

(b) all electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current and transformers when located within the building;

(c) a fixture legend; and

(d) a graphic coding (with a legend) to show all items on emergency power.

(8) Include additional information as needed and requested by the licensing authority.

(9) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules, legends and have all rooms labeled. The working drawings and specifications shall be complete and adequate for contract purposes.

(10) One set of final plans shall be submitted to the licensing authority for review and approval prior to the commencing of construction. All construction shall be executed in accordance with the approved final plans and specifications.

(11) Review and approval of building plans by the licensing authority does not eliminate responsibility of the applicant to comply with all applicable laws, rules and ordinances.

(12) The final approval of building plans and

specifications shall be acknowledged in writing by the licensing authority.

(13) The approved building plans shall be kept at the facility and readily available at all times.

D. Fire resistance: Required building construction and fire resistance shall be in accordance with the state building code and the fire code. Facilities with nine or more residents shall be protected throughout by an approved automatic fire protection (sprinkler) system.

E. Prohibition of mobile homes: For facilities with four or more residents, trailers and mobile homes shall not be used.

F. Construction: Construction shall commence within 180 calendar days of the date of receipt of approval (unless a written extension is requested by the facility and approved by authority). This approval shall in no way permit or authorize any omission or deviation from the requirements of any restrictions, laws, ordinances, codes or standards of any regulatory agency. [8.370.14.41 NMAC - N, 7/1/2024]

8.370.14.42 MAINTENANCE OF BUILDING AND GROUNDS:

The building(s) shall be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following areas:

A. Storage areas/grounds: Storage areas and grounds shall be maintained in a safe, sanitary and presentable condition at all times. Storage areas and grounds shall be kept free from accumulation of refuse, weeds, discarded furniture, old newspapers or other items that create a fire hazard.

B. Floors: Floors shall be maintained stable, firm and free of tripping hazards. [8.370.14.42 NMAC - N, 7/1/2024]

8.370.14.43 HAZARDOUS AREAS:

Hazardous areas include: Fuel fired equipment rooms (not a typical residential kitchen), bulk laundries or laundry rooms with more than 100 sq. ft., storage rooms more than 50 sq. ft. but less than

100 sq. ft. not storing combustibles, storage rooms with more than 100 sq. ft. storing combustibles, chemical storage rooms with more than 50 sq. ft., garages and maintenance shops/rooms.

A. Hazardous areas on the same floor as, and in or abutting, a primary means of escape or a sleeping room shall be protected by either:

(1) an enclosure of at least one hour fire rating with self-closing or automatic closing on smoke detection fire doors having a three-quarter of an hour rating; or

(2) an automatic fire protection (sprinkler) and separation of hazardous area with self-closing doors or doors with automatic-closing on smoke detection; or

(3) other hazardous areas shall be enclosed with walls with at least a 20 minute fire rating and doors equivalent to one and three-quarter inches solid bonded wood core, operated by self-closures or automatic closing on smoke detection.

B. Boiler, furnace or fuel fired water heater rooms:

For facilities with four or more residents: all boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be one and three-quarter inches solid core. [8.370.14.43 NMAC - N, 7/1/2024]

8.370.14.44 HEATING, AIR-CONDITIONING AND VENTILATION:

A. Heating, air-conditioning, piping, boilers and ventilation equipment shall be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes. All facilities shall have documentation that fuel-fire heating systems have been checked, tested and maintained annually by qualified personnel.

B. The heating method used by the facility shall provide a

minimum temperature of 70 degrees fahrenheit, measured at three feet above the floor, in all rooms used by the residents.

C. No open-face gas or electric heater nor unprotected single shell gas or electric heating device shall be used for heating the facility. Portable heating units shall not be used for heating the facility. All heating appliances shall be permanently anchored and kept away from flammables such as curtains, bedcovering, trash containers, or clothing. No heating appliance shall be located where the unit or wiring is a tripping hazard or presents danger from electrical shock.

D. Fireplaces and open flame heating shall not be utilized in sleeping rooms.

E. Gas fired water heaters shall not be located in sleeping rooms, bathrooms, or rooms opening into sleeping rooms.

F. The facility shall be adequately ventilated at all times to provide fresh air and the control of unpleasant odors by either mechanical or natural means.

G. All openings to the outside air used for ventilation shall be screened for the control of insects and rodents. Screen doors shall be equipped with self-closing devices.

H. The facility shall have a system for maintaining the residents comfort during periods of hot weather. Fans shall not be located where the unit or wiring is a tripping hazard. Fans shall be provided with protective shields when there is a potential for contact by any individual.

[8.370.14.44 NMAC - N, 7/1/2024]

8.370.14.45 WATER: Pursuant to the current New Mexico drinking water requirements:

A. The water supply system shall be constructed, protected, operated and maintained in conformance with applicable local, state and federal laws, ordinances and regulations.

B. Where a facility is supplied by its own water system, the system shall meet the sampling and

construction requirement of a non-community water system as defined by the current New Mexico drinking water requirements.

C. All water that is not piped into the facility directly from a public water supply system shall be from an approved source, disinfected, transported, handled, stored and dispensed in a sanitary manner. Such water shall be prevented from entering potable water systems by appropriate cross connection and backflow prevention devices.

D. Hot and cold running water, under pressure shall be provided in all areas where food is prepared and where equipment and utensils are washed, sinks, lavatories, washrooms and laundries.

E. The hot water temperature that is accessible to residents shall be maintained at a minimum of 95 degrees fahrenheit and a maximum of 110 degrees fahrenheit. Hot water in excess of 110 degrees fahrenheit is permitted in kitchen and laundry areas, provided that residents are supervised in order to prevent injury.

[8.370.14.45 NMAC - N, 7/1/2024]

8.370.14.46 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes shall be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the system that is used shall be inspected and approved by the state environmental authority, pursuant to 20.7.3 NMAC, prior to licensure.

C. Where municipal or community garbage collection and disposal service are not available, the method of collection, storage and disposal of garbage used by the facility shall be environmentally safe and sound and not create an objectionable environment and be in accordance with state environmental authority, pursuant to 20.9.2 NMAC.

[8.370.14.46 NMAC - N, 7/1/2024]

8.370.14.47 LIGHTING AND LIGHTING FIXTURES:

A. All areas of the facility, including storerooms, stairways, hallways, and interior and exterior entrances shall be lighted to make the area clearly visible.

B. Exits, exit-access ways and other areas used at night by residents and staff shall be illuminated by night lights or other continuous lighting.

C. Lighting fixtures shall be selected and located to accommodate the needs and activities of the residents, with the comfort and convenience of the residents in mind.

D. Lamps and lighting fixtures shall be shaded to prevent glare to the eyes of residents and staff, and protected from accidental breakage or shattering.

E. Facilities with four or more residents shall have emergency lighting to light exit passageways and the exterior area near the exits that activates automatically upon disruption of electrical service.

F. Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.

[8.370.14.47 NMAC - N, 7/1/2024]

8.370.14.48 ELECTRICAL SYSTEM:

A. All fuse and breaker boxes shall be labeled to indicate the area of the facility to which each fuse or circuit breaker provides service.

B. All staff personnel of the facility shall know the location of the electrical disconnect switch and how to operate it in case of emergency.

C. Electrical cords and appliances shall be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Extension cords shall not be used. The use of a multi-socket united laboratories approved (U/L APPROVED) surge protector with integrated circuit breaker no greater than six feet in length is permitted for the intended purpose and not as an extension cord.

[8.370.14.48 NMAC - N, 7/1/2024]

8.370.14.49 DOORS:
A. No door in any means of egress shall be locked against egress when the building is occupied.
(1) Exit doors may be provided with a night latch, dead bolt, or security chain, provided these devices are operable from the inside, by any occupant, without the use of a key, tool, or any special knowledge and are mounted at a height not to exceed 48 inches above the finished floor.
(2) If locks are not readily operable by all occupants within the building, the locks must:
(a) unlock upon activation of the fire detection or sprinkler system; and
(b) unlock upon loss of power in the facility. Prior to installing such locking devices, the facility shall have written approval from the building, fire and licensing authorities having jurisdiction.
B. All exit doors shall have a minimum width of 36 inches.
(1) Facilities with a capacity of 10 or more residents shall have exit doors leading to the outside of the facility that open outward.
(2) Facilities with a capacity of 50 or more residents must provide panic hardware at the exit doors.
(3) No door or path of travel to a means of egress shall be less than 28 inches wide.
C. All resident sleeping room doors must be at least one and three-quarters inches solid core construction.
D. Bathroom doors may be 24 inches wide. Facilities with four or more residents shall have at least one bathroom for every eight residents with a door clearance of 36 inches for access by persons with disabilities.
E. Locks on doors to toilet rooms and bathrooms shall be capable of release from the outside.
F. All doors shall readily open from the inside.
G. Doors shall be

provided for all resident sleeping rooms, all restrooms and all bathrooms.
 [8.370.14.49 NMAC - N, 7/1/2024]
8.370.14.50 EXITS:
A. The facility shall have at least two approved exits, that do not involve windows and which are remote from each other.
B. Facilities with 10 or more residents shall have each exit clearly marked with lighted signs having letters at least six inches high and at least three-quarters of an inch wide. Exit signs shall be visible at all times.
C. Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.
D. Exits shall be clear of obstructions at all times.
E. Exits, exit paths, or means of egress shall not pass through hazardous areas, garages, storerooms, closets, utility rooms, laundry rooms, bedrooms, or spaces subject to locking.
F. For facilities with four or more residents, sliding doors are not acceptable as a required exit. EXCEPTION: Assisted living facilities with three or fewer residents may have sliding doors as required exits.
G. When the yard gate(s) is part of the exit access and is locked, the gate shall be connected to the fire protection system and release upon activation of the fire/smoke system or shall have the ability to be unlocked at the gate site.
 [8.370.14.50 NMAC - N, 7/1/2024]
8.370.14.51 SEPARATION OF SLEEPING ROOMS:
A. All sleeping rooms shall be separated from escape route corridors by walls and doors that are smoke resistant. There shall be no passages, louvers, or transfer grills penetrating the wall to other spaces in the building.
B. All sleeping rooms shall be provided latches suitable for keeping the doors closed.

C. Every sleeping room shall have access to a primary means of escape that provides a path to the exterior, without exposure to unprotected vertical openings. Where sleeping rooms are above or below the level of exit discharge, the primary means of escape shall be:
(1) an enclosed interior stair; or
(2) an exterior stair; or
(3) a horizontal exit; or
(4) an existing approved fire escape stair.
D. Every sleeping room shall provide a secondary means of escape which may be any one of the following:
(1) a door leading directly to the outside, at or to grade level;
(2) a door, stairway, passage or hall remote from the primary escape and to the exterior; or
(3) an outside window or door, operable without tools from the inside with a minimum clear opening measured 20 inches wide, measured 24 inches high; the distance of the bottom of the opening from the floor is a maximum of 44 inches; this means of escape is acceptable if the bottom of the window is no more than 20 feet above grade or is accessible by fire department rescue apparatus, approved by the authority having jurisdiction, or it opens onto an exterior balcony; and
(4) bars, grills, grates or similar devices that are installed on emergency escape or rescue windows or doors shall be equipped with release mechanisms which are operable from the inside without the use of a key or special knowledge or effort.
E. Stairways and other vertical openings between floors shall be enclosed with construction to provide a smoke and fire resistance rating of not less than 20 minutes. Open stairways between floors shall not be permitted.
 [8.370.14.51 NMAC - N, 7/1/2024]

8.370.14.52 CORRIDORS:

A. Corridors in an existing building shall have a minimum width of 36 inches. Corridors in newly constructed facilities shall have a minimum width of 44 inches.

B. Corridors shall have a clear ceiling height of not less than seven feet measured to the lowest projection from the ceiling.

C. Corridors shall be maintained clear and free of obstructions at all times.

D. The floors of corridors and hallways shall be waterproof, greaseproof, smooth, slip-resistant and durable.

[8.370.14.52 NMAC - N, 7/1/2024]

8.370.14.53 MINIMUM ROOM DIMENSIONS:

A. All habitable rooms in a facility shall have a ceiling height of not less than seven feet six inches. Kitchens, halls, bathrooms and toilet compartments shall have a ceiling height of not less than seven feet.

B. Any room with sloped ceiling where any portion of the room is less than seven feet in height is subject to review and approval or disapproval by the licensing authority.

[8.370.14.53 NMAC - N, 7/1/2024]

8.370.14.54 RESIDENT ROOMS:

A. The facility's bed capacity shall not exceed the capacity approved by the licensing authority.

B. Each resident room shall have an outside room with a window. The area of the outdoor window shall be at least one tenth of the floor area of the room.

C. Resident rooms shall not be less than seven feet wide in any horizontal dimension.

D. There must be no through traffic in resident rooms. Resident rooms must connect directly to other internal common areas of the facility.

E. The window shades, drapes, curtains, or blinds in the resident rooms shall be in good repair and of flame-retardant materials.

F. Resident rooms may be private or semi-private. Semi-private rooms may not house more than two residents.

(1) Private rooms shall have a minimum of 100 square feet of floor area. The closet and locker area shall not be counted as part of the available floor space.

(2) Semi-private rooms shall have a minimum of 80 square feet of floor area for each bed and shall be furnished in such a manner that the room is not crowded and passage out of the room is not obstructed. A separate closet for each resident shall be provided. The closet and locker area shall not be counted as part of the available floor space. The beds shall be spaced at least three feet apart.

G. If a resident chooses not to bring their own furnishings to the facility; each resident room shall be provided with, as a minimum, the following furnishings per resident:

(1) a bed that shall be at least 36 inches wide, of sturdy construction and in good repair;

(2) each bed shall be provided with a clean, comfortable mattress of at least four inches in thickness, which is waterproof, or protected with a waterproof covering and a mattress pad;

(3) each bed shall be provided with a clean, comfortable pillow;

(4) each bed shall be provided with a pillow case, two clean sheets, blankets and a bedspread appropriate for the weather and the climate;

(5) an individual closet or closet area with a clothes rack for hanging clothes and shelves or drawers that are accessible to the resident;

(6) a dresser with drawers;

(7) a bedside table or desk;

(8) a chair;

(9) a reading lamp; and

(10) a mirror.
[8.370.14.54 NMAC - N, 7/1/2024]

8.370.14.55 TOILET AND BATHING FACILITIES: Toilet and bathing facilities shall be located appropriately to meet the needs of residents.

A. A minimum of one toilet, one sink and one bathing unit shall be provided for every eight residents or fraction thereof.

(1) The facility shall provide at least one tub and one shower or combination unit to allow for residents bathing preference.

(2) Facilities with four or more residents shall provide a handicap accessible bathroom for every 30 residents that allows for a bathing preference.

B. Facilities with four or more residents must comply with accessibility requirements for the disabled.

C. Toilet, sink and bathing facilities shall be readily available to the residents. No passage through a resident room by another resident to reach a toilet, bathing unit or sink facility shall be permitted.

D. The combination type tub and shower shall be permitted.

E. A facility with four or more residents that has live-in staff shall provide a separate toilet, sink and bathing facility for staff.

F. Toilets, tubs and showers shall be provided with grab bars.

G. Tubs and showers shall have a slip resistant surface.

H. The floors of bathrooms and bathing facilities shall have smooth, waterproof and slip-resistant surfaces.

I. Toilet paper and soap shall be provided in each toilet room.

J. The use of a common towel shall be prohibited.

K. Bathrooms and lavatories shall be cleaned as often as necessary to maintain a clean and sanitary condition.

[8.370.14.55 NMAC - N, 7/1/2024]

8.370.14.56 LIVING OR MULTIPURPOSE ROOM: The facility shall provide a minimum of 40 square feet per resident for common living, dining and social spaces.

A. The facility shall have a living or multipurpose room for the use of the residents. Such rooms shall be provided with reading lamps, tables and chairs or couches. These furnishings shall be well constructed, comfortable and in good repair.

B. The living room or multipurpose rooms shall be provided with supplies to meet the varied interests and needs of the residents.

C. Each activity room shall have a window area of at least one tenth of the floor area with a minimum of at least ten square feet. [8.370.14.56 NMAC - N, 7/1/2024]

8.370.14.57 MEETING ROOM: The facility shall have adequate meeting rooms and office space for use by staff and the interdisciplinary care team. Other rooms may serve as meeting rooms, provided resident confidentiality is maintained. [8.370.14.57 NMAC - N, 7/1/2024]

8.370.14.58 DINING AREA:
A. A dining area shall be provided for meals. Each dining area shall be designed and have furnishings to meet the individual needs of the residents.

(1) Facilities with 60 or fewer residents shall have tables and chairs in the dining area to accommodate the total number of residents in one sitting.

(2) Facilities with more than 60 residents shall provide seating for at least 60 residents at one time, but may serve meals in shifts to accommodate the total capacity of the facility.

(a) No more than three shifts are permitted for each meal.

(b) Facilities with more than 60 residents and serving meals in shifts must have other social areas for residents to

congregate during the meal service.

(c) All seating arrangements during meals shall allow clear access to the exits.

B. The living or multi-purpose room may be used as a dining area if the dining area portion does not exceed fifty percent of the available floor space and still allows a comfortable arrangement of the necessary furnishings for a living area. [8.370.14.58 NMAC - N, 7/1/2024]

8.370.14.59 WINDOWS:

A. Each sleeping room shall be provided with an exterior window.

(1) The window shall be operable, screened and have a clear operable area of 5.7 square feet minimum; measured 20 inches wide minimum and measured 24 inches high minimum.

(2) The top of the window sill shall not be more than 44 inches above the finished floor.

B. Screens shall be provided on all operable windows.

C. The proposed use of bars, grilles, grates or similar devices shall be reviewed and approved by the licensing authority prior to installation.

D. Sleeping rooms, living rooms, activity room areas and dining room areas shall have a window area of at least one tenth of the floor area with a minimum of 10 square feet. [8.370.14.59 NMAC - N, 7/1/2024]

8.370.14.60 FIRE CLEARANCE AND INSPECTIONS:

A. Written documentation of a facility's compliance with applicable fire prevention codes shall be obtained from the state fire marshal's office or the fire prevention authority with jurisdiction and shall be submitted to the licensing authority prior to the issuance of an initial license.

B. The facility shall request an annual fire inspection from the local fire prevention authorities. If

the policy of the local fire department does not provide an annual inspection of the facility, the facility will document the date the request was made and to whom and then contact licensing authorities. If the local fire prevention authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.

[8.370.14.60 NMAC - N, 7/1/2024]

8.370.14.61 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:

A. Fire alarm system. Facilities with four or more residents shall have a manual fire alarm system. The manual fire alarm shall be inspected and approved in writing by the fire authority with jurisdiction.

B. Smoke and heat detection. Approved smoke detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas. Areas of assembly, such as the dining and living room(s) must also be provided with smoke detectors.

(1) Detectors shall be powered by the house electrical service and have battery backup.

(2) Construction of new facilities or facilities remodeling or replacing existing smoke detectors shall provide detectors in common living areas and in each sleeping room.

(3) Smoke detectors shall be installed in corridors at no more than 30 foot spacing.

(4) Heat detectors shall be installed in all kitchens and also powered by the house electrical service.

[8.370.14.61 NMAC - N, 7/1/2024]

8.370.14.62 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM:

Facilities with nine or more residents shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable. [8.370.14.62 NMAC - N, 7/1/2024]

8.370.14.63 FIRE

EXTINGUISHERS: Fire extinguisher(s) must be located in the facility, as approved by the state fire marshal or the fire prevention authority with jurisdiction.

A. Facilities must as a minimum have two 2A10BC fire extinguishers:

(1) one extinguisher located in the kitchen or food preparation area;

(2) one extinguisher centrally located in the facility;

(3) all fire extinguishers shall be inspected yearly and recharged as needed; all fire extinguishers must be tagged noting the date of the inspection;

(4) the maximum distance between fire extinguishers shall be 50 feet.

B. Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

[8.370.14.63 NMAC - N, 7/1/2024]

8.370.14.64 FIRE SAFETY EQUIVALENCY SYSTEM

RATING: In facilities without a sprinkler system; the fire safety equivalency system shall be conducted at least annually. The facility shall maintain an evacuation rating score of prompt when a fire safety equivalency system is required.

[8.370.14.64 NMAC - N, 7/1/2024]

8.370.14.65 FIRE DRILLS:

All facilities shall conduct monthly fire drills which are to be documented.

A. There shall be at least one documented fire drill per month and at a minimum, one documented fire drill each eight hours (day, evening, night) per quarter that employs the use of the fire alarm system or the detector system in the facility.

B. A record of the monthly fire drills shall be maintained on file in the facility and readily

available. Fire drill records shall show:

(1) the date of the drill;

(2) the time of the drill;

(3) the number of staff participating in the drill;

(4) any problem noted during the drill; and

(5) the evacuation time in total minutes.

C. If applicable, the local fire department may be requested to supervise and participate in fire drills.

[8.370.14.65 NMAC - N, 7/1/2024]

8.370.14.66 STAFF AND RESIDENT FIRE AND SAFETY TRAINING:

A. All staff of the facility shall know the location and the proper use of fire extinguishers and the other procedures to be followed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instructions in the use of fire prevention and techniques of evacuation.

B. Facility staff shall be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exitways and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

C. Each new resident admitted to the facility shall be given an orientation tour of the facility to include the location of the exits, fire extinguishers and telephones and shall be instructed in the actions to be taken in case of fire or other emergencies.

D. Fire drill procedures: The facility must conduct at least one fire drill each month.

(1) Fire drills shall be held at different times of the day, evening and night.

(2) The fire alarm system or detector system in the facility shall be used in the fire drills.

During the night, the fire drill alarm may be silenced.

(3) During the fire drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of the conducted fire drills shall be maintained on file in the facility. The record shall show the date and time of the drill, the number of personnel participating in the drill, any problem(s) noted during the drill and the evacuation time in total minutes.

(5) The local fire department may be requested to supervise and participate in the fire drills.

[8.370.14.66 NMAC - N, 7/1/2024]

8.370.14.67 SMOKING:

A. Smoking by residents and staff shall take place only in supervised areas designated by the facility and approved by the state fire marshal or local fire prevention authorities. Smoking shall not be allowed in a kitchen or food preparation area.

B. All designated smoking areas shall be provided with suitable ashtrays that are not made of combustible material.

C. Residents shall not be permitted to smoke in bed.

D. Smoking shall not be permitted where oxygen is in use, is present or is stored.

[8.370.14.67 NMAC - N, 7/1/2024]

8.370.14.68 HOSPICE: An assisted living facility that provides or coordinates hospice care and services shall meet the requirements in this section, in addition to the rules applicable to all assisted living facilities, 8.370.14 NMAC.

A. Definitions: in addition to the requirements for all assisted living facilities pursuant to "definitions," 8.370.14.7 NMAC, the following definitions shall also apply.

(1) **"Hospice agency"** means an organization, company, for-profit or non-profit corporation or any other entity which provides a coordinated program of palliative and supportive services for

physical, psychological, social and the option of spiritual care of terminally ill people and their families. The services are provided by a medically directed interdisciplinary team in the person's home and the agency is required to be licensed pursuant to 8.370.19 NMAC.

(2) **"Hospice care"** means a focus on palliative, rather than curative care. The goal of the plan of care is to help the patient live as comfortably as possible, with emphasis on eliminating or decreasing pain and other uncomfortable symptoms.

(3) **"Licensed assisted living provider"** means a facility that provides 24 hour assisted living and is licensed by the health care authority.

(4) **"Hospice services"** means a program of palliative and supportive services which provides physical, psychological, social and spiritual care for terminally ill patients and their family members.

(5) **"Care coordination requirements"** means a written document that outlines the care and services to be provided by the hospice agency for assisted living residents that require hospice services.

(6) **"Palliative care"** means a form of medical care or treatment that is intended to reduce the severity of disease symptoms, rather than to reverse progression of the disease itself or provide a cure.

(7) **"Terminally ill"** means a diagnosis by a physician for a patient with a prognosis of six months or less to live.

(8) **"Visit notes"** means the documentation of the services provided for hospice residents and includes ongoing care coordination.

B. Employee training and support: A facility that provides hospice services shall provide the following education and training for employees who assist with providing these services:

(1) provide a minimum of six hours per year of

palliative/hospice care training, which includes one hour specific to the hospice resident's ISP, in addition to the basic staff education requirements pursuant to 8.370.14.17 NMAC; and
(2) offer an ongoing employee psychological support program for end of life care issues.

C. Individual service plan (ISP) requirements:

(1) Each resident who receives hospice services shall be provided the necessary palliative care to meet the individual resident's needs as outlined in the ISP and shall include one hour of training specific to the resident for all direct care staff.

(2) The assisted living facility, in coordination with the hospice provider, shall create an ISP that identifies how the resident's needs are met and includes the following:

(a) the requirements set forth in the "individual service plan," 8.370.14.26 NMAC, and "Exceptions to admission, readmission and retention," Subsection C of 8.370.14.20 NMAC;

(b) what services are to be provided;

(c) who will provide the services;

(d) how the services will be provided;

(e) a delineation of the role(s) of the hospice provider and the assisted living facility in the ISP process;

(f) documentation (visit notes) of the care and services that are provided with the signature of the person who provided the care and services; and

(g) a list of the current medications or biologicals that the resident receives and who is authorized to administer them.

(3) Medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance

or administered by the following individuals:

(a) a physician;

(b) a physician extender (PA or NP);

(c) a licensed nurse (RN or LPN);

(d) the resident if their PCP has approved it;

(e) family or family designee; and

(f) any other individual in accordance with applicable state and local laws.

D. Care coordination.

(1) The assisted living facility shall be knowledgeable with regard to the hospice requirements pursuant to 8.370.19 NMAC and ensure that the hospice agency is well informed with regard to the assisted living provisions pursuant to Subsection C of 8.370.14.20 NMAC.

(2) The assisted living facility shall hold a team meeting prior to accepting or retaining a hospice resident in accordance with "exceptions to admission, readmission and retention," Subsection C of 8.370.14.20 NMAC.

(3) Upon admission of a resident into hospice care, the assisted living facility shall designate a section of the resident's record for hospice documentation.

(a) The facility shall provide individual records for each resident.

(b) The hospice agency shall leave documentation at the facility in the designated section of the resident's record.

(4) The assisted living facility shall provide the resident and family or surrogate decision maker with information on palliative care and shall support the resident's freedom of choice with regard to decisions.

(5) Hospice services shall be available 24 hours a day, seven days a week for hospice residents, families and facility staff

and may include continuous nursing care for hospice residents as needed. These services shall be delivered in accordance with the resident’s individual service plan (ISP) and pursuant to 8.370.14.26 NMAC.

(6) The assisted living facility shall ensure the coordination of services with the hospice agency.

(a) The resident’s individual service plan (ISP) shall be updated with significant changes in the resident’s condition and care needs.

(b) The assisted living facility shall receive information and communication from the hospice staff at each visit.

(i) The information shall include the resident status and any changes in the ISP (i.e., medication changes, etc.).

(ii) The information shall be in the form of a verbal report to the assisted living facility staff and also in the form of written documentation.

(c) The assisted living facility or the family/resident shall reserve the right to schedule care conferences as the needs of the resident and family dictate. The care conferences shall include all care team members.

(d) Concerns that arise with regard to the delivery of services from either the assisted living facility or the hospice agency shall first be addressed with the facility administrator and the hospice agency administrator.

(i) The process may be informal or formal depending on the nature of the issue.

(ii) If an issue cannot be resolved or if there is an immediate danger to the resident the appropriate authority shall be notified.

E. Additional provisions: An assisted living facility that provides or coordinates hospice care and services shall make additional provisions for the following requirements:

(1) **individual services and care:** each resident receiving hospice services shall be provided the necessary palliative procedures to meet individual needs as defined in the ISP;

(2) **private visiting space:**
(a) physical space for private family visits;
(b) accommodations for family members to remain with the patient throughout the night; and

(c) accommodations for family privacy after a resident’s death.

F. Medicare and Medicaid restrictions: Assisted living facilities shall not accept a resident considered “hospice general inpatient” which would be billable to medicare or medicaid because the facility will not qualify for payment by medicare or medicaid.
[8.370.14.68 NMAC - N, 7/1/2024]

8.370.14.69 MEMORY CARE

UNITS: An assisted living facility that provides a memory care unit to serve residents with dementia shall comply with the provisions of subsection A-J below in addition to the rules applicable to all assisted living facilities, 8.370.14 NMAC.

A. Additional definitions: The following definitions, in addition to those in 8.370.14.7 NMAC, shall apply.

(1) **“Alzheimer’s”** means a brain disorder that destroys brain cells, causing problems with memory, thinking and behavior that are severe enough to affect work, lifelong hobbies or social life. Alzheimer’s gets progressively worse and is fatal.

(2) **“Care coordination agreement requirement”** means a written document that outlines the care and services that are provided by other outside agencies for assisted living residents that require additional care and services.

(3) **“Dementia”** means loss of memory

and other mental abilities severe enough to interfere with daily life. It is caused by changes in the brain.

(4) **“Memory care unit”** means an assisted living facility or part of or an assisted living facility that provides added security, enhanced programming and staffing appropriate for residents with a diagnosis of dementia, Alzheimer’s disease or other related disorders causing memory impairments and for residents whose functional needs require a specialized program.

(5) **“Secured environment”** means locked (secured/monitored) doors/fences that restrict access to the public way for residents who require a secure unit.

B. Care coordination requirement. An assisted living facility that accepts residents with memory issues shall determine which additional services and care requirements are relevant to the resident and disease process.

(1) The medical diagnosis and ISP shall be utilized in the determination of the need for additional services.

(2) The assisted living facility shall ensure the coordination of services and shall have evidence of an agreement of care coordination for all services provided in the facility by an outside health care provider.

C. Employee training: In addition to the training requirements for all assisted living facilities, pursuant to 8.370.14.17 NMAC, all employees assisting in providing care for memory unit residents shall have a minimum of 12 hours of training per year related to dementia, Alzheimer’s disease, or other pertinent information.

D. Individual service plan (ISP): An assisted living facility that admits memory care unit residents shall create an ISP in coordination with the resident’s primary care practitioner, in compliance with the requirements outlined in “individual service plan,” 8.370.14.26 NMAC, pursuant to a team meeting as described in “exceptions to admission, readmission

and retention,” Subsection C of 8.370.14.20 NMAC, and which ensures the following criteria:

(1) identification of the resident’s needs specific to the memory care unit and the services that are provided; each memory unit resident shall receive the services necessary to meet the individual resident’s needs;

(2) medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance or administered by the following individuals:

- (a) a physician;
- (b) a physician extender (PA or NP);
- (c) a licensed nurse (RN or LPN);
- (d) the resident if their PCP has approved it;

(e) family or family designee; and
(f) any other individual in accordance with applicable state and local laws.

with applicable state and local laws.

E. Assessments and reevaluations:

(1) An assessment shall be completed by a registered nurse or a physician extender within 15 days prior to admission. When emergency placement is warranted the 15 day assessment shall be waived and the assessment shall be completed within five days after admission.

(a) The resident shall have a medical evaluation and documentation by a physician, physician’s assistant or a nurse practitioner within six months of admission.

(b) The pre-admission assessment shall include written findings, an evaluation of less restrictive alternatives and the basis for the admission to the secured environment. The written documentation shall include a diagnosis from the resident’s PCP of Alzheimer’s disease or other dementia

and the need for the resident to reside in a memory care unit.

(c) Only those residents who require a secured environment placement or whose needs can be met by the facility, as determined by the assessment prior to admission or on review of the individual service plan (ISP), shall be admitted.

(2) A re-evaluation must be completed every six months and when there is a significant change in the medical or physical condition of the resident that warrants intervention or different care needs, or when the resident becomes a danger to self or others, to determine whether the resident’s stay in the assisted living facility memory care unit is still appropriate.

F. Documentation in the resident’s record: In addition to the required documentation pursuant to 8.370.14.21 NMAC, the following information shall be documented in the resident’s record:

(1) the physician’s diagnosis for admission to a secure environment or a memory care unit;

(2) the pre-admission assessment; and

(3) the re-evaluation(s).

G. Secured environment:

(1) Memory care unit residents may require a secure environment for their safety. A secured environment is any locked (secured/monitored) area in which doors and fences restrict access to the public way. These include but are not limited to:

- (a) double alarm systems;
- (b) gates connected to the fire alarm; and
- (c) tab alarms for residents at risk for elopement.

(2) In addition to the interior common areas required by this rule, the facility shall provide a safe and secure outdoor area for the year round use by the residents.

(a) Fencing or other enclosures shall prevent elopement and protect the safety and security of the residents.

(b) Residents shall be able to independently access the outdoor areas.

(3) Locked areas shall have an access code or key which facility employees shall have available on their person or on the locking unit itself at all times.

H. Resident rights: In addition to the requirements pursuant to 8.370.14.32 NMAC, the following shall apply:

(1) the resident’s rights may be limited as required by their condition and as identified in the ISP;

(2) the resident who believes that he or she has been inappropriately admitted to the secured environment may request the facility in contact the resident’s legal guardian, or an advocate such as the ombudsman or the primary care practitioner; upon request, the facility shall assist the resident in making such contact.

I. Disclosure to residents: A facility that operates a secured environment shall disclose to the resident and the resident’s legal representative, if applicable and prior to the resident’s admission to the facility, that the facility operates a secured environment.

(1) The disclosure shall include information about the types of resident diagnosis or behaviors that the facility provides services for and for which the staff are trained to provide care for.

(2) The disclosure shall include information about the care, services and the type of secured environment that the facility and trained staff provide.

J. Staffing: The facility shall provide the sufficient number of trained staff members to meet the additional needs of the residents in the secured environment. There must be at least one trained staff member awake and in attendance in the secured environment at all

times.

[8.370.14.69 NMAC - N, 7/1/2024]

8.370.14.70 INCORPORATED AND RELATED RULES AND CODES:

The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes the following:

A. Health facility licensure fees and procedures, New Mexico Health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico Health care authority, 8.370.3 NMAC.

C. Adjudicatory hearings for licensed facilities, New Mexico health care authority, 8.370.2 NMAC.

D. Caregiver's criminal history screening requirements, 8.370.5 NMAC.

E. Employee abuse registry 8.370.8 NMAC.

F. Incident reporting, intake processing and training requirements 8.370.9 NMAC. [8.370.14.70 NMAC - N, 7/1/2024]

History of 8.370.14 NMAC:
[RESERVED]

**HUMAN SERVICES
DEPARTMENT**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 370 OVERSIGHT
OF LICENSED HEALTHCARE
FACILITIES AND COMMUNITY
BASED WAIVER PROGRAMS
PART 15 GENERAL
REQUIREMENTS FOR
BOARDING HOMES**

8.370.15.1 ISSUING AGENCY: New Mexico Health Care Authority. [8.370.15.1 NMAC - N, 7/1/2024]

8.370.15.2 SCOPE: These requirements apply to public or private boarding homes which come within the statutory definition

of "health facilities" as set out in Subsection F of Section 24-1-2 NMSA 1978 Public Health Act and that are required to be licensed by the state licensing authority. This rule applies to all boarding homes facilities which receive lodging for compensation and are operated to provide assistance with one or more instrumental activities of daily living or with the coordination of community services to residents who do not need the level of services and supervision provided in a skilled nursing facility, intermediate care facility, assisted living facility, nor a general or special hospital or other institution. This rule does not apply to boarding homes under the control of an institution of higher learning, any facility which is otherwise licensed and regulated by the authority, any hotel, other landlord-tenant relationship or homeless shelter.

[8.370.15.2 NMAC - N, 7/1/2024]

8.370.15.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated under Subsection E of Section 9-8-6, NMSA 1978, as amended and the authority granted under Subsections F and J of Sections 24-1-2 and 24-1-3 respectively and 24-1-5, NMSA 1978, of the Public Health Act as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.

[8.370.15.3 NMAC - N, 7/1/2024]

8.370.15.4 DURATION: Permanent. [8.370.15.4 NMAC - N, 7/1/2024]

8.370.15.5 EFFECTIVE DATE: July 1, 2024, unless a later date is specified at the end of a section. [8.370.15.5 NMAC - N, 7/1/2024]

8.370.15.6 OBJECTIVE:
A. Establish standards for licensing boarding home facilities for adults in order to ensure

the health, safety, and welfare of individuals in need of such services.

B. Encourage the establishment and maintenance of boarding home facilities for adults that provide a humane, safe and homelike environment for elderly, disabled, or other persons who need personal care services and supervision, but who do not need institutional residential care or assistance with activities of daily living.

C. Establish standards for the construction, maintenance and operation of boarding home facilities.

D. Regulate such facilities in providing the appropriate level of care for residents and using supportive services in the surrounding community to meet the needs of residents.

E. Provide for boarding home compliance with these requirements through surveys to identify any areas that could be dangerous or harmful to the health, safety, or welfare of the residents and staff.

[8.370.15.6 NMAC - N, 7/1/2024]

8.370.15.7 DEFINITIONS:

A. "Abuse" means:
(1) knowingly, intentionally and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or
(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person, or injury, sexual abuse, or neglect resulting in harm of an individual resident.

B. "Amended license" means an amended license issued due to a change of manager name, location, capacity, or classification of any units.

C. "Activities of daily living (ADLs)" as per 42 CFR Section 441.505 2016 "means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring".

D. "Annual license"

means a license issued for a one-year period to a boarding home that has met all license requirements prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

E. “Applicant” means the individual who, or organization which, applies for a license.

F. “Assisted living facility” as per 8.370.14 NMAC means, a health facility operated for the care of two or more adults who need or desire assistance with one or more activities of daily living.

G. “Bed” means a piece of furniture which is used as a place to sleep. A bed is a cushioned mattress on a bed frame, the mattress resting on a solid base of wood slats or a box spring inner sprung base.

H. “Boarding home” means any facility that is required to be licensed by the health care authority, that provides assistance with one or more instrumental activities of daily living or assistance with the coordination of community services, for two or more adults age 18 or older, not related to the owner, that admits residents discharged from any mental or behavioral health care institution.

I. “Care and supervision” means any one or more of the following activities provided by a person or boarding home to meet the needs of the residents:

- (1) Limited assistance with self-administered medication.
- (2) Central storing or distribution of medications, as specified in 16.19.11 NMAC as per the requirements for a boarding and residential care home defined as a licensed custodial care facility by the board of pharmacy.
- (3) Arrangement of and assistance with obtaining medical and dental care.
- (4) Maintenance of house rules for the protection of residents.
- (5) Supervision of resident schedules and activities.

(6) Maintenance or supervision of resident’s cash resources or property, money management.

(7) Monitoring food intake or special diets.

(8) Providing basic services, such as, preparing meals, shopping, housework, using a phone or other technology, or assisting with filling out a job application.

J. “Dormitory” means a space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

K. “Instrumental activities of daily living (IADLs)” as per 42 CFR Section 441.505, “means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community”.

L. “Legally authorized person” means a parent of a minor, a court appointed guardian, or a person authorized by the resident in accordance with law to act on the resident’s behalf.

M. “Licensee” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the boarding home and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

N. “Licensing authority” means the agency within the authority vested with the authority to enforce these requirements.

O. “Limited assistance with self-administered medication” means the individual is capable to self-administer their medication or treatment, but may need cues, reminders or prompts

or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other assistance not involving medication administration. Limited assistance with self-administered medication is not the same as medication administration, which requires a registered nurse (RN) to perform or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations Section 16.12.5.10 NMAC.

P. “Manufactured home” means any home factory-built pursuant to the 24 CFR part 3280 manufactured home construction and safety standards (commonly known as ‘the HUD-code’) and built on a permanent chassis to ensure transportability.

Q. “Medication administration” means a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board (board of nursing) to administer medications; as set forth in Paragraph (2) of Subsection A of 16.12.2.7 NMAC.

R. “Misappropriation of property” means the deliberate misplacement, misappropriation of residents’ property, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.

S. “Modular home” means any home factory-built pursuant to the New Mexico regulation and licensing department construction industries regulations, 14.12.1 through 14.12.11 NMAC.

T. “Mobile home” means a prefabricated residential structure, built in a factory on a permanently attached chassis before being transported to site (either by being towed or on a trailer), and used permanently or semi-permanently in one place in accordance with 14.12.1 through 14.12.11 NMAC.

U. “Needs and services plan” means a written comprehensive plan, that identifies all needs and services for a resident.

V. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness, subject to a person’s right to refuse treatment and subject to a provider’s right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful sexual contact, including such contact with another recipient of care or services.

W. “Nontransient” means occupancy of a dwelling unit or sleeping unit for more than 30 days. See also; resident.

X. “Owner” means the individual who, or organization which, applies for a license. If the owner is an organization, then the individual signing the application on behalf of the organization, must have authority to submit the application from the organization. The owner is also known as the applicant.

Y. “Personal care services” means assistance with instrumental activities of daily living.

Z. “Pharmacist” means a person licensed under the pharmacy act, Sections 61-11-1 to 61-11-29, NMSA 1978.

AA. “Pharmacy” means a place where drugs are compounded or dispensed that is licensed by the New Mexico board of pharmacy.

BB. “Physical abuse” means damaging or potentially damaging acts or incidents that result in bodily injury or death.

CC. “Registered nurse” means a person licensed as a professional registered nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

DD. “Resident” means an individual receiving services and residing in the licensed boarding home.

EE. “Resident safety plan” means the required plan of action to be taken by a boarding home to ensure resident health and safety in case of accidents or emergencies involving environmental hazards, behavioral incidents involving residents, and third-party acts of violence.

FF. “Restraint” means any physical or chemical restraints which restrict freedom of movement or is used for discipline or for the convenience of the boarding home. This includes any article, device, or garment which is used primarily to modify resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room or chemical restraint, which means a medication used primarily to modify behavior by interfering with the resident’s freedom of movement or mental alertness. Mechanical supports shall not be considered physical restraints when used pursuant to the residents needs and supports care plan.

GG. “Transient” means occupancy of a dwelling unit or sleeping unit for not more than 30 days.

HH. “Variance” means a decision that is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

II. “Waive or waiver” means a decision that is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger. [8.370.15.7 NMAC - N, 7/1/2024]

8.370.15.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout

these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory compliance. “May” means permissive compliance. The words “adequate”, “proper”, and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide services to the public in facilities.

[8.370.15.8 NMAC - N, 7/1/2024]

8.370.15.9 SCOPE OF SERVICES:

A. General scope of services: These regulations apply to non-medical boarding homes that are required to be licensed under the public health act by the authority to provide residential placement to individuals seeking assistance with instrumental activities of daily living or assistance with accessing or the coordination of community services who may have been discharged from any mental or behavioral health care institution. Individuals who need assistance with one or more activities of daily living or who need a higher level of services and supervision provided in a skilled nursing facility, intermediate care facility, assisted living facility, a general or special hospital or other institution, shall not be placed in a boarding home.

B. Licensure is required:

(1) No boarding home as defined in Subsection H of 8.370.15.7 NMAC may operate in New Mexico unless it is licensed in accordance with the requirements of the authority.

(2) Any boarding home providing services described in these regulations that is in operation on the effective date of these regulations must apply for licensure within 30 days of the effective date.

(3) If an unlicensed boarding home is found to be providing services for which a license is required under these regulations or other health facility regulations, the secretary may issue a cease-and-desist order, to protect

human health or safety or welfare.

C. Exemption from licensure:

(1) The boarding home regulations contained in this rule shall not apply to any of the following:

(a) Any other licensed health facility, as defined by the public health act Subsection F of Section 24-1-2, NMSA 1978 licensed by the authority.

(b) Any clinic, as defined by the public health act Subsection F of Section 24-1-2 NMSA 1978 licensed by the authority.

(c) Any home operated by a home and community-based medicaid waiver service provider, under contract with the authority to provide waiver services.

(d) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, which provides no element of care and supervision.

(e) Any school dormitory or similar facility where all of the following conditions exist:

(i) The school is a public school as defined by Subsection L of Section 22-1-2 NMSA 1978 or a nonpublic school accredited by a generally accepted accreditation agency.

(ii) The school and the school dormitory are on the same grounds.

(iii) The program operates only during normal school terms unless the academic program runs year-around.

(iv) The school's function is educational only.

(v) The school program is not designated as providing rehabilitative or treatment services.

(f) Any care and supervision of persons by a relative, guardian or conservator.

(g)

Any care and supervision of persons from only one family by a close friend of the family, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week. The provision of longer hours of care shall not be precluded when provided for a brief period of time for reasons, including but not limited to family emergencies, vacation, and military leave.

(h) Any arrangement for the care and supervision of an adult or adults from only one close friend, who is not a licensee or current employee of a residential care facility for the elderly or of an adult residential facility, and whose friendship pre-existed a provider/recipient relationship, and all of the following are met:

(i) The care and supervision are provided in a home or residence chosen by the recipient, regardless of who owns the home or residence.

(ii) The arrangement is not of a business nature, in that the provider does not represent himself or herself as being in the business of provision of care, and any compensation that may be paid to the provider is only for the value of the services rendered.

(iii) The arrangement occurs and continues only with the one resident.

(i) Any housing project for elderly or disabled individuals that meets other federal requirements.

D. Other operations not affected: Boarding homes that also rent rooms solely on an owner-resident basis, to individuals who do not require assistance with one or more instrumental activities of daily living or assistance with the coordination of community services, are not required to comply with this rule in respect to those individuals only.

[8.370.15.9 NMAC - N, 7/1/2024]

8.370.15.10 GENERAL LICENSING REQUIREMENTS:

A. Application and

requirements for licensure:

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

(a) All information requested on the application must be provided.

(b) The application must be dated and signed by the person who shall be the licensee or, if the applicant is an organization, then the individual signing the application on behalf of the organization must have the authority to sign for the organization.

(c) The application must be notarized.

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

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

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

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

(d) in the case of a change of ownership, disclosure of any relationship or connection, including familial or direct or indirect business relationship, between the old licensee and the new licensee, and between any owner or operator of the new licensee, whether direct or indirect.

(3) A license shall not be granted to an owner/ applicant who does not clear the caregiver criminal history screening process as set forth in 8.370.5 NMAC. The applicant shall also provide to the authority information including, but not limited to, felony convictions, a civil judgement against

the applicant for fraud, embezzlement or misappropriation of property, and any state or federal adverse action resulting in suspension or revocation of license or permit. All criminal history records obtained pursuant to this section by the authority are confidential pursuant to Section 29-17-5 NMSA 1978.

(4) The new applicant shall submit evidence of sufficient resources to permit operation of the boarding home for a period of six months. The evidence shall include a credit report from a recognized credit bureau, and with a minimum credit score of 650 or above for applicants that are individuals.

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

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

(a) Current fee schedules will be provided by the licensing authority.

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

(c) Fees are non-refundable.

B. Notification and letter of intent: The license applicant shall advise the licensing authority of its intent to open a boarding home pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the license applicant and the boarding home and at a minimum, include the following:

- (1) the name of boarding home;
- (2) the name of the owner and licensee and the type of legal entity under which the boarding home shall be owned;
- (3) the name of the management company, if any;
- (4) the type of boarding home license requested;
- (5) the name

and resume of the proposed manager;

(6) the anticipated number of residents to be served;

(7) the number of beds in the proposed boarding home;

(8) the physical address of the boarding home including building name or suite number;

(9) the mailing address, if different from physical address;

(10) the applicant's contact name(s), address, e-mail address, and telephone number(s);

(11) the anticipated payers and sources of reimbursement; and

(12) a list of all services to be provided at the boarding home location which is requesting the license.

C. License application and fees: After review by the authority of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall submit a fully completed, printed or typed, dated, signed and notarized license application. The owner shall submit the application prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the authority, the applicant must submit to the licensing authority an application form provided by the authority, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. The licensing authority will provide current fee schedules. The authority reserves the right to require additional documentation to verify

the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees are non-refundable. The applicant must also attach to the application and submit to the authority, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning compliance by the applicable zoning authority.

D. Program description: The applicant must submit with its license application a program outline consistent with these regulations which includes at a minimum, the following information:

- (1) a list and description of all services and the scope of those services to be provided by the proposed boarding home;
- (2) projected number of residents to be served monthly;
- (3) a list of staffing and personnel requirements and duties to be performed;
- (4) proposed staffing plans;
- (5) admission and discharge criteria; and
- (6) an organizational structure diagram or chart including the manager, governing body, direct care staff, and other staff.

E. Policies and procedures: The applicant must submit with its license application a copy of the boarding home's policies and procedures with a crosswalk to these regulations to show compliance.

F. Building plans: the application for licensure must also include building plans as set forth in this rule. Boarding homes licensed for three or fewer residents are not required to submit building plans.

G. Additional documents required for license application: The following additional documents are required to be provided as part of the initial licensure process prior to the issuance of a temporary license, include, but are not limited to:

- (1) Building approvals: The applicant must submit all building approvals required for

the boarding home to operate in the jurisdiction in which it is located, including but not limited to:

(a) written zoning approval or proof of zoning compliance;

(b) building permit final approval, or certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and

(c) approvals from the fire safety authority having jurisdiction.

(2) Environment department approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:

(a) private water supply;

(b) private waste or sewage disposal;

(c) kitchen/food service.

(3) Custodial pharmacy permit: Any boarding home licensed pursuant to these regulations that supervises self-administration of medication for the residents or safeguards medication for residents must have an appropriate custodial drug permit from the state board of pharmacy. [8.370.15.10 NMAC - N, 7/1/2024]

8.370.15.11 ACTION BY THE AUTHORITY:

A. After receiving a complete application, the authority shall investigate the applicant to determine the applicant’s ability to comply with these regulations.

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

C. The licensing authority shall not issue a new license if the applicant has had a health facility license revoked or denied renewal or has surrendered

a license under threat of revocation or denial of renewal, or has lost certification as a medicaid provider as a result of violations of applicable medicaid requirements. The licensing authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be class “A” or class “B” deficiencies as defined in health facility sanctions and civil monetary penalties, 8.370.4 NMAC, or has been noncompliant with plans of correction. [8.370.15.11 NMAC - N, 7/1/2024]

8.370.15.12 TYPES OF LICENSE:

A. Annual license: An annual license is issued for a one-year period to a boarding home which has met all requirements of these regulations. If a temporary license is issued, once the authority has issued a written determination of full compliance with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

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

(1) A temporary license shall cover a period of time, not to exceed 120 days.

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

(3) a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations and the following:

(a) submitted a license application, with required supporting documents;

(b) has met all of the applicable life safety code requirements; and

(c) its program description has been reviewed for compliance with these regulations;

(d) a statement from the applicant that they are qualified, in full compliance with these regulations and has requested an initial health survey from the licensing authority.

(4) a temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(a) a finding that the applicant is qualified and in full compliance with these requirements;

(b) the boarding home being allowed to accept residents and provide care services, subject to any requirements and restrictions attached to the temporary license.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of manager or when there is a change of name for the boarding home, but an amended license shall only be issued if the manager is not an owner. If the manager is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

(1) be on a form, or filed electronically if available, as required by the licensing authority;

(2) be accompanied by the required fee for the amended license; and

(3) be submitted within 10 working days of the change.

[8.370.15.12 NMAC - N, 7/1/2024]

8.370.15.13 SCOPE OF LICENSE:

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

B. The license shall state any applicable restrictions, including maximum bed capacity and

the level of care that may be provided, and any other limitations that the authority considers appropriate and necessary taking all facts and circumstances into account.

C. A licensee shall fully comply with all requirements and restrictions of the license. [8.370.15.13 NMAC - N, 7/1/2024]

8.370.15.14 SEPARATE

LICENSES: Separate licenses shall be required for boarding homes which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same legal lot of record, multiple buildings on contiguous legal lots of record, or contiguous campus or condominium units within the same ownership.

[8.370.15.14 NMAC - N, 7/1/2024]

8.370.15.15 LICENSE

RENEWAL:

A. A licensee must submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the boarding home complies with all applicable state and federal regulations in force at the time of renewal. The authority reserves the right to require that a renewal applicant provide all additional documents, including any necessary proof of current compliance by licensee with these regulations and all applicable state and federal statutes and regulations, as part of its license renewal application for the authority to determine whether the applicant and the boarding home are in full compliance with these regulations.

B. Upon receipt of the renewal application and the required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the boarding home is in substantial compliance with these regulations and all other applicable state and federal regulations.

C. If the existing license expires and the licensee has failed to submit a renewal application, the authority may charge the applicant a civil monetary penalty of \$200, in accordance with Section 24-1-5.2 NMSA 1978, as amended, providing that during such time the boarding home remains in full compliance with these regulations. If the boarding home does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the boarding home shall cease operations until it obtains a new license through the initial licensure procedures and shall still be required to pay civil monetary penalties. Under Section 24-1-5 NMSA 1978, as amended, no boarding home shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be responsible to notify the boarding home of the renewal date or the expiration date of the boarding home's license.

E. After issuance of the initial license, if the boarding home is in substantial compliance with these regulations and provides an application and fee the boarding home may be issued a license renewal.

[8.370.15.15 NMAC - N, 7/1/2024]

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

[8.370.15.16 NMAC - N, 7/1/2024]

8.370.15.17 REPORT OF CHANGES:

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

and documentation regarding such changes.

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

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

D. When a change in the principal officer of a corporate license (chairman, president, general manager) occurs the authority shall be notified within 10 days in writing by the licensee. Such writing shall include the name and business address of such officer.

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

[8.370.15.17 NMAC - N, 7/1/2024]

8.370.15.18 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A. A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The authority shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

(1) any ownership interest of the boarding home changes;

(2) the boarding home changes location;

(3) the licensee of the boarding home changes;

(4) the boarding home discontinues operation; or.

B. A boarding home wishing to continue operation as a

boarding home under the conditions described in Paragraphs (1) through (4) above must submit an application for initial licensure in accordance with Paragraph (2) of Subsection B of 8.370.15.9 NMAC of these regulations, at least 30 days prior to the anticipated change.
[8.370.15.18 NMAC - N, 7/1/2024]

8.370.15.19 CHANGE OF OWNERSHIP:

An individual or entity wishing to purchase and continue operation of an already licensed boarding home shall:

A. Submit a new application for an initial license in accordance with these regulations at least 60 days prior to the anticipated change. The authority has the sole discretion to determine if it will issue a license under the same terms and conditions of the existing license.

B. The current owners will submit a letter citing the intended termination of current ownership, a closure plan and a request for a change of ownership to the licensing authority no later than 60 days prior to the date of sale.

C. The new owners shall complete and submit a new license application and transition plan. The license application and transition plan must be submitted to the licensing authority no later than 60 days prior to the date of sale. The new owners must provide a letter agreeing to assume all liabilities to the state and provide the following as described in the initial licensure procedures section of these regulations:

- (1) letter of intent;
- (2) license application and fee;
- (3) program description;
- (4) transition plan; and
- (5) policies and procedures or a statement that the new owners are utilizing previously approved policies and procedures.
- (6) Transition plan with timelines, that must include the following:

(a) process for the reassessment of residents;

(b) process for hiring boarding home staff and staffing plan identifying staff that will cover all duties upon transition; and

(c) execution of transfer agreements between the buyer and seller.

(7) Failure by any individual or entity to apply for and obtain a new license while continuing to operate under these regulations, shall be considered in violation of these regulations and the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed boarding home may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.
[8.370.15.19 NMAC - N, 7/1/2024]

8.370.15.20 AUTOMATIC EXPIRATION OF LICENSE:

A existing license will automatically expire at midnight on the day indicated on the license as the expiration date, unless it is renewed sooner, or it has been suspended or revoked.

A. If a boarding home discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action.

B. Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and subject to the imposition of civil monetary penalties, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.
[8.370.15.20 NMAC - N, 7/1/2024]

8.370.15.21 PROGRAM FLEXIBILITY:

A. All facilities shall maintain compliance with

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

B. Any approval of the authority granted under this section, or a certified copy thereof shall be posted immediately adjacent to the boarding home's license.
[8.370.15.21 NMAC - N, 7/1/2024]

8.370.15.22 WAIVERS AND VARIANCES:

A. Variances and waivers: At the licensing authority's sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the boarding home's residents and staff and is not in violation of other applicable state and federal statutes and regulations. Variances and waivers are non-transferrable. Waivers and variances may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of residents.

(1) All variances shall be in writing, attached to the license. A variance is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, unless otherwise limited, and provided that the health, safety, or welfare of the residents and staff are not in danger. All variances shall expire upon remodel of the facility or change of ownership.

(2) All waivers shall be in writing, attached to the license, is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, and shall be limited to the term of the license. Upon renewal of a license, waivers shall only be extended or continued at the sole discretion of the licensing authority.

B. Waiver/variance applications:

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

(a) the rule from which the waiver or variance is requested;

(b) the time period for which the waiver or variance is requested;

(c) if the request is for a variance, the specific alternative action which the boarding home proposes;

(d) the reasons for the request; and

(e) justification that the goal or purpose of the rule or regulations would be satisfied.

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

(3) The authority may require additional information from the boarding home prior to acting on the request.

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

(2) The terms of a requested variance may be modified upon agreement between the authority and a boarding home.

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

(4) The

authority may limit the duration of any waiver or variance.

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

D. Revocation: The authority may revoke a waiver or variance if:

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

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

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

(4) required by a change in law.

[8.370.15.22 NMAC - N, 7/1/2024]

8.370.15.23 UNLICENSED

FACILITIES: Any person or entity that opens or maintains a non-medical boarding home without a license is subject to the imposition of civil monetary penalties by the licensing authority. Failure to comply with the licensure requirements of this rule within 10 days of notice by the licensing authority may result in the following actions pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC:

A. A civil monetary penalty not to exceed \$5,000 per day.

B. A base civil monetary penalty, plus a per-day civil monetary penalty, plus the doubling of penalties as applicable, that continues until the facility is in compliance with the licensing requirements in this rule.

C. A cease and desist order to discontinue operation of a boarding home that is operating without a license.

D. Criminal penalties that may apply and shall be imposed as necessary.

E. If it is determined that the boarding home is operating outside the scope of this license it will be deemed operating as an unlicensed boarding home and will be required

to obtain the required applicable boarding home licensure.
[8.370.15.23 NMAC - N, 7/1/2024]

8.370.15.24 SURVEY OR MONITORING VISITS:

A. Application for licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a boarding home by authorized licensing authority representatives during the pendency of the license application, and if licensed, during the licensure period.

B. The licensing authority shall perform on-site survey or monitoring visits at all boarding homes to determine compliance with this rule.

C. The boarding home shall provide the licensing authority full access to all boarding home operations, buildings and information related to the operation of the boarding home. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

D. The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the boarding home.

E. Failure by the boarding home to provide the licensing authority access to the premises or information, including resident records, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, as deemed appropriate by the licensing authority.
[8.370.15.24 NMAC - N, 7/1/2024]

8.370.15.25 CORRECTIVE

ACTION: If violations of this rule are cited, the boarding home will be provided with an official statement of deficiencies within 10 business days following the survey.

A. Plan of correction (POC). Upon receipt of a report of deficiency from the licensing authority, and after receipt of a revised statement of deficiencies, when the findings are changed

pursuant to an IDR, the licensee or their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the boarding home intends to correct each violation noted and the expected date of completion. All plans of correction for deficiencies, if any, shall be disclosed in compliance with applicable statutes and regulations. A plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a boarding home license, including to prove licensee compliance violations. The plan of correction must contain the following:

- (1) what measures will be put into place or what systematic changes will be made to ensure the deficient practice does not recur;
- (2) the anticipated implementation date (a reasonable time-frame is allowed);
- (3) how the corrective action will be monitored to ensure compliance;
- (4) what quality assurance indicators will be put into place;
- (5) who will be responsible to oversee their monitoring; and
- (6) the date and signature of the manager or authorized representative.

B. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

(1) If the first plan of correction (POC) is rejected by the licensing authority, the boarding home will be sent a second copy of the statement of deficiencies. The boarding home shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The authority may at its option repeat the process until an acceptable plan of correction is received by the authority.

(2) Failure

to provide an acceptable plan of correction (POC) within a reasonable period of time, may lead to civil monetary penalties or other sanctions.

(3) All cited violations shall be corrected within 30 calendar days from the date of the survey; unless the licensing authority approves an extended date.

(4) Failure to submit an acceptable plan of correction may result in sanctions, including but not limited to civil monetary penalties, suspension or non-renewal of the boarding home license.

(5) The licensing authority may accept, reject, or direct the plan of correction.

C. Informal dispute review (IDR). The boarding home may request an informal review of survey deficiencies by providing a written request to the licensing authority within 10 calendar days of receipt of the written survey findings. With the request, the boarding home shall include information or evidence that justifies the disagreement with a cited deficiency.

(1) The licensing authority will review the submitted information and make a determination.

(2) If the deficiency is removed, a new statement of deficiencies will be issued to the boarding home.

(3) The boarding home shall provide a new plan of correction for all remaining deficiencies upon receipt of the new statement of deficiencies.

(4) A copy of the "IDR operating rules" is available upon request.

[8.370.15.25 NMAC - N, 7/1/2024]

8.370.15.26 ENFORCEMENT:

A. Suspension of license without prior hearing: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five

working days of the suspension, unless waived by the licensee.

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

(1) Failure to comply with any provision of these regulations.

(2) Failure to allow access to the boarding home and survey by authorized representatives of the licensing authority.

(3) Any person working at the boarding home under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the residents, staff or visitors.

(4) Misrepresentation or falsification of any information or application forms or other documents provided to the licensing authority.

(5) Discovery of repeat violations of these regulations during surveys.

(6) Failure to provide the required care and services as outlined by these regulations for the residents receiving care at the boarding home.

(7) Abuse, neglect or exploitation of any resident by boarding home operator, staff, or relatives of operator/staff.

(8) Allowing any person, subject to all applicable statutes and regulations, to work at the boarding home if that person is listed on the employee abuse registry, nurse aid registry, or considered an unemployable caregiver or has a disqualifying conviction under the caregivers criminal history screening requirements, 8.370.5 NMAC, as amended, and related regulations as amended.

C. The list above shall not limit the authority from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[8.370.15.26 NMAC - N, 7/1/2024]

8.370.15.27 HEARING

PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the authority against a boarding home's license will be held in accordance with applicable rules relating to adjudicatory hearings, including but not limited to, 8.370.2 NMAC, as amended. A copy of the above regulations will be furnished at the time an adverse action is taken against a boarding home's license by the licensing authority, if the regulations cannot be obtained from a public website.

[8.370.15.27 NMAC - N, 7/1/2024]

8.370.15.28 APPEALS:

A. A licensee that is subject to an adverse action may request an administrative appeal. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the boarding home are in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.

B. All notices, orders or decisions which the licensing authority issues to a boarding home prior to a transfer of ownership shall be in effect against both the former owner and the new owner, unless the transfer of penalties to the new owner is rescinded in writing by the authority.

[8.370.15.28 NMAC - N, 7/1/2024]

8.370.15.29 POLICIES AND

PROCEDURES: The boarding home shall establish written policies and procedures that are reviewed and approved annually by the governing body. The manager shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the boarding home's written policies and procedures shall include how the

boarding home intends to comply with all requirements of these regulations and address:

A. incident management system;

B. the maintenance of the boarding home, equipment and supplies; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures;

C. quality of care and services including appropriate and inappropriate admission and discharge criteria; and resident risk assessment;

D. referral of residents for services; transfer of residents to a hospital or other facility or program; ambulance transfer services; and emergency procedures and resuscitative techniques;

E. infectious waste and biohazard disposal in accordance with all applicable statutes and regulations;

F. infection control and prevention;

G. staffing plan, personnel records, and minimum staffing;

H. maintenance of the resident's confidential records including protection of resident confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of resident records including appropriate document destruction procedures;

I. the retention, maintenance, security and destruction of resident, personnel and boarding home records;

J. dietary services including meal service; staff in-service training; dietary records; clean and sanitary conditions; and food management;

K. housekeeping services to keep the boarding home safe, clean, and free of hazards and clutter;

L. If applicable, laundry services for the boarding home's laundry and resident's laundry including handling, process and

storage of clean and dirty laundry;

M. pharmacy practices including the storage, administration, and disposal of medications; medication management; and documentation;

N. resident's personal belongings including locked storage and contraband;

O. resident rights;

P. smoking policy;

Q. grievance policy;

R. house rules, to

include freedom permitted and limitations necessary to protect the rights of others;

S. Visiting hours.

[8.370.15.29 NMAC - N, 7/1/2024]

8.370.15.30 STAFFING REQUIREMENTS:

A. Operator or manager: A boarding home shall be supervised by a full-time manager. Multiple facilities that are located within a 40-mile radius may have one full-time manager. The manager shall:

(1) be at least 21 years of age;

(2) have a high school diploma or its equivalent;

(3) pass the background check and screening process pursuant to 8.370.5 NMAC;

(4) be able to communicate with the residents in the language understood by the residents;

(5) not work while under the influence of alcohol or illegal drugs;

(6) have evidence of education and experience directly related to the services that are provided at the boarding home;

(7) provide three notarized letters of reference from persons unrelated to the applicant, and

(8) comply with the pre-employment requirements pursuant to the employee abuse registry, 8.370.8 NMAC;

(9) be responsible for the daily operation of the boarding home and for the safety and well-being of the residents. In

the manager’s absence, there shall be a responsible designee at least 21 years of age (who is not a resident of the boarding home) to assume the responsibility of the boarding home;

(10) provide orientation to all new employees which shall include resident rights, evacuation and emergency procedures, training in policies and procedures, and competent supervision designed to improve resident care;

(11) not act as, or become, the legal guardian of or have power of attorney for any resident.

B. Direct care staff:
(1) shall be at least 18 years of age;
(2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;

(3) shall comply with the pre-employment requirements pursuant to the employee abuse registry, 8.370.8 NMAC;
(4) shall comply with the current requirements of reporting and investigating incidents pursuant to incident reporting, intake processing and training requirements, 8.370.9 NMAC;

C. if a boarding home provides transportation for residents, the employees of the boarding home who drive vehicles and transport residents shall have copies of the following documents on file at the boarding home:

- (1) a valid New Mexico driver’s license with the appropriate classification for the vehicle that is used to transport residents;
- (2) proof of insurance;
- (3) documentation of a clean driving record; and

(4) shall comply with the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC. [8.370.15.30 NMAC - N, 7/1/2024]

8.370.15.31 STAFF

TRAINING:

A. Training and orientation for each new employee and volunteer that provides direct care shall include a minimum of the following training prior to providing unsupervised care for residents.

B. On-going training shall be provided to staff that provides direct care as needed; the training and proof of competency shall include at a minimum:

- (1) fire safety and evacuation training;
- (2) first aid and CPR;

(3) safe food handling practices (for persons involved in food preparation and service), to include:

- (a) instructions in proper storage;
- (b) preparation and serving of food;
- (c) safety in food handling;
- (d) appropriate personal hygiene; and
- (e) infectious and communicable disease control;

(4) confidentiality of records and resident’s information;

(5) residents’ rights;

(6) reporting requirements for abuse, neglect or exploitation in accordance with 8.370.9 NMAC;

(7) smoking policy for staff, residents and visitors;

(8) emergency procedures;

(9) staff are familiar with each resident’s needs and services plan;

C. Documentation of orientation and subsequent trainings shall be kept in the personnel records at the boarding home.

[8.370.15.31 NMAC - N, 7/1/2024]

8.370.15.32 PERSONNEL

POLICIES: The boarding home shall have and implement written personnel policies for the following:

A. staff, private duty attendant and volunteer qualifications;

B. staff, private duty attendant and volunteer conduct;

C. staff, private duty attendant and volunteer training policies;

D. staff and private duty attendant and volunteer criminal history screening;

E. emergency procedures;

F. medication administration restrictions;

G. the retention and maintenance of current and past personnel records; and

H. facilities shall maintain records and files that reflect compliance with state and federal employment rules.

[8.370.15.32 NMAC - N, 7/1/2024]

8.370.15.33 PERSONNEL

RECORDS:

A. The boarding home shall have policies and procedures for managing personnel information and records.

B. Staff scheduling records shall be maintained for at least three years.

C. Employee records shall be kept at the boarding home and include:

- (1) employment application;
- (2) training records;

(3) licenses and certifications, if applicable, and

(4) caregiver criminal history screening documentation pursuant to 8.370.5 NMAC.

[8.370.15.33 NMAC - N, 7/1/2024]

8.370.15.34 STAFFING REQUIREMENTS AND RATIOS:

Minimum staffing requirements.

A. There shall be an adequate number of personnel on duty to provide the basic care, resident assistance and the required supervision based on the assessment of the residents’ needs. There shall be at least one staff member on duty or available to be on the premises within

30 minutes, and responsible for care and supervision of residents in case of accidents or emergencies, when residents are present in the boarding home.

B. During resident sleeping hours, boarding home facilities shall have at least one direct care staff person available on the premises or available to be on the premises within 30 minutes in case of emergency.

C. Facilities that care for more than 15 residents must have an adequate number of personnel on duty to meet the needs of the residents with a minimum of at least one staff member available at all times and a second staff member on call and capable of being on the premises of the boarding home within 30 minutes. [8.370.15.34 NMAC - N, 7/1/2024]

8.370.15.35 RESIDENT ACCEPTANCE, ADMISSIONS AND DISCHARGE: The boarding home shall complete an admission agreement for each resident. The manager of the boarding home or a designee responsible for admission decisions shall meet with the resident or the resident’s legally authorized person prior to admission. No resident shall be admitted who is below the age of 18 or for whom the boarding home is unable to provide appropriate care as set forth in this regulation.

A. The boarding home shall develop admission and discharge criteria and agreements.

B. Admission and discharge criteria must be available in writing to all residents and visitors to the boarding home.

C. Materials describing services offered, eligibility requirements, resident rights and responsibilities and fees charged must be provided in a form understandable to the resident and legal guardian(s) with consideration of the resident’s and guardian’s primary language, and the mode of communication best understood by persons with visual or hearing impairments, as applicable.

D. The admission agreement shall meet these criteria:

(1) The services that are provided by the boarding home and the charges for such services must be explained in full.

(2) The method of payment by the resident must be clearly stated.

(3) The terms and notification process for termination of the admission agreement must be explained and included in the admission agreement.

(4) A new admission agreement must be made whenever services to be provided or other terms are changed.

(5) The admission agreement shall also contain the responsibilities of the representative payee or other individuals who are assisting the resident, if any. [8.370.15.35 NMAC - N, 7/1/2024]

8.370.15.36 RESIDENT ACCEPTANCE AND RETENTION LIMITATIONS:

A. Acceptable criteria for admission:

(1) Residents are accepted who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence and choose to arrange for food, shelter, oversight and limited services such as laundry and transportation from a boarding home.

(2) Although unable to live independently and in need of some protective living accommodations, residents of a boarding home must be able to perform activities of daily living without assistance.

(3) Individuals seeking assistance with instrumental activities of daily living or assistance with accessing or the coordination of community services who may have been discharged from any mental or behavioral health care institution.

(4) Individuals who may have a primary diagnosis of developmental disability and receive home and community-based medicaid waiver services, may be accepted

when the interdisciplinary team (IDT) and guardian and individual agree that the boarding home is an appropriate placement in the community.

B. Individuals who meet the following criteria shall not be admitted to or retained in boarding homes:

(1) Persons who require more care and supervision than is provided by the boarding home.

(2) Persons who require nursing care, or who are not ambulatory.

(3) Persons with dementia or related disorders causing memory impairment.

(4) Persons whose physician has prescribed a therapeutic diet if those dietary requirements cannot be met.

(5) Persons who have needs that are in conflict with the needs of other residents or the program of services offered.

(6) Persons who currently require acute inpatient psychiatric care due to a mental disorder.

(7) Persons who require inpatient care in a health facility.

(8) Persons who are unable to care for themselves and would be at risk if left alone.

(9) Persons who require services that the boarding home does not provide or make available.

(10) Persons who are actively being destructive of property, self-destructive, disturbing or abusive to others, or suicidal or in need of acute inpatient psychiatric services.

C. Resident retention limitations: Residents whose behavior exceed their resident safety plan and are referred to a higher level of care may be retained and return to their residency at the boarding home upon medical or behavioral stabilization according to their discharge plan and in accordance with their admission agreement.

[8.370.15.36 NMAC - N, 7/1/2024]

8.370.15.37 PROGRAM SERVICES:

A. The boarding home must be able to provide oversight to the residents, such as reminding them of meals, medications and appointments and monitoring activities while on the premises of the boarding home.

B. Each resident shall designate a personal physician and dentist to be called in case of emergency. In the event that the resident does not have a personal physician or dentist, the boarding home may assist the resident to make necessary arrangements to secure the services of a licensed physician or dentist as needed.

C. Boarding homes shall provide assistance with certain instrumental activities of daily living and assistance with accessing or the coordination of community services, including but not limited to:

- (1) coordinating travel to and from appointments;
- (2) assistance with communication or technology devices;
- (3) assistance with applying for services or employment;
- (4) limited assistance with self-administered medication for the individual who is capable to self-administer their medication or treatment, but may need cues, reminders or prompts or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other assistance not involving medication administration. If limited assistance with self-administered medication is being provided, the resident retains all responsibility for taking their medications. Limited assistance with self-administered medication is not the same as “assistance with taking medication” or “medication administration” which require a registered nurse or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations to

perform. 16.12.5.10 NMAC. [8.370.15.37 NMAC - N, 7/1/2024]

8.370.15.38 NEEDS AND SERVICES PLAN:

Prior to admission, the licensee shall determine whether the boarding home’s program can meet the prospective resident’s service needs.

A. If the resident is to be admitted, then prior to admission, the licensee shall complete a written needs and services plan.

B. The following individuals shall be included in developing the plan:

- (1) the resident, and the resident’s legally authorized person or their authorized representative, if any;
- (2) any relative participating in the placement;
- (3) the boarding home manager or designee responsible for boarding home admissions;
- (4) the placement or referral entity, if any;
- (5) optional: a health care professional who knows the resident, such as a community support worker, social worker, or therapist;
- (6) optional: the hospice or home health clinician, if resident is receiving services from a hospice or home health provider respectively;
- (7) any individual the resident believes would be beneficial to inform the needs and services plan.

C. The needs and services plan shall include:

- (1) The resident’s desires and background, obtained from the resident, the resident’s family or their authorized representative, if any, and licensed professional, where appropriate, regarding the following:
 - (a) medical conditions;
 - (b) dietary restrictions;
 - (c) prescribed medications;

(d) physical/mental and social function.
(2) Specific service needs, if any.

(3) Boarding home plans for providing services to meet the individual needs identified above.

(a) Objectives, within a time frame, that relate to the resident’s problems or needs.

(b) Plans for meeting the objectives.

(c) Identification of any individuals or agencies responsible for implementing each part of the plan.

(d) Method of evaluating progress.

D. The written needs and services plan shall be updated as frequently as necessary to ensure its accuracy, and to document significant occurrences that result in changes in the resident’s physical, mental or social functioning. If modifications to the plan identify an individual resident service need which is not being met by the general program of boarding home services, the following requirements shall be met:

(1) Consultation shall be secured from a dietitian, physician, social worker, psychologist, or other consultant as necessary to assist in determining if such needs can be met by the boarding home within the boarding home’s program of services.

(2) If it is determined that the resident’s needs cannot be met, the licensee shall inform the resident and their authorized representative, if any, or responsible person, if there is no authorized representative, of this fact and shall request that the resident relocate.

(3) If the resident refuses to relocate, the licensee may evict the resident in accordance with admission and discharge agreement.

[8.370.15.38 NMAC - N, 7/1/2024]

8.370.15.39 RESIDENT RECORDS: The licensee shall

ensure that a separate, complete, and current record is maintained in the boarding home for each resident.

A. Each record must contain information including but not limited to the following:

(1) Name of resident, social security number, phone number.

(2) Birthdate.

(3) Gender.

(4) Date of admission.

(5) The source of referral and relevant referral information.

(6) Names, addresses, and telephone numbers of the authorized representative and emergency contact.

(7) A signed and dated copy of the admission agreement and resident's rights document.

(8) Name, address, and telephone number of the resident's physician and dentist, and any other medical and mental health providers.

(9) Medical assessments and diagnosis, if applicable.

(10) Record of any illness or injury requiring treatment by a physician or dentist and for which the boarding home will provide assistance to the resident in meeting their necessary medical and dental needs.

(11) An original or original copy of all physician medication and treatment orders signed by the physician.

(12) Record of current medications, including frequency and dosage; the name of the prescribing physician, and instructions, if any, regarding control and custody of medications.

(13) A record of all contacts with medical and other services.

(14) Needs and services plan.

(15) Modified diet requirements.

(16) Advanced directives, or any preference for life

saving measures if appropriate.

(17) Signed consent for the release of information, if information is released.

(18) Documentation of guardianship, agent or other legal decision maker other than resident.

(19) A written account of all personal possessions and funds deposited with the boarding home and accounting for all funds spent and deposited subsequently by the resident.

B. Resident records should also include but are not limited to the following:

(1) Medical and dental appointments.

(2) Accidents or injuries.

(3) Any problems or improvements observed in the resident.

(4) Any change in the resident's condition which would indicate a need for higher level of care.

(5) Date, time, and services provided by a visiting nurse service.

C. All information and records obtained from or regarding residents shall be confidential.

(1) The licensee shall be responsible for safeguarding the confidentiality of record contents.

(2) Except as specified in (a) below, or as otherwise authorized by law, the licensee and all employees shall not reveal or make available confidential information.

(a) All resident records shall be available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying.

(b) Removal of records shall be subject to the following requirements:

(i) Licensing representatives shall not remove current records for current residents unless the same information is otherwise readily available in another document or format.

(ii)

Original resident records or digital reproductions shall be retained for at least three years following termination of service to the resident. [8.370.15.39 NMAC - N, 7/1/2024]

8.370.15.40 RESIDENT RIGHTS:

A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a boarding home, a resident, parent, legal guardian and legal representative shall be given the applicable written description of the resident's legal rights, translated into resident's preferred language, if necessary, to ensure the resident's understanding.

B. A written copy of the resident's legal rights shall be provided to the resident and to the resident's legal guardian or agent, if applicable, and to the most significant responsible party in the following order:

- (1) the resident;
- (2) the resident's spouse or significant other;
- (3) any of the resident's adult children;
- (4) the resident's parents;
- (5) the resident's advocate.

C. The resident rights shall be posted in a conspicuous public place in the boarding home and shall include the telephone numbers to contact the authority to file a complaint which shall include the licensing authority and the state ombudsman's office.

D. To protect resident rights, the boarding home shall:

- (1) treat all residents with courtesy, respect, dignity and compassion;
- (2) not discriminate in admission or services based on gender, gender identity, sex, sexual orientation, resident's age, race, color, religion, physical or mental disability, or national origin;
- (3) provide residents written information about

all services provided by the boarding home and their costs and give advance written notice of any changes;

(4) provide residents with a clean, safe and sanitary living environment;

(5) provide a humane psychological and physical environment of care for all residents;

(6) protect the confidentiality of the resident's records;

(7) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; privacy during medical examinations, consultations and treatment; and reasonable privacy in the residents' own rooms;

(8) protect the resident's right to receive visitors;

(9) protect the resident's right to receive visits from their attorney, physician, psychologist, clergyman, social worker, long term care ombudsman or representatives of the authority in private;

(10) provide residents the ability to send and receive unopened mail;

(11) provide access to telephones in order to make and receive confidential calls, provided that such calls do not infringe upon the rights of other residents and do not restrict availability of the telephone during emergencies.

(a) The licensee shall be permitted to require reimbursement from the resident or their authorized representative for long distance calls.

(b) The licensee shall be permitted to prohibit the making of long distance calls upon documentation that requested reimbursement for previous calls has not been received.

(12) ensure that residents:

(a) are free from physical abuse and emotional abuse, neglect, and exploitation and restraint;

(b) are free to participate or abstain from the practice of religion and shall be afforded reasonable accommodations to worship;

(c) have the right to reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment if available;

(d) wear their own clothes;

(e) possess and use their own personal items, including their own toilet articles;

(f) have access to individual storage space for their private use;

(g) have the right to voice grievances to the boarding home staff, public officials, any state agency, or any other person, without fear of reprisal or retaliation;

(h) have the right to have their grievance addressed within five days;

(i) have the right to prompt and adequate medical attention for physical ailments;

(j) have the right to social interaction, including the right to associate freely with persons in and out of the boarding home, to participate in community groups and organizations, and to leave the boarding home and return to it without restriction;

(k) have the right to participate in treatment decisions and formulate advance directives such as living wills and powers of attorney;

(l) have the right to manage and control their personal finances;

(m) receive assistance in exercising the right to vote; and

(n) move from the boarding home in accordance with the terms of the admission agreement.

[8.370.15.40 NMAC - N, 7/1/2024]

8.370.15.41 NUTRITION: Boarding homes shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the "recommended daily dietary allowance" of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the current USDA dietary guidelines for Americans. Vending machines shall not be considered a source of snacks.

A. Dietary services: The boarding home will develop and implement written policies and procedures that are maintained on the premises.

B. All food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

(1) at least three nutritious meals per day shall be served;

(2) no more than 14 hours may elapse between the end of an evening meal and the beginning of a morning meal;

(3) therapeutic diets shall be provided when ordered by the physician, and where indicated food shall be cut, chopped, or ground to meet individual needs;

(4) under no circumstances may food be withheld for disciplinary reasons;

(5) between meals, nourishment or snacks shall be available for all residents unless limited by dietary restrictions prescribed by a physician;

(6) a weekly menu is posted conspicuously for the residents; and

(7) copies of the menus of meals as served shall be dated and kept on file for at least 30 days. Menus shall be made available for review by the residents or their authorized representatives and the licensing agency upon request.

C. Each facility shall have a policy establishing dining times and hours that accommodate all residents' needs.

[8.370.15.41 NMAC - N, 7/1/2024]

8.370.15.42 FOOD SERVICE:

Requirements for boarding homes:

A. The boarding home shall have either contracted food preparation or prepare food on site.

B. A boarding home that provides onsite food preparation shall comply with the New Mexico environment department (NMED) food preparation regulations.

C. The boarding home shall have the equipment and staff necessary to receive and serve the food.

D. The boarding home shall maintain the equipment necessary for in-house preparation, or have an alternate source for food preparation, and service of food in emergencies. In case of emergency, (weather, power outage or other conditions) the boarding home shall maintain a minimum of three days' supply of drinking water and nonperishable food.

E. Individuals with food preparation responsibilities shall practice safe food handling techniques in accordance with the current edition of food code published by the U.S. public health service, food and drug administration. Food handling techniques include:

(1) preparing, holding and storing food at safe temperatures;

(2) reheating potentially hazardous leftover foods shall meet hazard analysis critical control point (HACCP) temperature guidelines for safety.

F. If a resident requires a special diet, a copy of the diet shall be obtained from the resident's physician. A copy of the diet order shall be kept in the resident's file and a copy of the diet shall be kept in the kitchen.

G. Dining: Meals served on the premises shall be served in dining rooms or similar areas in which the furniture, fixtures and equipment necessary for meal service are provided.

(1) Such dining areas shall be located near the kitchen so that food may be served quickly and easily.

(2) Facilities shall have tables and chairs in the dining area to accommodate the total number of residents.

(3) Residents shall be encouraged to have meals with other residents.

(4) Tray service shall be provided in case of temporary need to allow resident to eat in their room.

H. The licensee shall meet the following food supply and storage requirements:

(1) There should be adequate amount of food available on the premises to prepare for the next scheduled meal and snack.

(2) Freezers shall be large enough to accommodate required perishables and shall be maintained at a maximum temperature of zero degrees F (-17.7 degrees C).

(3) Refrigerators shall be large enough to accommodate required perishables and shall maintain a maximum temperature of 45 degrees F (7.2 degrees C).

[8.370.15.42 NMAC - N, 7/1/2024]

8.370.15.43 PHARMACEUTICAL SERVICES:

A. Any boarding home licensed pursuant to these regulations that supervises self-administration of medication for the residents or safeguards medication for residents must have an appropriate custodial drug permit from the state board of pharmacy.

(1) Only medications which can be self-administered by the resident, unless they will be administered by a licensed physician, dentist or registered nurse, can be kept by a boarding home.

(2) Medications prescribed for one resident must not be given to any other resident.

(3) Drugs and medications shall neither be supplied nor given to residents unless ordered or prescribed by a licensed physician, dentist or advanced practice registered nurse.

(4) Over the counter medications may be given to a resident by the boarding home if the boarding home has a written procedure for giving such medications reviewed and approved by a licensed physician or advanced practice registered nurse.

(5) Medications must be separated by individual in the storage area.

(6) The key for the medication storage area must be made available only to personnel duly authorized by the manager of the boarding home.

(7) Medication which requires refrigeration must be kept in a separate locked box within a refrigerator, a locked refrigerator or a refrigerator in a locked room.

(8) All medications must be kept in their original labeled containers.

(9) Medications labeled "for external use only" must not be accessible to residents and must be kept separate from other medications.

(10) All outdated medications shall be disposed of in a manner approved by the state board of pharmacy.

(11) No boarding home will prepare dosages of medications in advance to be given to residents for self-administration. The medications must be in their original container. The staff member assisting may hold the container and assist the resident in opening the container.

B. Board of pharmacy permits: A copy of the boarding home's custodial drug permit issued by the state board of pharmacy must be displayed, if any medications are kept by the boarding home on behalf of any residents.

[8.370.15.43 NMAC - N, 7/1/2024]

8.370.15.44 INFECTION CONTROL:

A. The boarding home shall develop and implement policies and procedures for infection control and prevention. Policies shall address the following:

(1) proper hand washing techniques;

(2) prevention and treatment of needle stick or sharp injuries;

(3) proper disposal of sharps, if applicable, in accordance with OSHA and the New Mexico environment department standards;

(4) universal precautions when handling blood, body substances, excretions, secretions shall be used;

(5) the management of common illness and specific procedures to manage infectious diseases;

(6) ensure garbage containers are in good and sanitary condition to prevent the harborage and feeding of pests.

B. Staff shall be trained in and shall adhere to infection control practices, the release of confidential information and reporting requirements related to infectious diseases.

C. Each boarding home shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry. [8.370.15.44. NMAC - N, 7/1/2024]

8.370.15.45 RESIDENT SAFETY: The boarding home shall ensure the safety or residents within the home and that staff are trained and able to respond in emergencies.

A. Staff responsible for providing direct care and supervision shall receive training in first aid and cardiopulmonary resuscitation (CPR) from persons qualified by agencies including but not limited to the American red cross.

(1) If the boarding home has no medical unit on the grounds, first aid supplies shall be maintained and be readily available in a central location in the boarding home.

(2) The supplies shall include at least the following:

(a) A current edition of a first aid manual

approved by the American red cross, the American medical association or a state or federal health agency.

- (b) Sterile first aid dressings.
- (c) Bandages or roller bandages.
- (d) Adhesive tape.
- (e) Scissors.
- (f) Tweezers.
- (g) Thermometers.
- (h) Antiseptic solution.

B. If resident experiences a medical emergency, boarding home staff should immediately contact emergency services. There shall be at least one person capable of and responsible for communicating with emergency personnel.

(1) The following information shall be readily available:

(a) The name, address and telephone number of each resident’s physician and dentist, and other medical and mental health providers, if any.

(b) The name, address and telephone number of each emergency agency, including but not limited to the fire department, crisis center or paramedical unit. There shall be at least one medical resource available to be called at all times.

(c) The name and telephone number of an ambulance service.

(d) An advance directive or request regarding resuscitative measures.

(2) For residents with an advance directive or request regarding resuscitative measures, during a medical emergency, the boarding home staff shall present the advance directive or request regarding resuscitative measures to emergency personnel.

(3) When a resident requires prosthetic devices, or vision or hearing aids, the staff

shall be familiar with the use of these devices and aids and shall assist the resident with their utilization as needed.

C. If a resident or visitor is engaging in behavior which is a threat to their mental or physical health or safety, or to the health and safety of others in the boarding home, the boarding home staff must immediately contact emergency services.

D. The boarding home must ensure that the following conditions are met if oxygen equipment is in use:

(1) The licensee makes a written report to the local fire jurisdiction that oxygen is in use at the boarding home.

(2) “No Smoking - oxygen in use” signs shall be posted in appropriate areas.

(3) Smoking is prohibited where oxygen is in use.

(4) All electrical equipment is checked for defects that may cause sparks.

(5) Oxygen tanks that are not portable are secured either in a stand or to the wall.

(6) Plastic tubing from the nasal canula (mask) to the oxygen source is long enough to allow the resident movement within their room but does not constitute a hazard to the resident or others.

(7) Residents use oxygen from a portable source when they are outside of their rooms or when walking in a day care setting.

(8) Equipment is operable.

(9) Equipment is removed from the boarding home when no longer in use by the resident.

E. The boarding home must have a valid custodial drug permit issued by the state board of pharmacy, that supervise the self-administration of medications or safeguards with regard to medications for the residents. All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as approved by the board of pharmacy and the key shall be in the care of the manager or designee.

(1) Internal medication shall be kept separate from external medications. Drugs to be taken by mouth shall be separated from all other delivery forms.

(2) A separate, locked refrigerator, a separate locked box within a refrigerator or a refrigerator in a locked room, shall be provided by the boarding home for medications. The refrigerator temperature shall be kept in compliance with the state board of pharmacy requirements for medications.

(3) All medications, including non-prescription medications, shall be stored in separate compartments for each resident and all medications shall be labeled with the resident's name and in compliance with label instructions and state and federal laws.

(4) No person other than the dispensing pharmacist shall alter a prescription label.

(5) Each resident's medication shall be stored in its originally received container.

(6) No medications shall be transferred between containers.

(7) A resident may be permitted to keep their own medication in a locked compartment in their room for self-administration, if the physician's order deems it appropriate.

(8) The boarding home shall not require the residents to purchase medications from any particular pharmacy.

[8.370.15.45 NMAC - N, 7/1/2024]

8.370.15.46 COMPLAINTS:

The boarding home must investigate complaints made by a resident, caregiver or guardian regarding treatment or care, or regarding the lack of respect for the resident's property and must document both the existence of the complaint and the resolution of the complaint. The boarding home's investigation of a complaint(s) must be initiated within three working days of receipt of the complaint.

[8.370.15.46 NMAC - N, 7/1/2024]

8.370.15.47 REPORTING OF INCIDENTS:

All facilities licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with all other applicable statutes and regulations.

A. All facilities shall report to the licensing authority any serious incidents or unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the residents or staff, including but not limited to:

(1) any serious incident or unusual occurrence, including any incident or occurrence which has threatened, or could have threatened the health, safety and welfare of the residents or staff;

(2) injuries of unknown origin or known, suspected or alleged incidents of resident abuse, neglect, exploitation or mistreatment by staff or other person(s), or death;

(3) fire, flood or other man-made or natural disasters including any damage to the boarding home caused by such disasters and any incident which poses or creates any life safety or health hazards;

(4) any outbreak of contagious diseases and diseases dangerous to the public health, suspected diseases reportable by law shall be reported to the local public health agency and the authority's bureau of community health and prevention within time frames specified by these agencies;

(5) any human errors by staff and employees which may or has resulted in the death, serious illness, hospitalization, or physical impairment of a resident or staff; and

(6) abuse, neglect, exploitation, and injuries of unknown origin and other reportable incidents in accordance with 8.370.9 NMAC, as may be amended from time to time.

B. Documentation:

The boarding home is responsible for documenting all incidents, within five days of the incident, and having on file the following:

(1) a narrative description of the incident;

(2) evidence contact was made to the licensing authority;

(3) results of the boarding home's investigation, and

(4) the boarding home action, if any.
[8.370.15.47 NMAC - N, 7/1/2024]

8.370.15.48 PHYSICAL ENVIRONMENT AND GENERAL BUILDING PLAN REQUIREMENTS:

A. Building plans: Boarding homes licensed for four or more residents must submit building plans. The building plans must be of professional quality, prepared and stamped by an architect registered pursuant to NMSA 61-15-9 NMSA 1978. One printed copy of the complete set of building plans must be submitted, drawn to an accurate scale of at least one-eighth of an inch to one foot, submitted in size format required by the licensing bureau. The building plans for renovations or building additions to an existing building must include sufficient information to clearly distinguish between new and existing construction, for the authority to make a compliance determination. The building plan(s), information required is noted below:

(1) site plan: showing the location of the building on a site/plot plan to determine surrounding conditions, driveways, all walks and steps, ramps, parking areas, handicapped and emergency vehicle spaces, accessible route to the main entrance, secure yard for residents, any permanent structures, including notes on construction materials used;

(2) code compliance plan and life safety plan: noting applicable code requirements and compliance data, locations of rated fire walls, smoke partitions (if any), exit paths & distances, fire extinguishers locations;

(3) floor plans: showing location use of each room, (e.g., waiting room, dining room, living/common rooms, office, resident

rooms, kitchen, common elements, door locations (swings), window locations, restrooms, locations of all restrooms, plumbing fixtures (sinks, toilets, tubs-showers; location a of all level changes within and outside the building (e.g. steps or ramps, etc.); and all other pertinent explanatory information addressing the requirements in applicable regulations;

(4) exterior building elevations: noting all building heights, locations of exterior doors, and any operable and fixed windows (sill heights);

(5) building and wall sections: showing at least one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, walls, and ceiling/roof construction;

(6) schedule sheets: room finish, noting all room finishes, (e.g., carpet, tile, gypsum board with paint, etc.); door schedule, noting door sizes/thickness, door types & ratings; window schedule, noting sizes, type and operation; skylight schedule, noting size, type;

(7) special systems plan: location of heat and smoke detectors, nurse call systems, and operational elements of alarm system;

(8) mechanical plans: noting location of heating units, furnaces, hot water heaters, and fuel type and source, all heating, ventilating and air conditioning/cooling systems including locations of fire dampers;

(9) plumbing plan: noting all plumbing fixture locations, fixture types;

(10) electrical plan: noting power and lighting layouts, exit lighting, emergency lighting fixtures, emergency power systems (if any), electrical panel information, and

(11) other plans: As necessary (i.e.; phasing plan) to describe compliance with the other requirements in applicable regulations.

B. Existing or

renovated construction: If the proposed boarding home includes any remodeling, renovations or additions or new construction of any type, the building plans and specifications covering all portions of the proposed work delineating all existing construction and all new or proposed construction shall be submitted to the authority for review and approval. Submit phasing plan if project construction will be phased. New boarding homes proposed for licensure in existing buildings must comply with all building requirements as if they were completely new construction.

C. New construction: Building plans must be submitted and will be reviewed by the authority for compliance with these licensing regulations, and applicable building and fire safety codes. If the authority approves the boarding home’s building plans and local building officials have issued a construction permit, construction may begin.

D. This provision is an ongoing requirement and applies to, and includes all construction at the facility, which occurs before and after issuance of the initial license. This provision does not generally apply to maintenance and repair. However, if the maintenance or repair impacts or alters any of the facility requirements under these regulations, the applicant or licensee must notify the authority and verify ongoing compliance with these regulations.

E. The authority shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and proposed construction, the applicant or licensee must submit for building plan approval by the authority before construction begins.

F. Completed construction: All new or renovated construction completed shall comply with the building plans approved by the authority in the plan review process and prior to construction,

these rules, and all other applicable rules and codes; and any of the authority’s approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities having jurisdiction, in addition to New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12. Applicant must receive initial life safety code approval and a temporary license from this authority prior to accepting or admitting any residents into the facility.

[8.370.15.48 NMAC - N, 7/1/2024]

8.370.15.49 PHYSICAL ENVIRONMENT AND GENERAL BUILDING REQUIREMENTS:

A. Facilities licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and residents shall comply with the Americans with Disabilities act (ADA), current edition.

B. All buildings of the premises providing resident use and services will be considered part of the boarding home and must meet all requirements of these regulations. Where a part of the boarding home services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

C. A boarding home applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may stipulate these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and in New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.

D. Use of manufactured homes, modular homes, mobile homes and recreational vehicles:

(I) Use of a manufactured home, modular home

or mobile home may be allowed if the structure meets all physical, environment and general building requirements in this rule and all other applicable state, county and municipal building codes.

(2) For facilities with four or more residents, mobile homes shall not be allowed.

(3) The use of recreational vehicles, travel or camper trailers which are designed to drive or be towed behind a vehicle is prohibited.

E. Facilities with a licensed capacity of 16 or more residents shall also meet the following requirements:

(1) There shall be space available in the boarding home to serve as an office for business, administration and admission activities, and a private office to conduct private interviews.

(2) There shall be a reception area and a restroom facility designated for use by visitors. [8.370.15.49 NMAC - N, 7/1/2024]

8.370.15.50 MAINTENANCE OF BUILDING AND GROUNDS:

The boarding home's buildings and systems shall be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following:

A. all electrical, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems;

B. all equipment and materials needed for resident use shall be maintained clean and in good repair;

C. all furniture and furnishings must be kept clean and in good repair; and

D. the grounds of the boarding home must be maintained in a safe and sanitary condition at all times.

[8.370.15.50 NMAC - N, 7/1/2024]

8.370.15.51 HAZARDOUS AREAS:

A. Hazardous areas

include the following:

(1) fuel fired equipment rooms;

(2) bulk laundries or laundry rooms with more than 100 square feet;

(3) storage rooms with more than 50 square feet but less than 100 square feet not storing combustibles;

(4) storage rooms with more than 100 square feet storing combustibles;

(5) chemical storage rooms with more than 50 square feet; and

(6) garages in which fuel-fired equipment is located or in which tools, paints, solvents or construction materials are stored, maintenance shops, or maintenance rooms.

B. Hazardous areas on the same floor or abutting a primary means of escape or a sleeping room shall be protected as required by New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

C. All boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour.

[8.370.15.51 NMAC - N, 7/1/2024]

8.370.15.52 EXITS:

A. Each floor of a boarding home shall have exits as required by as required by New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

B. Each exit must be marked by illuminated exit signs having letters at least six inches high whose principle strokes are at least three-quarters of an inch wide.

C. Illuminated exit signs, if required by the authority having jurisdiction, must be

maintained in operable condition at all times.

D. Exit ways must be kept free from obstructions at all times.

[8.370.15.52 NMAC - N, 7/1/2024]

8.370.15.53 HALLWAYS

AND CORRIDORS: For facilities contained within existing commercial or residential buildings, corridor widths must conform with the New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division, as applied by the authority having jurisdiction.

[8.370.15.53 NMAC - N, 7/1/2024]

8.370.15.54 HOUSEKEEPING:

A. The boarding home must be kept free from accumulations of refuse, discarded equipment, furniture, paper, dirt, rubbish, dust, and safety hazards and offensive odors.

B. Common rooms, kitchen, waiting areas, restrooms and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the residents.

C. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

D. Janitorial cleaning supplies must be kept in a secure closet or cabinet.

[8.370.15.54 NMAC - N, 7/1/2024]

8.370.15.55 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible hard-wired telephone for summoning help, in case of emergency, must be available in the boarding home.

B. A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital, poison control center, and the authority's division of health improvement's complaint hotline must be prominently posted by the telephone(s).

[8.370.15.55 NMAC - N, 7/1/2024]

8.370.15.56 MEDICATIONS

STORAGE: All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as required and approved by the New Mexico board of pharmacy, and the key shall be in the care of the manager or designee.
[8.370.15.56 NMAC - N, 7/1/2024]

8.370.15.57 OUTDOOR ACTIVITY SPACE:

A. An easily accessible outdoor activity area shall be available for use by residents.
B. A smoking area, if provided, must be located 25 feet away from any exit door and be provided with noncombustible metal ash urns.
[8.370.15.57 NMAC - N, 7/1/2024]

8.370.15.58 KITCHEN AND DINING:

A. The boarding home shall prepare food on site or have contracted food preparation. A boarding home that provides onsite food preparation shall comply with the current standards and regulations of the New Mexico environment department (NMED), and other local government authorities.
B. A boarding home with a kitchen area, whether used for on-site food preparation or not, must adhere to the following requirements:
(1) toilet facilities may not open directly into the kitchen;
(2) filters, exhaust hoods, ranges, deep fat fryers, ovens and all other similar items shall be operable and clean;
(3) kitchen exhaust hood shall be vented to exterior and provided with a fire-suppression system if required by NMED or local authority;
(4) the kitchen, prep areas, and dining area shall be kept clean, and sanitary, and
(5) all dishes and utensils used for eating and drinking and in the preparation of food and drink, shall be cleaned and sanitized after each usage.
[8.370.15.58 NMAC - N, 7/1/2024]

8.370.15.59 DINING, RECREATION AND INDOOR ACTIVITY OR MULTIPURPOSE ROOMS:

A boarding home shall have common rooms, including a living room, dining room, den or other recreation/activity rooms for the resident's use. The furnishings shall be well constructed, comfortable and in good repair.
A. At least one such room shall be available to residents for relaxation and visitation with friends or relatives, and which can be closed for private visits.
B. A dining area shall be provided for meals and shall have tables and chairs to accommodate the residents.
C. Each activity area or common room shall have a minimum net glazed area (window) not less than eight percent of the floor area of the room served. Boarding homes in existence as of the date of adoption of this section must have at least one activity area that complies with this requirement, but are not required to make structural changes to all activity areas.
D. Total Area: The combined floor space of common rooms shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space.
[8.370.15.59 NMAC - N, 7/1/2024]

8.370.15.60 RESIDENT ROOMS:

Resident bedrooms must meet, at a minimum, the following requirements:
A. A boarding home shall not exceed the resident (bed) capacity approved by the licensing authority. Any beds or bedrooms provided for boarding home staff are not included in the approved bed capacity.
B. No resident bedroom shall be used as a public or general passageway to another room, bath or toilet. Resident rooms must connect directly to a hallway or other common area of the boarding home.
C. No room commonly used for other purposes shall be used as a bedroom for any resident. Such

rooms shall include but not be limited to halls, stairways, unfinished attics or basements, garages, storage areas, and sheds, or similar detached buildings.

D. Resident rooms may be private (single), semi-private or dormitory style sleeping room. Required square footage excludes any closets or fixed cabinetry.

(1) Private (single) rooms must be of a minimum room size of 70 square feet or as otherwise required by the authority having jurisdiction.

(2) Semi-private rooms may not house more than two residents and shall provide 60 square feet per resident or as otherwise required by the authority having jurisdiction.

(3) Dormitory rooms shall be of a minimum room size of 150 square feet and must provide 50 square feet per occupant with a maximum occupancy of eight or as otherwise required by the authority having jurisdiction.

E. Resident rooms shall not be less than seven feet in any horizontal direction or as otherwise required by the authority having jurisdiction.

F. Each resident room shall have operable window(s) with screens. The area of the outdoor windows shall be at least one tenth of the floor area of the room. At least one window in each resident room must allow for emergency egress and comply with the New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

G. Each resident room shall be furnished with well-constructed, comfortable furniture in good repair, unless the resident chooses to bring their own furniture:

(1) An individual bedframe with a clean, fire-retardant mattress and pillow, with firm support.

(2) Cots and bunk beds are not allowed. The bed

must be at a minimum a standard size “twin” or larger bed.

(3) In addition to the bed, each resident shall be furnished with a chair, a night stand, and light(s) necessary for reading.

(4) Two residents sharing a semi-private bedroom shall be permitted to share one-night stand.

(5) Lockers, portable or permanent closets and drawer space in each bedroom to accommodate the resident’s clothing and personal belongings. A minimum of two drawers, or eight cubic feet of drawer space, whichever is greater, shall be provided for each resident.

(6) Consenting couples may be allowed to share one double or larger sized bed in a semi-private room.

H. Each resident shall be provided with the following items:

(1) Clean linen in good repair, including lightweight, warm blankets and bedspreads; top and bottom bed sheets; pillowcases; mattress pads; rubber or plastic sheeting, when necessary; and bath towels, hand towels and wash cloths.

(2) The quantity of linen provided shall permit changing the linen at least once each week or more often when necessary to ensure that clean linen is in use by residents at all times.

(3) The use of common towels and washcloths shall be prohibited.

(4) The boarding home shall ensure provision to each resident, the necessary items for personal care and maintenance of personal hygiene, including but not limited to the following items: toilet paper, feminine napkins, nonmedicated soap, toothbrush, toothpaste, and comb.

[8.370.15.60 NMAC - N, 7/1/2024]

8.370.15.61 TOILETS, LAVATORIES AND BATHING FACILITIES:

A. General requirements: The number of and location of toilets, lavatories and bathing facilities shall be provided

and installed in accordance with the New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

(1) All toilet rooms must be provided with a lavatory for hand washing.

(2) All toilets must be kept supplied with toilet paper.

(3) All lavatories for hand washing must be kept supplied with disposable towels for hand drying, a mechanical blower or individual hand towel hooks or bars for each resident’s hand towel.

(4) A minimum of one toilet, one lavatory and one bathing unit (tub, shower, or combo unit) shall be provided for every eight residents or fraction thereof.

(5) If a boarding home has live-in staff, a separate toilet, hand washing, and bathing facility for staff must be provided.

(6) Facilities with four or more residents shall provide one handicap accessible bathroom or as required by the New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

(7) Toilets and bathrooms shall be located near resident bedrooms.

(8) Individual privacy shall be provided in all toilet, bath and shower areas.

(9) Lavatories and bathing units shall have hot and cold water available. Hot water shall not exceed 110 degrees.

[8.370.15.61 NMAC - N, 7/1/2024]

8.370.15.62 LAUNDRY SERVICES:

A. General requirements: A boarding home shall

provide laundry services, either on the premises or through a laundromat or commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas.

(4) Boarding home laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage.

(5) All linens and bedding shall be changed as needed or when a new resident is to occupy the bed.

B. **Personal laundry:** Residents who are able, and who so desire, may be allowed to use at least one washing machine, dryer, iron and ironing board for their personal laundry, provided that the equipment is of a type and in a location, which can be safely used by the residents. If that washing machine is coin operated, residents on SSI/SSP shall be provided with coins or tokens and laundry supplies.

[8.370.15.62 NMAC - N, 7/1/2024]

8.370.15.63 PLUMBING SYSTEMS; WATER AND WASTE DISPOSAL:

All plumbing systems including water supply and sewer systems shall be in accordance with latest adopted editions of the New Mexico commercial building code, international building code (IBC), New Mexico plumbing code, New Mexico mechanical code current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction and local building codes.

A. **Water:** A boarding

home licensed pursuant to these regulations must be provided with an adequate supply of water that is of a safe and sanitary quality suitable for domestic use.

(1) If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.

(2) Hot and cold running water under pressure must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

(3) Water distribution systems are arranged to provide hot water at each hot water outlet at all times.

(4) Hot water for hand washing and bathing facilities must not exceed 120 degrees F.

B. Water heaters: Must be able to supply hot water to all hot water taps within the boarding home at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees F.

(1) Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.

(2) All water heaters must be equipped with a pressure relief valve (pop-off valve).

C. Sewage and waste disposal: All sewage and liquid wastes must be disposed of into a municipal or public sewage system where such facilities are available.

(1) Where a municipal sewage system is not available, the system used must be inspected and approved by the New

Mexico environment department or recognized local authority.

(2) Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid waste generated by the boarding home must be inspected and approved by the New Mexico environment department or recognized local authority.

(3) All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids. Receptacles must be kept closed and clean.

[8.370.15.63 NMAC - N, 7/1/2024]

8.370.15.64 ELECTRICAL POWER & LIGHTING STANDARDS:

A. All electrical equipment and installation shall comply with the New Mexico commercial building code, international building code (IBC), New Mexico electrical code, current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

B. Lighting shall be provided at all spaces occupied by people, machinery, or equipment within buildings, approaches to buildings, and parking lots.

C. Emergency lighting shall be provided which will activate automatically upon disruption of electrical services.

(1) Facilities with four or more residents shall have emergency lighting to light exit passageways and the exterior area near the exits that activates automatically upon disruption of electrical service.

(2) Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.

D. Electrical cords and extension cords shall:

(1) be U/L approved;

(2) be replaced as soon as they show wear;

(3) be plugged into an electrical receptacle within the room where used;

(4) not be used as a general wiring method; and

(5) not be used in series.

E. Electrical receptacles shall:

(1) be duplex-grounded type electrical receptacles (convenience outlets) and installed in all areas in sufficient quantities for tasks to be performed as needed;

(2) be a ground fault circuit interrupter if located within six feet of a water source.

F. The use of multiple receptacle adapters (gang plugs) in electrical receptacles is strictly prohibited.

[8.370.15.64 NMAC - N, 7/1/2024]

8.370.15.65 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, ventilation, air-conditioning, piping, boilers, and furnaces must be installed and maintained to meet all requirements of the New Mexico commercial building code, international building code (IBC), New Mexico plumbing, mechanical and electrical codes, current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

(1) The heating, ventilation and air-conditioning system must be able to maintain interior temperatures in all rooms used by residents, staff or visitors with interior temperatures between 65 degrees Fahrenheit and 78 degrees Fahrenheit year-round.

(2) The use of non-vented heaters, open flame heaters or portable heaters is prohibited.

(3) An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.

(4) All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.

(5) All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

B. A boarding home must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.

(1) All restrooms, bathroom, and laundry rooms shall be provided with exhaust fans vented to the exterior.

(2) Kitchen hoods must be vented to the exterior.

C. All building code requirements must be met regarding emergency egress for an outside window or door. A window unit air conditioner or fan shall not be installed in the required emergency egress window.

D. Fireplaces and wood burning stoves must be properly vented, have exterior combustion air, and be securely screened or have tempered glass doors. Fireplaces or wood burning stoves are not allowed in resident rooms.

[8.370.15.65 NMAC - N, 7/1/2024]

8.370.15.66 FIRE SAFETY SYSTEMS AND COMPLIANCE:

All Boarding homes shall comply with the current applicable requirements of the state fire marshal, or local fire authority having jurisdiction, for fire prevention, safety, and fire safety systems. All equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

A. Fire clearance and inspections: Each boarding home must request from the state fire marshal, or local fire authority having jurisdiction, an annual fire inspection. Records of inspection shall be kept on file in the boarding home.

(1) Copies of the fire inspection records must be

kept on file at the boarding home for the following:

- (a) fire extinguishers;
- (b) smoke and fire alarm systems;
- (c) automatic detection equipment, including carbon monoxide detectors;
- (d) kitchen hoods with fire suppression;
- (e) automatic fire suppression systems, and
- (f) other fire safety equipment.

(2) If the policy of the fire authority having jurisdiction does not provide for annual inspection of the boarding home, the boarding home must document the date the request was made and to whom. If the fire authorities conduct annual inspections, a copy of the latest inspection must be kept on file in the boarding home.

B. Staff fire and safety training: All staff of the boarding home must know the location of, and be instructed in proper use of fire extinguishers, fire safety systems, and other procedures to be observed in case of fire or other emergencies.

(1) Boarding home staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

(2) The boarding home should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

C. Evacuation plan: Each boarding home must have a fire evacuation plan conspicuously posted in each separate area of the building for residents in case of fire or other emergencies, showing routes of evacuation and designated areas to meet. Staff shall be trained to

direct and assist residents during an emergency evacuation.

D. Fire drills: All facilities shall conduct monthly fire drills which are to be documented. A record of the monthly fire drills shall be maintained on file in the boarding home and readily available. There shall be at least one documented fire drill per month. There shall be one documented fire drill for each daily work shift (i.e.: day, night or graveyard) per quarter, that employs the use of the fire alarm system or the detector system in the boarding home. Fire drill records shall show:

- (1) the date and time of the drill;
- (2) the number of staff participating in the drill;
- (3) any problem noted during the drill;
- (4) the evacuation time in total minutes, and
- (5) if applicable, the local fire department may be requested to supervise and participate in fire drills.

E. Fire alarms, smoke detectors and other equipment: The system shall comply with the current applicable requirements of the state fire marshal, or local fire authority having jurisdiction.

(1) Facilities shall have an automatic fire alarm system, if required by the authority having jurisdiction. The fire alarm system(s) shall be inspected and approved in writing by the fire authority with jurisdiction.

(2) Approved smoke detectors that when activated provides an alarm which is audible in all sleeping areas shall be installed on each floor. Areas of assembly, such as the dining, living or activity room(s) must also be provided with smoke detectors.

(3) Approved carbon monoxide detectors that when activated provides an alarm which is audible in all sleeping areas shall be installed on each floor.

F. Fire extinguishers: Fire extinguisher(s) shall be installed in the boarding home, as approved by the state fire marshal or the local fire

prevention authority with jurisdiction.

(1) Facilities must as a minimum have two 2A10BC fire extinguishers:

(a) One extinguisher located in the kitchen or food preparation area.

(b) One extinguisher centrally located in the boarding home.

(c) The maximum distance between fire extinguishers shall be 50 feet.

(d) All fire extinguishers shall be inspected yearly, recharged as needed and tagged noting the date of the inspection.

(2) Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

G. Automatic fire protection (fire sprinkler) system: Facilities shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with the New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes as applied by the state fire marshal, or local fire authority having jurisdiction.

(1) Exception: Boarding homes designated as "R-3" in the New Mexico commercial building codes, with 10 transient residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress (as referenced in section 310.5 Residential Group R-3).

(2) Exception: Boarding homes designated as "R-3" in the New Mexico commercial building code, with 16 nontransient residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-

family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress (as referenced in section 310.5 Residential Group R-3). [8.370.15.66 NMAC - N, 7/1/2024]

8.370.15.67 INCORPORATED AND RELATED CODES: The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes but not limited to the following:

A. Health facility licensure fees and procedures, health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings for licensed facilities, health care authority, 8.370.2 NMAC.

D. Caregiver's criminal history screening requirements, 8.370.5 NMAC.

E. Employee abuse registry, 8.370.8 NMAC.

F. Incident reporting, intake processing and training requirements, 8.370.9 NMAC.

G. New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12. [8.370.15.67 NMAC - N, 7/1/2024]

HISTORY of 8.370.15 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 16 REQUIREMENTS FOR LONG TERM CARE FACILITIES**

8.370.16.1 ISSUING AGENCY: New Mexico Health Care Authority.

[8.370.16.1 NMAC - N, 7/1/2024]

8.370.16.2 SCOPE:

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

B. All facilities licensed as nursing homes pursuant to Subsection A of Section 24-1-5 NMSA 1978, are subject to all provisions of these regulations. [8.370.16.2 NMAC - N, 7/1/2024]

8.370.16.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and 24-1-5 NMSA 1978 of the Public Health Act, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation. [8.370.16.3 NMAC - N, 7/1/2024]

8.370.16.4 DURATION: Permanent. [8.370.16.4 NMAC - N, 7/1/2024]

8.370.16.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section. [8.370.16.5 NMAC - N, 7/1/2024]

8.370.16.6 OBJECTIVE:

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

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

C. Encourage the

maintenance of long term care facilities that will provide quality services which maintain or improve the health and quality of life to the residents.
[8.370.16.6 NMAC - N, 7/1/2024]

8.370.16.7 DEFINITIONS:

For purposes of these regulations the following shall apply:

A. Definitions

beginning with “A”:

(1) “Abuse”

means any act or failure to act performed intentionally, knowingly, or recklessly that causes or is likely to cause harm to a resident, including but not limited to:

(a)

Physical contact that harms or is likely to harm a resident of a care facility.

(b)

Inappropriate use of physical restraint, isolation, or medication that harms or is likely to harm a resident.

(c)

Inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician’s order.

(d)

Medically inappropriate conduct that causes or is likely to cause physical harm to a resident.

(e)

Medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident.

(f)

An unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

(2)

“**Ambulatory**” means able to walk without assistance.

(3)

“**Applicant**” means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

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

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

D. Definitions
beginning with “D”:

(1)

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

(a)

manifested before the individual reaches age 22;

(b)

likely to continue indefinitely; and

(c)

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

(i)

self-care;

(ii)

understanding and use of language;

(iii)

learning;

(iv)

mobility;

(v)

self-direction;

(vi)

capacity for independent living; and

(vii)

economic self-sufficiency.

(2)

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

(4) “Direct

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

E. Definitions

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

(1)

Exploitation includes but is not limited to:

(a)

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

(b)

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

(c)

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

(d)

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

(e)

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

(2) Exception:

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

F. Definitions

beginning with “F”:

(1) “Facility”

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

(2) “Full-

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

G. Definitions

beginning with “G”: [RESERVED]

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”:

(1)

“**Intermediate care facility**” means a nursing home, which is licensed by the authority as an intermediate care facility to provide intermediate nursing care.

(2)

“**Intermediate nursing care**” means a basic care consisting of physical, emotional, social and other

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

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

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

L. Definitions
beginning with “L”:

(1) “**Licensed practical nurse**” means a person licensed as a licensed practical nurse under Section 61-3-1 through Section 61-3-30 NMSA 1978, Nursing Practice Act.

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

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

N. Definitions
beginning with “N”:
(1) “**Non-ambulatory**” means unable to walk without assistance.

(2) “**Non-mobile**” means unable to move from place to place.

(3) “**Nurse**” means registered nurse or licensed practical nurse.

(4) “**Nurse practitioner (certified)**” means a registered professional nurse who meets the requirements for licensure as established under Sections 61-

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

O. Definitions
beginning with “O”:

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

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

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

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

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

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

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

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

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

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

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

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

R. Definitions
beginning with “R”:
(1)

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

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

S. Definitions
beginning with “S”:
(1) “**Skilled nursing facility**” means a nursing home which is licensed by the authority to provide skilled nursing services.

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

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

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

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

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

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

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

(3)

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

(4)

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

T. Definitions

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

U. Definitions

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

V. Definitions

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

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

W. Definitions

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

[8.370.16.7 NMAC - N, 7/1/2024]

8.370.16.8 LICENSURE:

A. Application/

requirements for licensure:

(1) All initial

applications shall be made on forms provided by the licensing authority.

(a)

all information requested on the application must be provided;

(b)

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

(c)

the application must be notarized.

(2) In every

application, the applicant shall provide the following information:

(a)

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

(b)

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

(c)

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

(d)

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

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

(3) The

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

(4) The new

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

(5) No license

may be issued unless and until the applicant has supplied all information requested by the authority.

(6) Fees: All

applications for initial licensure must be accompanied by the required fee.

(a)

Current fee schedules may be requested from the licensing authority.

(b)

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

(c)

Fees are non-refundable.

B. Action by the

authority:

(1) After

receiving complete application, the authority shall investigate the applicant’s ability to comply with these regulations.

(2) Within

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

(3) The

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

certification as a Medicaid provider as a result of violations of applicable medicaid requirements. The licensing authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be Class A or Class B deficiencies as defined in health facility sanctions and civil monetary penalties, 8.370.4 NMAC, or has been noncompliant with plans of correction.
[8.370.16.8 NMAC - N, 7/1/2024]

8.370.16.9 TYPES OF LICENSE:

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

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

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

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

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

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

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

(3) Application must be submitted within 10 working days of the change.
[8.370.16.9 NMAC - N, 7/1/2024]

8.370.16.10 SCOPE OF LICENSE:

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

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

C. A licensee shall fully comply with all requirements and restrictions of the license.
[8.370.16.10 NMAC - N, 7/1/2024]

8.370.16.11 SEPARATE LICENSES: Separate licenses shall be required for facilities which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same ground or adjacent ground.
[8.370.16.11 NMAC - N, 7/1/2024]

8.370.16.12 LICENSE RENEWAL:

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

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

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the long term care facility shall cease operation until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a

license.
[8.370.16.12 NMAC - N, 7/1/2024]

8.370.16.13 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location or accessible to public view within the facility.
[8.370.16.13 NMAC - N, 7/1/2024]

8.370.16.14 REPORT OF CHANGES:

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

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

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

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

E. Any decrease or increase in licensed bed capacity of the facility shall require notification by letter to the authority and shall result in the issuance of a corrected license.
[8.370.16.14 NMAC - N, 7/1/2024]

8.370.16.15 NON-TRANSFERABLE RESTRICTION ON LICENSE:

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

A. Ownership of the facility changes.

B. The facility changes location.

C. Licensee of the facility changes.

D. The facility discontinues operation.

E. A facility wishing to continue operation as a licensed long term care facility under circumstances listed in 8.370.16.15 NMAC must submit an application for initial licensure in accordance with 8.370.16.8 NMAC of these regulations, at least 30 days prior to the anticipated change.

[8.370.16.15 NMAC - N, 7/1/2024]

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

A. On the day a facility discontinues operation.

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

C. On the day a facility changes location.

[8.370.16.16 NMAC - N, 7/1/2024]

8.370.16.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING:

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

[8.370.16.17 NMAC - N, 7/1/2024]

8.370.16.18 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions

or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

A. Failure to comply with any provision of these regulations.

B. Failure to allow survey by authorized representatives of the licensing authority.

C. Any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony.

D. Misrepresentation of falsification of any information or application forms or other documents provided to the licensing authority.

E. Discovery of repeat violations of these regulations during surveys.

F. Failure to provide the required care and services as outlined by these regulations for the patients receiving care at the long term care facility.

G. Abuse, neglect or exploitation of any patient/client/resident by facility operator, staff, or relatives or operator/staff.

[8.370.16.18 NMAC - N, 7/1/2024]

8.370.16.19 HEARING PROCEDURES:

A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the long term care facility as outlined in 8.370.16.17 NMAC and 8.370.16.18 NMAC will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the adjudicatory hearing procedures will be furnished to the long term care facility or agency at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.

[8.370.16.19 NMAC - N, 7/1/2024]

8.370.16.20 PROGRAM FLEXIBILITY:

A. All facilities shall maintain compliance with

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

B. Any approval of the authority granted under this section, or a certified copy thereof shall be posted immediately adjacent to the facility's license.

[8.370.16.20 NMAC - N, 7/1/2024]

8.370.16.21 WAIVERS AND VARIANCES:

A. Definitions: As used in this section:

(1) waiver: means the grant of an exemption from a requirement of these regulations;

(2) variance: means the granting of an alternate requirement in place of a requirement of these regulations.

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

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

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

C. Applications:

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

(a) the rule from which the waiver or variance is requested;

(b) the time period for which the waiver or variance is requested;

(c) if the request is for a variance, the specific alternative action which the facility proposes;

(d) the reasons for the request; and

(e) justification that the goal or purpose of the rule or regulations would be satisfied.

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

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

D. Grants and denials:

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

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

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

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

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

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

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

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

(3) the licensee notifies the authority in writing that it wishes to relinquish the

waiver or variance and be subject to the rule previously waived or varied;

(4) required by a change in law.
[8.370.16.21 NMAC - N, 7/1/2024]

8.370.16.22 RIGHTS OF RESIDENTS: Every resident shall have the right to:

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

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

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

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

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

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

improvements in resident care.

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

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

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

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

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

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

(1) No person may be admitted to a facility without that person or that person's guardian or designated representative signing

an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to be admitted for short-term care, the information required under these regulations.

(a)

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

(b)

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

(c)

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

(d)

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

(e)

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

(f)

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

(g)

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

(h)

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

(2) No

statement of admission information may be in conflict with any part of these regulations.

F. Treatment: Be

treated with courtesy, respect, and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified,

and registered providers under contract with the facility.

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

(1) Privacy

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

(2) Privacy

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

(3)

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

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

(1) the work

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

(2) the work

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

(3) the

resident volunteers for work and such activities is not contra-indicated by physician.

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

J. Personal

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

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

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

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

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

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

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

P. Religious activity: Participate in religious activities and

services, of resident’s choice and meet privately with clergy.

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

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

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

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

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

R. Incompetence: If

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

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

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

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

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

U. Encouragement and assistance: Each facility shall encourage and assist residents to exercise their rights as residents and

citizens and shall provide appropriate training for staff awareness so that staff are encouraged to respect the rights of residents established under this section.

[8.370.16.22 NMAC - N, 7/1/2024]

8.370.16.23 COMPLAINTS:

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

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

C. Reporting complaints: Allegations that residents’ rights have been violated by persons licensed, certified or registered by any professional licensing board or designated authority shall be promptly reported by the facility to the appropriate licensing or examining board or authority and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified, or registered by any professional licensing board or authority, may also report such allegations to the board. [8.370.16.23 NMAC - N, 7/1/2024]

8.370.16.24 COMMUNITY ORGANIZATION ACCESS:

A. In this section, “access” means the right to:

(1) enter any facility;

(2) seek a resident’s agreement to communicate privately and without restriction with the resident;

(3) communicate privately and without restriction with any resident who does not object to communication.

B. Any employee, agent, or designated representative of a community legal services

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

C. Conditions:

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

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

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

(b) Inform residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational materials and discussions in groups or with individual residents.

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

(d) Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.
[8.370.16.24 NMAC - N, 7/1/2024]

8.370.16.25 HOUSING RESIDENTS IN LOCKED UNITS:
Definitions as used in this section:

A. Locked unit: means a ward, wing or room which is designated as a protected environment and is secured in a manner that prevents a resident from leaving

the unit at will. A physical restraint applied to the body is not a locked unit. A facility locked for purposes of security is not a locked unit, provided that residents may exit at will. An alarmed unit does not constitute a locked unit.

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

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

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

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

C. Emergencies: In an emergency, a resident may be confined in a locked unit if necessary to protect the resident or others from injury or to protect property, providing the facility immediately attempts to notify the physician for instructions. A physician's orders for the confinement must be obtained within 12 hours. No resident may be confined for more than an additional hours under order of the physician.
[8.370.16.25 NMAC - N, 7/1/2024]

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

A. Full-time administrator: Every nursing home shall be supervised full-time by an

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

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

C. Change of administrator:

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

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

(3) Notice of change of administrator: When the licensee loses an administrator, the licensee shall notify the authority within two authority working days of such loss and provide written notification to the authority of the name and qualifications of the person in charge of the facility during the vacancy; and the name and qualifications of the replacement administrator, when known.
[8.370.16.26 NMAC - N, 7/1/2024]

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

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

B. Physical health certifications: Every new employee shall be certified in writing by a

physician as having been screened for tuberculosis infection and provide a statement of medical evidence that they are currently free from communicable disease prior to beginning work.

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

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

E. Abuse of residents:
(1) Orientation for all employees: Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. All employees shall be oriented to resident's rights and to their position and duties by the time they have worked 30 days.

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

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

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

F. Continuing education:

(1) Nursing in-service: The facility shall require

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

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

(3) All other staff in-service: The facility shall provide in-service designed to improve the skills and knowledge of all other employees.
 [8.370.16.27 NMAC - N, 7/1/2024]

8.370.16.28 RECORDS - GENERAL: The administrator or administrator's designee shall provide the authority with any information required to document compliance with these regulations and shall provide reasonable means for examining records and gathering the information.
 [8.370.16.28 NMAC - N, 7/1/2024]

8.370.16.29 PERSONNEL RECORDS: A separate record of each employee shall be maintained, be kept current, and contain sufficient information to support assignment to the employee's current position and duties.
 [8.370.16.29 NMAC - N, 7/1/2024]

8.370.16.30 MEDICAL RECORDS - STAFF:
A. Timeliness: Duties relating to medical records shall be completed in a timely manner.
B. Each facility shall

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

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

(2) receives regular consultation but not less than four hours quarterly as appropriate from a person who meets the requirements of Paragraph (1) of Subsection B of 8.370.16.30 NMAC. Such consultation shall not be substituted for the routine duties of staff maintaining records. The records consultant shall evaluate the records and records service, identify problem areas, and submit written recommendations for change to the administrator.

(3) Sufficient time will be allocated to the person who is designated responsible for medical record service to insure that accurate records are maintained.
 [8.370.16.30 NMAC - N, 7/1/2024]

8.370.16.31 MEDICAL RECORDS - GENERAL:

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

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

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

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

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

F. Retention and destruction:

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

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

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

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

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

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

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

G. Records documentation:

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

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

[8.370.16.31 NMAC - N, 7/1/2024]

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

A. Identification and summary sheet:

B. Physician's documentation:

(1) An admission medical evaluation by a physician, including:

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

(2) All physician's orders including:

- (a) admission to the facility;
- (b) medications and treatments;
- (c) diets;
- (d) rehabilitative services;
- (e) limitations on activities;
- (f) restraint orders;
- (g) discharge or transfer orders.

(3) Physician progress notes following each visit.

(4) Annual physical examination.

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

C. Nursing service documentation:

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

(2) Initial nursing care plan and any revisions.

(3) Nursing notes are required as follows:

- (a) for residents requiring skilled care, a narrative nursing note shall

be required as often as needed to document the resident's condition, but at least weekly; and

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

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

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

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

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

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

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

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

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

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

(i) other non-routine nursing care given;

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

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

D. Social services records:

(1) a social history of the resident; and

(2) notes

regarding pertinent social data and action taken.

E. Activities
records: Documentation of activities programming, a history and assessment, a summary of attendance, and quarterly progress notes.

F. Rehabilitative services:

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

(2) Plan of treatment.

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

G. Dietary assessment: Record of the dietary assessment.

H. Dental services: Summary of all dental services resident has received.

I. Diagnostic services: Records of all diagnostic tests performed during the resident's stay in the facility.

J. Plan of care: Plan of care which includes integrated program activities, therapies and treatments designed to help each resident achieve specific goals as developed by an interdisciplinary team.

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

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

(1) current medical finding and condition;

(2) final diagnosis;

(3) rehabilitation potential;

(4) a summary of the course of treatment;

(5) nursing and dietary information;

(6) ambulation status;

(7) administrative and social information; and

(8) needed continued care and instructions. [8.370.16.32 NMAC - N, 7/1/2024]

8.370.16.33 OTHER

RECORDS: The facility shall retain:

A. Dietary records: All menus and therapeutic diets for one year.

B. Staffing records: Records of staff work schedules and time worked for one year.

C. Safety tests: Records of tests of fire detection, alarm, and extinguishment equipment.

D. Resident census: At least a daily census of all residents, indicating number of residents requiring each level of care.

E. Professional consultations: Documentation of professional consultations by:
(1) A dietician.
(2) A registered nurse.

(3) Others, as may be used by the facility.

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

G. Transfer agreements: Transfer agreements.

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

I. Court orders and consent forms: Copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of the resident. [8.370.16.33 NMAC - N, 7/1/2024]

8.370.16.34 LICENSE LIMITATIONS:

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

B. Care levels: No person who requires care greater than

that which the facility is licensed to provide may be admitted to or retained in the facility, unless under waiver according to state guidelines.

C. Other conditions: The facility shall comply with all other conditions of the license. [8.370.16.34 NMAC - N, 7/1/2024]

8.370.16.35 OTHER LIMITATIONS ON ADMISSION:

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

B. Communicable diseases:

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

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

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

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

D. Developmental disabilities: No person who has a primary diagnosis of developmental disability may be admitted to a facility unless the facility is certified as in intermediate care facility for

the mentally retarded, except that a person who has a developmental disability and who requires skilled nursing care services may be admitted to a skilled nursing facility if approved for such level of care by the state developmental disability authority.

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

F. Admission seven days a week: With prior approval, facilities shall take reasonable steps to admit residents seven days a week. [8.370.16.35 NMAC - N, 7/1/2024]

8.370.16.36 PROGRAM STATEMENT FOR DEVELOPMENTALLY DISABLED RESIDENTS:

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

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

- (1) services to be provided;
- (2) admission policies for developmentally disabled persons;
- (3) program goals for developmentally disabled residents;
- (4) description of program elements, including relationships, contracted services and arrangements with other health and social services agencies and programs.
- (5) a designation of staff assigned to the care of developmentally disabled residents. Staff scheduling shall demonstrate consistency of staff involvement. Staff members shall

have demonstrated skill in the management of these residents; and

(6)

a description of care evaluation procedures for developmentally disabled residents. These procedures shall require that case evaluation results be incorporated into the individual resident’s care plan and that individual plans of care be reviewed and revised as indicated by resident need.

[8.370.16.36 NMAC - N, 7/1/2024]

8.370.16.37 PROCEDURES FOR ADMISSION OF RESIDENTS:

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

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

- (1) order of a physician;
- (2) receipt of information from a physician, before or on the day of admission, about the person’s current medical condition and diagnosis, and receipt of a physician’s initial plan of care and orders from a physician for immediate care of the resident; and
- (3) receipt of certification in writing from a physician that the person is free of active tuberculosis and clinically apparent communicable disease the person may be found to have.

C. “Medical examination and evaluation”:

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

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

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

[8.370.16.37 NMAC - N, 7/1/2024]

8.370.16.38 REMOVALS FROM THE FACILITY: The provisions of this section shall apply to all resident removals.

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

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

the preceding section, no resident may be involuntarily removed unless an alternate placement is arranged for the resident.

B. Permanent removals:

(1) Notice:
The facility shall provide a resident, the resident’s physician and guardian, relative, or other responsible person, at least 30 days notice of removal under Subsection A of 8.370.16.38 NMAC, except Subparagraph (a) of Paragraph (2) of Subsection A of 8.370.16.38 NMAC, unless the continued presence of the resident endangers the health, safety, or welfare of the resident or other residents.

(2) Removal procedures:

(a)
The resident, shall be given a notice containing the time and place of a planning conference; a statement informing the resident that any persons of the resident’s choice may attend the conference; and the -procedure for submitting a complaint to the authority.

(b)
Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to involuntary removal under Subsection A of 8.370.16.38 NMAC a planning conference shall be held at least three days before removal with the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident’s physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements, and develop a relocation plan which includes at least those activities listed below.

(c)
Removal activities shall include: counseling regarding the impending removal; arrangements for the resident to visit the potential alternative placement or meeting with that facility’s admissions staff, unless medically contra-indicated or waived by the resident; assistance to the resident in planning the moving

of belongings and funds to the new facility or quarters; and provisions for needed medications and treatments during relocation.

(d)
Discharge records: Upon removal of a resident, all relevant documents shall be prepared and provided to the facility admitting the resident.
[8.370.16.38 NMAC - Rp, 8.370.16.38 NMAC, 7/1/2024]

8.370.16.39 TRANSFER AGREEMENTS:

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

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

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

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

C. Exemption: A facility which does not have a resident transfer agreement in effect, but which is found by the authority to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer

between the two facilities and the information referred to in Subsection B of 8.370.16.39 NMAC above, shall be considered to have such an agreement in effect if and for so long as the authority finds that to do so is in the public interest and essential to ensuring nursing facility services in the community.

[8.370.16.39 NMAC - N, 7/1/2024]

8.370.16.40 BEDHOLD:

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

B. Limitation: The facility shall hold a resident’s bed until the resident returns, until the resident waives their right to have the bed held or until the maximum time allowable as defined by facility policies expires. The facility is responsible for notifying resident or family of their bedhold policy.
[8.370.16.40 NMAC - N, 7/1/2024]

8.370.16.41 TRANSFER WITHIN THE FACILITY:

Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if any, and any other person designated by the resident shall be given a reasonable notice and explanation of the reasons for transfer. Transfer of a resident between rooms or beds within a facility may be made only for medical reasons or for the resident’s welfare or the welfare of other residents, or voluntarily with the residents’ approval.
[8.370.16.41 NMAC - N, 7/1/2024]

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

A. Hygiene:
(1) Each resident shall be kept comfortably clean and well groomed.

(2) Beds shall be made daily, with a complete change of linen to be provided as

often as necessary, but at least once a week.

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

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

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

(a) facility has made unsuccessful good faith effort; and

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

(c) staffing is sufficient to meet residents' needs.

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

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

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

C. Rehabilitative measures: Residents shall be assisted

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

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

E. Nourishment:
(1) Diets: Residents shall be served diets as prescribed by a physician.

(2) Adaptive devices: Adaptive self-help devices shall be available to residents assessed as capable of using such devices and these residents shall be trained in their use to contribute to independence in eating.

(3) Assistance: Residents who require assistance with food or fluid intake shall be helped as necessary.

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

[8.370.16.42 NMAC - N, 7/1/2024]

8.370.16.43 NOTIFICATION OF CHANGES IN CONDITION OR STATUS OF RESIDENT:

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

B. Changes in status: A resident's guardian and other person designated in writing by the resident or guardian shall be notified promptly of any significant nonmedical change in the resident's status, including financial situation, any plan to

discharge the resident, or any plan to transfer the resident within the facility or to another facility.

[8.370.16.43 NMAC - N, 7/1/2024]

8.370.16.44 TREATMENT AND ORDERS:

A. Orders:
(1)

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

(2) Verbal orders: Verbal orders from physicians or dentists may be accepted by a nurse or pharmacist, or, in the case of verbal orders for rehabilitative therapy, by a therapist. Verbal orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a not specifically limited as to time or number of doses when ordered shall be automatically stopped in accordance with the stop order policy required by Subsection A of 8.370.16.57 NMAC of these regulations.

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

B. Stop orders: Medications shall be in accordance with the stop order policy required by Subsection E of 8.370.16.57 NMAC of these regulations.

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

C. Release of medications to residents: Medications shall be released to residents who are

on leave or have been discharged only on order of the physician.

D. Administration of medications:

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

(2) Responsibility for administration: Policies and procedures designed to provide safe and accurate administration of medications shall be developed by the facility and shall be followed by personnel assigned to prepare and administer medication except when a single unit dose package distribution system is used. Person administering medication will immediately record in the resident's clinical records.

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

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

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

(6) Day care: The handling and administration of medications for day care clients shall comply with the requirements of this subsection.
[8.370.16.44 NMAC - N, 7/1/2024]

8.370.16.45 PHYSICAL AND CHEMICAL RESTRAINTS:

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

(1) Physical restraint: means any article, device,

or garment which is used primarily to modify, resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room. Mechanical supports shall not be considered physical restraints.

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

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

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

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

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

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

restrictive type appropriate to the resident.

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

G. Records: Any use of restraints shall be noted, dated, and documented in the resident's clinical record on each tour of duty during which the restraints are in use.
[8.370.16.45 NMAC - N, 7/1/2024]

8.370.16.46 USE OF OXYGEN:

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

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

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

D. Flammable goods: Prior to administering oxygen, all matches and other smoking material shall be removed from the room.
[8.370.16.46 NMAC - N, 7/1/2024]

8.370.16.47 RESIDENT CARE PLANNING:

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

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

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

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

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

[8.370.16.47 NMAC - N, 7/1/2024]

8.370.16.48 MEDICAL DIRECTION IN SKILLED CARE FACILITIES:

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

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

C. Responsibilities to the facility: The medical director shall monitor the health status of the

facility's employees. Incidents and accidents that occur on the premises shall be reviewed by the medical director to identify hazards to health and safety.

[8.370.16.48 NMAC - N, 7/1/2024]

8.370.16.49 PHYSICIAN SERVICES IN ALL FACILITIES:

The facility shall assure that the following services are provided:

A. Attending physicians: Each resident shall be under the supervision of a physician of the resident's or guardian's choice who evaluates and monitors the resident's immediate and long-term needs and prescribes measures necessary for the health, safety and welfare of the resident. Each attending physician shall make arrangements for the medical care of the physician's residents in the physician's absence.

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

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

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

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

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

[8.370.16.49 NMAC - N, 7/1/2024]

8.370.16.50 NURSING

SERVICES:

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

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

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

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

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

(a) be a registered or licensed practical nurse; and
(b) be trained or experienced in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.

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

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

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

(c) coordinating nursing services with other resident services;

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

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

preparation, experience, and licensing of each.

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

(1) Staffing requirement:

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

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

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

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

(b)
The charge nurse, if a licensed practical nurse, shall manage and direct the nursing and other activities of other licensed practical nurse and less skilled assistants and shall arrange for the provision of direct care to specific residents, including administration of medications, by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.
[8.370.16.50 NMAC - N, 7/1/2024]

8.370.16.51 NURSING STAFF: In addition to the requirements of 8.370.16.50 NMAC, the following conditions shall be met:

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

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

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

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

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

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

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

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

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

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

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

2.3 Hours per patient day	2.5 Hours per patient day
Day Shift	One staff for eight patients
Evening Shift	One staff for seven patients
Night Shift	One staff for 10 patients
	One staff for 10 patients
	One staff for 13 patients
	One staff for 12 patients

[8.370.16.51 NMAC - N, 7/1/2024]

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

A. Staff:
(1) Full or

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

(2)

Qualifications: The dietary service supervisor shall be either:

(a) a

dietitian; or

(b)

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

(3) Staff:

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

B. Hygiene of staff:

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

C. Menus:

(1) Menus

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

(2) Menus

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

(3) Food

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

(4) The facility

shall make reasonable adjustments to accommodate each resident's preferences, habits, customs, appetite,

and physical condition.

(5) A file of

tested recipes shall be maintained.

(6) A variety

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

D. Therapeutic diets:

(1)

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

(2)

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

(3) Vitamin

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

E. Meal service:

All diets shall be prescribed by the attending physician.

(1) Schedule:

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

(2)

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

(3) Table

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

(4) Re-

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

(5)

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

(6) Snacks:

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

(7) Drinking

water: When a resident is confined to bed, a covered pitcher of drinking

water and a glass shall be provided on a beside stand. The water shall be changed frequently during the day, and pitchers and glasses shall be sanitized daily. Single-service disposable pitchers and glasses may be used. Common drinking utensils shall not be used.

(8) Food

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

[8.370.16.52 NMAC - N, 7/1/2024]

8.370.16.53 FOOD SUPPLIES AND PREPARATION:

A. Supplies: Food

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

B. Preparation: Food

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

C. Milk: Only

pasteurized fluid milk which is certified Grade A shall be used for beverages. Powdered milk may be used for cooking if it meets Grade A standards or is heated to a temperature of 165 degrees fahrenheit during cooking [8.370.16.53 NMAC - N, 7/1/2024]

8.370.16.54 SANITATION:

A. Equipment and

utensils:

(1) All

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

(2) The floors,

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

(3) All

furnishings, table linens, drapes, and

furniture shall be maintained in a clean and sanitary condition.

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

B. Storage and handling of food:

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

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

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

D. Dishwashing: Whether washed by hand or mechanical means, all dishes, plates, cups, glasses, pots, pans, and utensils shall be cleaned in accordance with accepted procedures which shall include separate steps for prewashing, washing, rinsing, and sanitizing by means of hot water or chemicals or a combination approved by the authority.
[8.370.16.54 NMAC - N, 7/1/2024]

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

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

B. Report to physician: Within two weeks of the initiation of

rehabilitative treatment, a report of the resident's progress shall be made to the physician.

C. Review of plan: Rehabilitative services shall be reevaluated at least quarterly by the physician and therapists, and the plan of care updated as necessary.
[8.370.16.55 NMAC - N, 7/1/2024]

8.370.16.56 SPECIALIZED SERVICES-QUALIFICATIONS:

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

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

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

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

D. Equipment: Equipment necessary for the provision of therapies required by the residents shall be available and used as needed.
[8.370.16.56 NMAC - N, 7/1/2024]

8.370.16.57 PHARMACEUTICAL SERVICES:

A. Definitions: As used in this section:

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

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

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

C. Supervision:

(1) Medication consultant: Each facility shall retain a registered pharmacist who shall visit the facility at least monthly to review the drug regimen of each resident and medication practices.

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

D. Emergency medication kit:

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

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

E. Requirements for all medication systems:

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

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

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

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

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

(3) Destruction of medications:

(a) Time limit: Unless otherwise ordered by a physician, a resident's

medication not returned to the pharmacy for credit shall be removed to a locked storage area when discontinued by a physician's order. Such discontinued medications will be destroyed within 30 days of the physician's discontinuance of use.

(b)

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

(c)

Remaining controlled substances:

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

(4) Control of medication:

(a)

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

(b)

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

(c)

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

(5) Proof-of-use record:

(a)

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

(b)

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

(6) Resident control and use of medications:

(a)

Residents may have medications in

their possession or stored at their bedside on the order of a physician.

(b)

Medications which, if ingested or brought into contact with the nasal or eye mucosa, would produce toxic or irritant effects shall be stored and used only in accordance with the health, safety, and welfare of all residents. [8.370.16.57 NMAC - N, 7/1/2024]

8.370.16.58 DIAGNOSTIC SERVICES:

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

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

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

D. Physician's order: No services under the subsection may be provided without an order of a physician.

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

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

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

(a)

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

- (i) resident assessment;
- (ii) emergency procedures;
- (iii) supervised practice in the safe operation of equipment;
- (iv) familiarity with state regulations governing the transportation of persons with disabilities;
- (v) and a method for determining and documenting successful completion of the course.

(b)

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

(2) Any

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

(a)

a state approved training program in passenger assistance; and

(b)

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

(c)

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

(i)

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

(ii)

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

(d)

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

(3) Each regulated facility and agency shall establish and enforce written policies (including training) and procedures for employees who provide assistance to clients with boarding or alighting from motor vehicles.

(4) Each regulated facility and agency shall establish and enforce written policies (including training and procedures for employees who operate motor vehicles to transport clients. [8.370.16.58 NMAC - N, 7/1/2024]

8.370.16.59 BLOOD AND BLOOD PRODUCTS: Any blood-handling and storage facilities shall be safe, adequate, and properly supervised. If the facility provides for maintaining and transferring blood and blood products, it shall meet the appropriate requirements for licensed hospitals. If the facility only provides transfusion services, it shall meet the requirements of applicable regulations. [8.370.16.59 NMAC - N, 7/1/2024]

8.370.16.60 DENTAL SERVICES:

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

B. Attending dentists: (1) Arrangements for dental care: The facility shall make arrangements for dental care for residents who do not have a private dentist. (2) Transportation: The facility shall assist the resident, if necessary, in arranging for transportation to and from the dentist's office.

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

D. Emergency dental care: The facility shall arrange for emergency dental care when a resident's attending dentist is unavailable.

[8.370.16.60 NMAC - N, 7/1/2024]

8.370.16.61 SOCIAL SERVICES:

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

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

(2) Qualifications: The person shall: (a) have a bachelor's degree in social work, sociology, or psychology; and have one year of social work experience in a health care setting; or (b) have a master's degree in social work from a graduate school of social work accredited by the council on social work education; or (c) if the designated person is not a qualified social worker, the facility shall receive at least monthly consultation from a social worker who meets the required standards.

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

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

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

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

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

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

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

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

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

(4) Training: Participation in in-service training for direct care staff on the emotional and social problems and needs of the aged and ill and on methods for fulfilling these needs. [8.370.16.61 NMAC - N, 7/1/2024]

8.370.16.62 ACTIVITIES:

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

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

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

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

with the National therapeutic recreation society; or

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

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

(d) has completed a state approved program.

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

(2) Supervision: The activity program shall be supervised by:

(a) a qualified activities coordinator; or

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

[8.370.16.62 NMAC - N, 7/1/2024]

8.370.16.63 EQUIPMENT AND SUPPLIES:

A. Beds:

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

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

(3) Side rails shall be installed for both sides of the bed when required by the resident's condition.

B. Bedding:

(1) Each resident shall be provided at least one clean, comfortable pillow. Additional pillows shall be provided if requested by the resident or required by the resident's condition.

(2) Each bed shall have a mattress pad unless contraindicated by special use equipment.

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

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

(b) Beds occupied by bedfast or incontinent residents shall be provided drawsheets or appropriate pads.

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

(5) Each bed shall have a clean, washable bedspread.

C. Other furnishings:

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

(2) At least one arm chair shall be available for each room for each bed. A folding chair shall not be used.

(3) A properly shaded reading light in working condition shall be installed over or at each bed.

(4) Adequate compartment or drawer space shall be provided in each room for each resident to store personal clothing and effects and to store, as space

permits, other personal possessions in a reasonably secure manner.

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

D. Towels, washcloths, and soap:

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

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

(3) Single service towels and soap shall be provided at each lavatory for use by staff.

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

[8.370.16.63 NMAC - N, 7/1/2024]

8.370.16.64 RESIDENT CARE EQUIPMENT:

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

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

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

D. Other equipment: Other equipment, such as wheelchairs with brakes, footstools, commodes, foot cradles, footboards, under-the-

mattress bedboards, walkers, trapeze frames, transfer boards, parallel bars, reciprocal pulleys, suction machines, patient lifts and stryker or froster frames, shall be used as needed for the care of the residents.
[8.370.16.64 NMAC - N, 7/1/2024]

8.370.16.65 MAINTENANCE: All facility furnishings and equipment shall be maintained in a usable, safe and sanitary condition.
[8.370.16.65 NMAC - N, 7/1/2024]

8.370.16.66 STERILIZATION OF SUPPLIES AND EQUIPMENT: Each facility shall provide sterilized supplies and equipment by one or more of the following methods:
A. use of an autoclave;
B. use of disposable, individually wrapped, sterile supplies such as dressings, syringes, needles, catheters, and gloves;
C. sterilization services under a written agreement with another facility; or
D. other sterilization procedures when approved in writing by the authority.
[8.370.16.66 NMAC - N, 7/1/2024]

8.370.16.67 SANITIZATION OF UTENSILS: Utensils such as individual bedpans, urinals and wash basins which are in use shall be sanitized in accordance with acceptable sanitization procedures on a routine schedule. These procedures shall be done in an appropriate area.
[8.370.16.67 NMAC - N, 7/1/2024]

8.370.16.68 DISINFECTION OF RESIDENT GROOMING UTENSILS: Hair care tools such as combs, brushes, metal instruments, and shaving equipment which are used for more than one resident shall be disinfected before each use.
[8.370.16.68 NMAC - N, 7/1/2024]

8.370.16.69 OXYGEN:
A. No oil or grease shall be used on oxygen equipment.
B. When placed at the resident's bedside, oxygen tanks shall be securely fastened to a tip-proof carrier or base.

C. Oxygen regulators shall not be stored with solution left in the attached humidifier bottle.

D. When in use at the resident's bedside, cannulas, hoses, and humidifier bottles shall be changed at least every 30 days.

E. Disposable inhalation equipment shall be pre-sterilized and kept in contamination-proof containers until used, and shall be replaced at least every 30 days when in use.

F. With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days.
[8.370.16.69 NMAC - N, 7/1/2024]

8.370.16.70 HOUSEKEEPING SERVICES:

A. Requirement: Facilities shall develop and implement written policies that ensure a safe and sanitary environment for personnel and residents at all times.

B. Cleaning:
(1) General: The facility shall be kept clean and free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards.

(2) Floors: Floors and carpeting shall be kept clean. Polishes on floors shall provide a non-slip finish. Carpeting or any other material covering the floors that is worn, damaged, contaminated or badly soiled shall be replaced, repaired or cleaned.

(3) Other surfaces: Ceiling and walls shall be kept clean and in good repair at all times. The interior and exterior of the buildings shall be painted or stained as needed to protect the surfaces. Loose, cracked, or peeling wallpaper or paint shall be replaced or repaired.

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

(5) Combustibles in storage areas: Attics, cellars and other storage areas shall

be kept safe and free from dangerous accumulations of combustible materials. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

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

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

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

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

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

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

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

(3) Screening of windows and doors: All windows and doors used for ventilation purposes shall be provided with wire screening of not less than number 16 mesh or its equivalent, and shall be properly installed and maintained

to prevent entry of insects. Hinged screen days when in use.

(4) With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days. [8.370.16.70 NMAC - N, 7/1/2024]

8.370.16.71 PHYSICAL ENVIRONMENT:

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

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

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

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

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

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

(4) **Fire safety evaluation system:** means a proposed or existing facility not meeting all requirements of the applicable Life Safety Code shall be considered in compliance if it achieves a passing

score on the Fire Safety Evaluation System (FSES), developed by the United State department of commerce, National bureau of standards, to establish safety equivalencies under the Life Safety Code.

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

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

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

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

(2) **New construction:** Any new construction or remodeling shall meet the applicable provisions of the 1981 edition of the Life Safety Code.

(3) **Existing facilities:** Any existing facility shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the facility complied with

and continues to comply with the applicable provisions of the 1967, 1973, or 1981 edition of the Life Safety Code, with or without waivers.

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

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

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

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

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

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

(4) **Any changes** in the approved final plans affecting the application of the requirements of this subchapter shall be shown on the approved final plans and shall be submitted to the authority for approval before construction is undertaken. The authority shall notify the facility in writing of any conflict with this subchapter found in its review of modified plans and specifications.

(5) **General:**

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

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

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

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

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

F. Constructions and inspections:

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

(a) The completed construction shall be in compliance with the approved

drawings and specifications, including all addenda or modifications approved for the project.

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

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

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

(b) Uniform Building Code (UBC), Uniform Plumbing Code (UPC), Uniform Mechanical Code (UMC), National Electrical Code (NEC), National fire protection association standards (NFPA), American National standard institute (ANSI), American society of heating, refrigerating, and air conditioning engineers (ASHRAE), department of health and human services (DHHS) guidelines for construction and equipment of hospital and medical facilities.

G. Resident safety and disaster plan:

(1) Disaster plan:

(a) Each facility shall have a written procedure which shall be followed in case of fire or other disasters, and which shall specify persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating helpless residents, frequency of fire drills and assignment of specific tasks and responsibilities to the personnel of each shift and each discipline.

(b) The plan developed by the facility

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

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

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

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

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

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

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

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

(c) Where the facility is located in a city, village, or township that does not have an official established fire department, the licensee shall obtain and maintain a continuing contract for fire protection service with the nearest municipality providing such service. A certification of the existence of such contract shall be kept on file in the facility.

(4) Fire equipment: All fire protection

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

(5) Fire

Report: All incidents of fire in a facility shall be reported to the authority within 72 hours.

(6) Smoking:

Smoking by residents shall be permitted only in designated areas supervised in accordance with the conditions, needs, and safety of residents.

(7) Prevention

of ignition: Heating devices and piping shall be designed or enclosed to prevent the ignition of clothing or furniture.

(8) Floor

coverings: Scatter rugs and highly polished, slippery floors are prohibited, except for non-slip entrance mats. All floor coverings and edging shall be securely fastened to the floor or so constructed that they are free of hazards such as curled and broken edges.

(9) Roads

and sidewalks: The ambulatory and vehicular access to the facility shall be kept passable and open at all times of the year. Sidewalks, drives, fire escapes, and entrances shall be kept free of ice, snow, and other obstructions.

H. Safety and systems:

(1)

Maintenance: The building shall be maintained in good repair and kept free of hazards such as those created by any damaged or defective building equipment.

(2) Corridors:

(a)

Handrails: Corridors used by residents shall be equipped with handrails firmly secured on each side of the corridor.

(b)

Size: All corridors in resident use areas shall be at least eight feet wide.

(3) Doors:

(a)

Size: Doors to residents' rooms shall not be less than three feet eight inches wide and six feet eight inches in height, and shall be at least one and three-quarter inches solid core wood or equivalent construction.

(b)

Latches: Each designated fire exit door shall have such latches or hardware that the door can be opened from the inside by pushing against a single bar or plate or by turning a single knob or handle.

(c)

Locks on exit doors from the building and from nursing areas and wards may not be hooked or locked to prevent exit from the inside, shall be installed on the door of the resident's room, unless the lock is operable from inside the room with a simple one-hand, one-motion operation without the use of a key unless the resident is confined; a master-key is available to emergency personnel such as the fire department.

(4) Toilet

room doors: Resident toilet room doors shall be not less than three feet zero inches by six feet eight inches, and shall not swing into the toilet room unless they are provided with two way hardware.

(5)

Thresholds: Raised thresholds which cannot be traversed easily by a bed on wheels, a wheelchair, a drug cart, or other equipment on wheels shall not be used.

I. Emergency power:

Emergency electrical service with an independent power source which covers lighting as nursing stations, telephone switchboards, exit and corridor lights, boiler room, and fire alarm systems, shall be provided. The service may be battery operated if effective for at least four hours.

J. Fire protection:

(1) Carpeting:

Carpeting shall not be installed in rooms used primarily for the following purposes: food preparation and storage, dish and utensil washing, soiled utility workroom, janitor closet, laundry processing, hydro-therapy, toilet and bathing, resident isolation,

and resident examination.

(2) Carpet

fireproofing: Carpeting, including underlying padding, if any, shall have a flamespread rating of 75 or less when tested in accordance with standard 255 of the National Fire Protection Association (NFPA), or a critical radiant flux of more than 0.45 watts per square centimeter when tested in accordance with NFPA standard 253, 1978 edition. Certified proof by the manufacturer of the aforementioned test for the specific product shall be available in the facility. Certification by the installer that the material installed is the product referred to in the test shall be obtained by the facility. Carpeting shall not be applied to walls in any case except where the flamespread rating can be shown to 25 or less.

(3) Acoustical

tile: Acoustical tile shall be non-combustible.

(4)

Wastebaskets: Wastebaskets shall be of non-combustible materials.

(5) Vertical

exit stairways: At least one interior exit stairway shall be provided to that an enclosed protected path of at least one-hour fire resistive construction is available for occupants to proceed with safety to the exterior of the facility.

(6)

Housing blind, non-ambulatory, or handicapped residents: In an existing facility of two or more stories which is not of at least two-hour fire resistive construction, blind, non-ambulatory, or physically handicapped residents shall not be housed above the street level floor unless the facility is either of one-hour protected non-combustible construction (as defined in national fire protection standard 200), fully sprinklered one-hour protected ordinary construction, or fully sprinklered one-hour protected wood frame construction.

(7) Storage

of oxygen: Oxygen tanks, when not in use, shall be stored in a ventilated closet designated for that purpose only or stored outside the building of the home in an enclosed secured area.

Oxygen storage areas must comply with NFPA 99.

K. Sprinklers for fire protection: Facilities shall have automatic sprinkler protection throughout buildings. In the event of an addition to, or remodeling of a facility, the entire facility shall have automatic sprinkler protection throughout unless there is a two hour fire rated partition wall between the old and new construction, in which case only the new or remodeled area shall be sprinklered.

L. Mechanical systems:

(1) Water supply:

(a) A portable water supply shall be available at all times. If a public water supply is available, it shall be used. If a public water supply is not available, the well or wells shall comply with applicable regulations.

(b) An adequate supply of hot water shall be available at all times. The temperature of hot water at plumbing fixtures used by residents may not exceed 110 degrees fahrenheit (43 degrees celsius) and shall be automatically regulated by control valves or by another approved device.

(2) Sewage disposal: All sewage shall be discharged into a municipal sewage system if available. Otherwise, the sewage shall be collected, treated, and disposed of by means of an independent sewage system approved under applicable state law and local authority.

(3) Plumbing: The plumbing for potable water and drainage for the disposal of excreta, infectious discharge, and wastes shall comply with applicable state plumbing standards.

(4) Heating and air conditioning:

(a) The heating and air conditioning systems shall be capable of maintaining adequate temperatures and providing freedom from drafts.

(b) A minimum temperature of at least

70 degrees fahrenheit (21 degrees celsius) in all bedrooms and in all other areas used by residents, unless resident preference is documented for deviations.

(5)

Incineration:

(a) Facilities for the incineration of soiled dressings and similar wastes, as well as garbage and refuse, shall be provided when other methods of disposal are not available.

(b)

An incinerator shall not be flue fed nor shall any upper floor charging chute be connected with the combustion chamber.

(6) Telephone:

There shall be at least one operational non-pay telephone on the premises and as many additional telephones as are deemed necessary in an emergency.

(7) General

lighting:

(a) Adequate lighting shall be provided in all areas of the facility. Lighting shall be of a type that does not produce discomfort due to high brightness, glare or reflecting surface. No candles, oil lanterns, or other open flame method of illumination may be used.

(b)

Facilities shall have lighting during the evening and night hours that is commensurate with staff needs.

(8)

Ventilation:

(a) The facility shall be well-ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air on a basis commensurate with the type of occupancy.

(b)

All inside bathrooms and toilet rooms shall have mechanical ventilation to the outside.

(c)

Mechanical ventilation shall be provided to the resident area corridors, solaria, dining, living and recreation areas, and nursing stations. These areas shall be under positive pressure;

(d)

All rooms in which food is stored, prepared or served, or in which utensils are washed shall be well-ventilated. Refrigerated storage rooms need not be ventilated.

(e)

Kitchens, bathrooms, utility rooms, janitor closets, and soiled linen rooms shall be ventilated.

(9) Elevators:

At least one elevator shall be provided in the facility if resident beds or activities are located on more than one floor. The platform size of the elevator shall be large enough to hold a resident bed and an attendant.

(10) Electrical:

(a) In all facilities, non-conductive wall plates shall be provided where the system is not properly grounded.

(b)

In new construction begun after the effective date of these regulations, at least two duplex-type outlets shall be provided for each bed.

[8.370.16.71 NMAC - N, 7/1/2024]

8.370.16.72 RESIDENTS' ROOMS:

A. Assignment of residents: Residents co-habiting a double occupancy room or a ward shall be of the same sex unless residents are married, related, or are consenting adults.

B. Location: No bedroom housing or resident shall:

(1) Open directly to a kitchen or laundry.
(2) Be located so that a person must pass through a resident's bedroom, toilet room, or bathroom to gain access to any other part of the facility.

(3) Be located so that a person must pass through a kitchen or laundry to gain access to the resident's room or other part of the facility.

C. Access to corridor and outside: Each bedroom shall have direct access to a corridor and outside exposure with the floor at or above grade level.

D. Size:

(1) The minimum floor area per bed shall be 100 square feet in single rooms and 80 square feet per bed in multiple bedrooms, exclusive of vestibule, closets, built-in vanity and wardrobe, toilet rooms and built-in lockers. The authority may waive this requirement in individual cases where the facility has demonstrated in writing that such variations are in accordance with the particular needs of the residents and will not adversely affect their health and safety.

(2) Resident rooms shall be large enough to permit the sides and feet of all beds to be not less than two feet from the nearest walls.

(3) Ceilings shall be at least eight feet in height.

E. Windows: The bottom sill of windows in bedrooms shall be no more than three feet from the floor.

F. Bed Capacity: No rooms shall house more than four beds.

G. Bed arrangements: The beds shall be arranged so that the beds shall be at least three feet apart and clear aisle space of at least three feet from the entrance to the room to each bed shall be provided.

H. Closet space: A closet or locker shall be provided for each resident in each bedroom. Closets or lockers shall afford a space of not less than 15 inches wide by 18 inches deep by five feet in height for each resident bed.

I. Cubicle curtains: Each bed in a multiple-bed room shall have a flame retardant or flameproof cubicle curtain or an equivalent divider that will assure resident privacy.

J. Room identification: Each bedroom shall be identified with a unique number placed on or near the door.

K. Design and

proximity to baths: Residents' bedrooms shall be designed and equipped for adequate nursing care and the comfort and privacy of residents. Each bedroom shall have or shall be conveniently located near adequate toilet and bathing facilities. [8.370.16.72 NMAC - N, 7/1/2024]

8.370.16.73 TOILET AND BATHING FACILITIES:

A. General: All lavatories required by this subsection shall have hot and cold running water. Toilets shall be water flushed and equipped with open front seats without lids.

(1) Toilet facilities shall be provided in conjunction with each resident's rooms, with not more than two residents' rooms, and not more than four beds per toilet room.

(2) One toilet and one lavatory for not more than four residents shall be provided and separate facilities shall be provided for each sex.

(3) One tub or shower for every 20 residents shall be provided. The bath or shower shall be located on the same floor as the residents served. Facilities for showering with a wheeled shower chair shall be provided.

(4) Every tub, shower, or toilet shall be separated in such a manner that it can be used independently and afford privacy.

(5) On floors where wheelchair residents are cared for, there shall be a toilet room large enough to accommodate a wheelchair and attendant.

B. Employee and family facilities: Toilets, baths, and lavatories for use by employees or family members shall be separate from those used by residents.

C. Grab bars: Firmly secured grab bars shall be installed in every toilet and bathing compartment used by residents.

D. Wheelchair facilities:

(1) On floors housing residents who use wheelchairs, there shall be at least

one toilet room large enough to accommodate wheelchairs.

(2) In all facilities licensed for skilled care, a bathtub or shower room large enough to accommodate a wheelchair and attendant shall be provided.

E. The requirement of separate facilities for male and female residents is not applicable to facilities used by married couples sharing a room, or those referenced in Subsection A of 8.370.16.72 NMAC if the facilities are not used by other residents.

[8.370.16.73 NMAC - N, 7/1/2024]

8.370.16.74 NURSING FACILITIES:

A. All facilities: Each facility shall have:

(1) A medicine storage area.

(2) Space for storage of linen, equipment, and supplies.

(3) Utility rooms, which shall be located, designed and equipped to provide areas for the separate handling of clean and soiled linen, equipment, and supplies.

B. Each resident care area on each floor shall have:

(1) A centrally located nurse station located to provide visual control of all resident room corridors; equipped with storage for records and charts, a desk or work counter, operational telephone, and nurse call system as required in 8.370.16.75 NMAC.

(2) A medicine preparation room immediately adjacent to the nurse station with a work counter, refrigerator, sink, and a well-lighted medicine cabinet with lock and space for medicine cart. The room shall be mechanically ventilated.

(3) A soiled utility room with a flush-rim siphon jet service sink cabinet counter, and sink with hot and cold running water. The utility shall be mechanically ventilated and under negative pressure.

(4) A cleaning

area or room with a sink with hot and cold running water, counter, and cabinets.

(5) Staff toilet and lavatory facilities separate from those of residents, near nursing station.

(6) If a kitchen is not open at all times, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving between meal nourishment. Each station may service more than one nursing area.

[8.370.16.74 NMAC – N, 7/1/2024]

8.370.16.75 NURSE CALL SYSTEM: A nurse call station shall be installed at each resident’s bed, in each resident’s toilet room, and at each bathtub and shower. The nurse call at the toilet, bath, and shower rooms shall be an emergency call equipped with pull cords of sufficient length to extend to within 18 inches off the floor. All calls shall register at the nurse station and shall actuate a visible signal in the corridor where visibility to corridors is obstructed at the room door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. An emergency call station shall also be provided in any enclosed room used by residents.

8.370.16.76 DINING, RECREATION AND ACTIVITY AREAS:

A. Multi-purpose space: The facility shall provide one or more furnished multi-purpose areas of adequate size for dining, diversional, and social activities of residents.

B. Lounge: At least one dayroom or lounge, shall be provided for use of the residents.

C. Size of dining rooms: Dining rooms shall be of sufficient size to seat all residents at no more than two shifts. Dining tables and chairs shall be provided. TV trays or portable card tables shall not be used as dining tables.

D. Space: If a multi-purpose room is used for dining and

diversional and social activities of residents, there shall be sufficient space to accommodate all activities and minimize their interference with each other.

E. Total area: The combined floor space of dining, recreation, and activity areas shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space.

[8.370.16.76 NMAC - N, 7/1/2024]

8.370.16.77 FOOD SERVICE - GENERAL:

A. The facility shall have a kitchen or dietary area which shall be adequate to meet food service needs and shall be arranged and equipped for the refrigeration, storage and preparation, and serving of food, as well as for dish and utensil cleaning and refuse storage and removal.

B. Dietary areas shall comply with the local health or food handling codes. Food preparation space shall be arranged for the separation of functions and shall be located to permit efficient services to residents and shall not be used for non-dietary functions.

(1) Kitchen and dietary: Kitchen and dietary facilities shall be provided to meet food service needs and arranged and equipped for proper refrigeration, heating, storage, preparation, and serving of food. Adequate space shall be provided for proper refuse handling and washing of waste receptacles, and for storage of cleaning components.

(2) Traffic: Only traffic incidental to the receiving, preparation and serving of food and drink shall be permitted.

(3) Toilets: No toilet facilities may open directly into the kitchen.

(4) Food storage: Food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside.

(5) Handwashing: A separate handwashing sink with soap

dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen.

(6) Dishwashing: A separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided.

(7) Sink: At least a three-compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drainboards, at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drainboard shall be available for prewashing. The additional sink may also be used for liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least fifty percent of the largest utensil used. In lieu of the additional sink for prewashing, a well type garbage disposal with overhead spray wash may be provided.

(8) Mechanical dishwashers: Mechanical dishwashers and utensil washers, where provided, shall meet the requirements of the current approved list from the national sanitation foundation or equivalent with approval of the authority.

(9) Temperature: Temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of in immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus two degrees fahrenheit or one degree celsius.

(10) Fire extinguishers: Approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment.

(11) Walls: The walls shall be of plaster or equivalent material with smooth, light - colored, non-absorbent, and washable surface.

(12) Ceiling: The ceiling shall be of plaster or

equivalent material with smooth, light-colored, non-absorbent, washable, and seamless surface.

(13) Floors:

The floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be non-absorbent and easily cleaned.

(14) Screens:

All room openings to the out - of-doors shall be effectively screened. Screen doors shall be self-closing.

(15) Lighting:

All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted.

(16) Sewage

contamination: Rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or wastelines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

[8.370.16.77 NMAC - N, 7/1/2024]

8.370.16.78 STORAGE:

A. General storage:

A general storage area shall be provided for supplies, equipment, and wheelchairs.

B. Linen: Facilities shall provide a linen storage space or cabinet for each nursing unit.

[8.370.16.78 NMAC - N, 7/1/2024]

8.370.16.79 FAMILY AND EMPLOYEE LIVING QUARTERS:

Any family and employee living quarters shall be separate from the residents' area.

[8.370.16.79 NMAC - N, 7/1/2024]

8.370.16.80 EMPLOYEE

FACILITIES: The following shall be provided for employees, and shall not be located in food preparation, food storage, utensil washing area or in resident's rooms:

A. An area, room, or rooms for employee wraps, with lockers for purses and other personal belongings when on duty.

B. Handwashing

lavatories with soap dispenser, single service towel dispenser, or other approved hand drying equipment.

C. Toilet facilities separate from those used by residents. [8.370.16.80 NMAC - N, 7/1/2024]

8.370.16.81 JANITOR

FACILITIES: Facilities shall have a mechanically ventilated janitor closet of adequate size on each floor and in the food service area, equipped with hot and cold running water and a service sink or receptor.

[8.370.16.81 NMAC - N, 7/1/2024]

8.370.16.82 LAUNDRY

FACILITIES:

A. Facilities: A laundry room shall be provided unless commercial laundry facilities are used. Laundry facilities shall be located in areas separate from resident units and shall be provided with necessary washing and drying equipment.

B. Work room: When commercial laundries are used, a room for sorting, processing, and storing soiled linen shall be provided and shall have mechanical exhaust ventilation.

C. In addition to the requirements of Subsection A of 8.370.16.82 NMAC and Subsection B of 8.370.16.82 NMAC, facilities shall have:

(1) A soiled linen sorting room separate from the laundry, which shall be mechanically ventilated and under negative pressure.

(2) A lavatory with both hot and cold running water, soap, and individual towels in the laundry area.

[8.370.16.82 NMAC - N, 7/1/2024]

8.370.16.83 ISOLATION: For every 100 beds or fraction thereof, facilities shall have available one separate room, equipped with separate toilet, handwashing, and bathing facilities, for the temporary isolation of a resident. The isolation room bed shall be considered part of the licensed bed capacity of the facility.

[8.370.16.83 NMAC - N, 7/1/2024]

8.370.16.84 ADMINISTRATION AND ACTIVITY AREAS:

A. Administration and resident activity areas:

Administration and resident activities areas shall be provided. The sizes of the various areas will depend upon the requirements of the facility. Some functions allotted separate spaces or rooms under Subsection B of 8.370.16.84 NMAC may be combined, provided that the resulting plan will not compromise acceptable standards of safety, medical and nursing practices, and the social needs of residents.

B. Administration department areas shall include:

- (1)** business office;
- (2)** lobby and information center;
- (3)** office of administrator;
- (4)** admitting and medical records area;
- (5)** public and staff toilet room;
- (6)** office of director of nurses; and
- (7)** in-service training area.

C. Resident activities areas shall include:

- (1)** occupational therapy;
- (2)** physical therapy;
- (3)** activity area; and
- (4)** beauty and barber shop.

[8.370.16.84 NMAC - N, 7/1/2024]

8.370.16.85 MIXED

OCCUPANCY: Rooms or areas within the facility may be used for occupancy by individuals other than residents and facility staff if the following conditions are met:

A. the use of these rooms does not interfere with the services provided to the residents; and

B. the administrator takes reasonable steps to ensure that the health and safety and rights of the residents are protected.

[8.370.16.85 NMAC - N, 7/1/2024]

8.370.16.86 LOCATION AND SITE:

- A. Zoning:** The site shall adhere to local zoning regulations.
- B. Outdoor areas:** Areas shall be provided for outdoor recreation area, exclusive of driveways and parking area.
- C. Parking:** Space for off-street parking for staff and visitors shall be provided. [8.370.16.86 NMAC - N, 7/1/2024]

8.370.16.87 SUBMISSION OF PLANS AND SPECIFICATIONS:

- For all new construction:
- A. One copy of schematic and preliminary plans** shall be submitted to the authority for review and approval of the functional layout.
 - B. One copy of working plans and specifications** shall be submitted to and approved by the authority before construction is begun. The authority shall notify the facility in writing of any divergence in the plans and specifications, as submitted, from the prevailing rules.
 - C. The plans specified in Subsection B of 8.370.16.87 NMAC** shall show the general arrangement of the buildings, including a room schedule and fixed equipment for each room and a listing of room numbers, together with other pertinent information. Plans submitted shall be drawn to scale.
 - D. Any changes in the approved working plans** affecting the application of the requirements herein established shall be shown on the approved working plans and shall be submitted to the authority for approval before construction is undertaken. The authority shall notify the facility in writing of any divergence in the plans and specifications as submitted, from the prevailing rules.
 - E. If on-site construction above the foundation** is not started within six months of the date of approval of the working plans and specifications under Subsection B of 8.370.16.87 NMAC, the approval shall be void and the plans and

specifications shall be resubmitted for reconsideration of approval.

- F. If there are no divergences from the prevailing rules,** the authority shall provide the facility with written approval of the plans as submitted. [8.370.16.87 NMAC - N, 7/1/2024]

8.370.16.88 RELATED REGULATIONS AND CODES:

- Long term care facilities subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:
- A. Health facility licensure fees and procedures,** New Mexico health care authority, 8.370.3 NMAC.
 - B. Health facility sanctions and civil monetary penalties,** New Mexico health care authority, 8.370.4 NMAC.
 - C. Adjudicatory hearings,** New Mexico health care authority, 8.370.2 NMAC. [8.370.16.88 NMAC - N, 7/1/2024]

History of 8.370.16 NMAC: RESERVED

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 17 REQUIREMENTS FOR FREESTANDING BIRTH CENTERS**

8.370.17.1 ISSUING AGENCY: New Mexico Health Care Authority, Division of Health Improvement. [8.370.17.1 NMAC - N, 7/1/2024]

8.370.17.2 SCOPE:

- A. These regulations** apply to public, for profit and non-profit freestanding birth centers providing the services specified in these regulations. Any freestanding

birth center providing services specified in these regulations must be licensed under these regulations prior to obtaining federal certification.

- B. These regulations do not apply to:**
 - (1) hospitals** that provide labor and delivery services under their hospital license;
 - (2) births** performed in a private residence by licensed midwives or certified nurse midwives acting within the scope of their license; and
 - (3) offices and treatment rooms of a licensed private practitioners.** [8.370.17.2 NMAC - N, 7/1/2024]

8.370.17.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, Subsection R of Section 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation. [8.370.17.3 NMAC - N, 7/1/2024]

8.370.17.4 DURATION: Permanent. [8.370.17.4 NMAC - N, 7/1/2024]

8.370.17.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section. [8.370.17.5 NMAC - N, 7/1/2024]

8.370.17.6 OBJECTIVE:

- A. To encourage the establishment and maintenance of freestanding birth centers** which provide quality care within a safe home like environment for mothers and infants.
- B. To establish minimum standards for licensing of freestanding birth centers** that provide birthing services different from, and

outside the acute care hospital setting, while promoting safety and quality care for mothers and infants.

C. To monitor freestanding birth center compliance under these regulations through surveys and to identify any facility areas in which could be dangerous or harmful.
[8.370.17.6 NMAC - N, 7/1/2024]

8.370.17.7 DEFINITIONS:

A. “AABC” means American association of birth centers.

B. “Administrator” means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the birth center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the facility and all of the services provided at the facility, including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.

C. “Applicant” means the individual or legal entity that applies for a license. If the applicant is a legal entity, then the individual signing the license application on behalf of the legal entity must have written legal authority from the legal entity to act on its behalf and execute the application. The license applicant must be the legal owner of the facility.

D. “Apprentice midwife” means an individual as defined in and licensed under 16.11.3 NMAC, as amended, and currently in good standing.

E. “ACNM” means the American college of nurse midwives.

F. “Basic life support” (BLS) means training and current certification in adult cardiopulmonary resuscitation equivalent to American heart association class C basic life support and in emergency treatment of a victim of cardiac or respiratory arrest through cardiopulmonary resuscitation and emergency cardiac care.

G. “Birth assistant”

means a staff person over the age of 18 who is capable of recognizing complications and who can care for the mother and infant by performing normal postpartum and newborn care. At a minimum, a birth assistant must be trained and have current certifications in BLS and neonatal resuscitation program (NRP) and can only function under the direct supervision of a licensed provider immediately available on site.

H. “Birth center” (BC) means a freestanding birth center licensed by the state for the primary purpose of performing low-risk deliveries that is not a hospital, attached to a hospital or in a hospital, and where births are planned to occur away from the mother’s residence following a low-risk pregnancy.

I. “Birth room” or “birthing room” means a private room of sufficient size to accommodate a client in active labor with the equipment and personnel necessary to assist the mother in a safe birth and in full compliance with the minimum standards in these regulations. Any facility with four or more birthing rooms must also comply with the birthing room and center requirements in the current edition of the facility guidelines institute, guidelines for design and construction, specific requirements for freestanding birth centers.

J. “CABC” means the commission for the accreditation of birth centers.

K. “Certified nurse midwife” means a licensed individual educated in the two disciplines of nursing and midwifery as defined and licensed under 16.11.2 NMAC, as amended, and currently in good standing.

L. “Certified nurse practitioner” means a registered nurse as defined and licensed under the Nursing Practice Act, Section 61-3-23.2 NMSA 1978, as amended, and related regulations and is currently in good standing.

M. “CLIA” means Clinical laboratory improvement amendments of 1988 as amended.

N. “Client” means any

person who receives care, including a mother, infant or newborn, at a freestanding birth center.

O. “Compliance” means the facility’s adherence to these regulations, as well as any and all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the facility license.

P. “Deficiency” means a violation of or failure to comply with any provision(s) of these regulations.

Q. “Employee” means any person who works at the facility and is a direct hire of the owner or management company, if applicable.

R. “External quality committee” means the members of the internal quality committee and an external peer reviewer or a clinical consultant and any other facility healthcare partners, as available.

S. “Facility” means the physical premises, building(s) and equipment where the freestanding birth center services are provided, whether owned or leased and which is licensed pursuant to these regulations.

T. “Incident” means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

U. “Incident management system” means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

V. “Incident report form” means the reporting format issued by the authority for the reporting of incidents or complaints.

W. “Internal quality committee” means and includes the administrator and clinical director at a minimum. If the administrator and clinical director are the same person, another staff person with clinical experience must serve on the internal quality committee. Other staff at the facility may also serve on this committee as deemed appropriate.

X. “License” means

the document issued by the licensing authority pursuant to these regulations granting the legal right to operate a birth center for a specified period of time, at the physical premises, not to exceed one year.

Y. “Licensee” means the person(s) or legal entity that operates the physical premises and facility and in whose name the facility license has been issued and who is legally responsible for compliance with these regulations.

Z. “Licensed midwife” means a licensed individual as defined and licensed under 16.11.3 NMAC, as amended, currently in good standing.

AA. “Licensed practical nurse” means a licensed individual as defined and licensed under the Nursing Practice Act, Section 61-3-19 NMSA 1978, as amended, currently in good standing.

BB. “Licensing authority” means the New Mexico health care authority.

CC. “Low risk pregnancy” means a pregnancy that is determined by documented medical history, risk assessment, and prenatal care that reasonably predicts an outcome of a normal and uncomplicated labor and birth.

DD. “Management company” means the legal entity that manages the facility, if different from the legal owner of the facility.

EE. “Midwife” means a licensed individual authorized to practice midwifery in New Mexico as defined and licensed under 16.11.2 NMAC, as amended, or 16.11.3 NMAC, as amended, currently in good standing.

FF. “NFPA” means the national fire protection association which sets codes and standards for building fire safety.

GG. “NMSA” means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.

HH. “Neonatal resuscitation program” (NRP) means training and current certification in both the NRP module

on medications and the module on intubation using an endotracheal tube (ET) or laryngeal mask airway (LMA) or both, endorsed by American academy of pediatrics or the American heart association.

II. “Quality assurance” means the licensed health care facility’s on-going comprehensive self-assessment of compliance with these regulations and any and all other applicable statutes and regulations including, but not limited to,, the facility’s own policies and procedures and incident investigations, documentation, reporting and reviewing of all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents for study and improvement of the facility’s organizational, administrative and preventative practices in employee training and reporting.

JJ. “Quality improvement system” means a systematic approach to the continuous study and improvement of the efficacy of organizational, administrative and clinical practices to meet the needs of persons served, address any changing regulatory requirements and achieve the facility’s mission, values and goals.

KK. “Physician” means a licensed individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Sections 61-6-1 to 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Sections 61-10-1 to 61-10-22 NMSA 1978, as amended, and related regulations.

LL. “Physician’s assistant” means an individual, currently in good standing, who is licensed and authorized to provide services to patients under the supervision and direction of a licensed physician under the Physician Assistant Act, Sections 61-6-7 to 61-6-10 NMSA 1978, as amended and related regulations, or is authorized and licensed to provide services to patients under the supervision and direction of a licensed osteopathic

physician under the Osteopathic Physicians’ Assistants Act, Sections 61-10A-1 to 61-10-7 NMSA 1978 as amended, and related regulations.

MM. “Plan of correction” (POC) means the plan submitted by the licensee or its representative(s) addressing how and when deficiencies identified through a survey or investigation will be corrected. A plan of correction is a public record once it has been approved by the regulatory authority and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a facility license, including to prove licensee compliance violations or failures.

NN. “Policy” means a written statement that guides and determines present and future facility decisions and actions.

OO. “Premises” means all of the facility including buildings, grounds and equipment.

PP. “Procedure” means the action(s) that must be taken in order to implement a written policy.

QQ. “Registered nurse” means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Sections 61-3-1 to 61-3-30 NMSA 1978, as amended, and related regulations.

RR. “Scope of practice” means the procedures, actions, and processes that a healthcare practitioner is permitted to undertake under the terms of their professional license. The scope of practice is limited to that which the applicable law allows for specific education, training, experience and demonstrated competency.

SS. “Staff” means any person who works at the facility, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the facility.

TT. “U/L approved” means approved for safety by the national underwriters laboratory.

UU. “Variance”

means a written decision, made at the licensing authority’s sole discretion, allowing a licensee and facility to deviate from a portion(s) or provision of these regulations for a specified time period not exceeding a year, providing the variance does not jeopardize the health, safety or welfare of the facility’s clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations.

VV. “Violation” means any and all actions or procedures by the facility or licensee that are not in compliance with these regulations and any and all other applicable state and federal statutes and regulations.

WW. “Waive” or “waiver” means a written decision, made at the licensing authority’s sole discretion, to allow a birth center to refrain from complying with a portion(s) or provision of these regulations for a limited and specified time period not exceeding a year, providing the waiver does not jeopardize the health, safety or welfare of the facility’s clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations. [8.370.17.7 NMAC - N, 7/1/2024]

8.370.17.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory compliance. “May” means permissive compliance. The words “adequate”, “proper”, and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide birthing services to the public in facilities governed by these regulations. However, if any other applicable statute or regulation requires mandatory or stricter compliance for birth center services than these regulations, the licensee and facility must comply with the more strict compliance requirements. [8.370.17.8 NMAC - N, 7/1/2024]

8.370.17.9 FREESTANDING

BIRTH CENTER SCOPE OF SERVICES:

A. General scope of services. Freestanding birth centers endorse the wellness care model by providing supportive care and using interventions only when medically necessary. Birth centers may provide women’s health services including annual exams, contraception counseling, pre-conception counseling, sexually transmitted infection testing and treatment, prenatal care, birth services, and postpartum and newborn care following a normal, low risk pregnancy. The facility may offer other health services by licensed professionals working within the scope of their license providing the physical space used by the other services is clearly delineated and separate from the birth center services, the other services do not interfere with any birth center requirements, the facility complies with any applicable licensing regulations for the other services, and the authority is capable of determining the physical boundaries between the birth center facilities licensed under these regulations and other facilities, if licensed under other regulations.

B. Limitations on scope of services. Except in the event of an emergency, surgical procedures shall be limited to those normally performed during birth, but may include episiotomy and repair, other procedures for newborns, and well women’s care but only if such procedures are performed by a licensed practitioner acting within the scope of the practitioner’s license. Trials of labor after cesarean section (TOLAC) and vaginal birth after cesarean (VBAC) services shall only be performed at a freestanding birth center by a practitioner whose license authorizes this scope of practice.

C. Services not allowed and not to be performed at freestanding birth center. The following services shall not be performed in a freestanding birth center:

- (1) general,

regional or epidural anesthesia services;

(2)

medications for cervical ripening, induction or augmentation of labor;

(3)

operative vaginal forceps or vacuum or abdominal births; and

(4)

abortions.

D. Geographic

requirements:

(1)

Freestanding birth centers shall be located within a maximum of 30 minutes normal driving time from a referral hospital. Reliable evidence of normal driving time must be provided.

(2)

The authority may, at its sole discretion, approve a variance for a freestanding birth center that is located more than 30 minutes normal driving time from a referring hospital, if the authority finds that the health and safety of the birth center clients will not be adversely affected.

E. Additional

requirements applicable to facilities with four or more birthing rooms. Any and all facilities with four or more birthing rooms shall comply with all of these regulations and also with all applicable requirements in the current edition of the facility guidelines institute’s guidelines for design and construction, specific requirements for freestanding birth centers. [8.370.17.9 NMAC - N, 7/1/2024]

8.370.17.10 LICENSE REQUIRED: A freestanding birth center facility shall not be operated without a license issued by the authority. Any freestanding birth center or facility operating after the effective date of these regulations, must be licensed under these regulations. Any facility providing the services described in these regulations after the effective date of these regulations, shall apply for a freestanding birth center license within 180 days. Any unlicensed freestanding birth center that has not applied for a license, may only continue to operate without a license

for 180 days from the effective date of these regulations. A freestanding birth center licensed under these regulations shall not assert, represent, offer, provide or imply that the facility is or may render care or services other than the services it is permitted to render under these regulations and within the scope of all applicable professional license(s). If an unlicensed freestanding birth center is found to be providing services for which a license is required under these regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The licensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

[8.370.17.10 NMAC - N, 7/1/2024]

8.370.17.11 INITIAL LICENSURE PROCEDURES:

These regulations should be thoroughly understood and used by the applicant, when applying for the initial freestanding birth center license. The applicant for an initial facility license under these regulations must follow these procedures when applying for a license.

A. Notification and letter of intent: The owner shall advise the licensing authority of its intent to open a freestanding birth center pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the owner and the facility and at a minimum, include the following:

- (1) the name of facility;
- (2) the name of the legal owner and licensee and the type of legal entity under which the facility shall be owned;
- (3) the name of the management company, if any;
- (4) the type of facility license requested;
- (5) the anticipated number of clients to be served;
- (6) the number

of birthing rooms in the proposed facility;

- (7) the physical address of facility including building name or suite number;
- (8) the mailing address, if different from physical address;
- (9) the contact name(s), address, e-mail address, and telephone number(s);
- (10) the anticipated payers and sources of reimbursement; and
- (11) a list of all services, medical and non-medical, to be provided at the facility location which is requesting the license.

B. License application and fees: After review by the authority of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall be required to complete a license application on a form provided by the authority. Prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the authority, the applicant must submit to the licensing authority an application form provided by the authority, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. Current fee schedules will be provided by the licensing authority.

The authority reserves the right to require additional documentation to verify the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees must be paid in the form of a certified check, money order, personal, or business check, or electronic transfer (if available), made payable to the state of New Mexico, and are non-refundable.

C. Existing facility and building plans: As part of the initial license application, the applicant must also attach to the application and submit to the authority, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning approvals by the applicable building authority. The existing facility building plans must be of professional quality, on substantial paper measuring at least 24" x 36", and drawn to an accurate scale of one-eighth inch to one foot. The plans for existing construction must include sufficient information for the authority to make a compliance determination and at a minimum:

- (1) floor plans showing proposed use of each room, (e.g., waiting room, examination room, office, etc.);
- (2) interior dimensions of all rooms;
- (3) one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, wall, and ceiling/roof, and the finishes, (e.g., carpet, tile, gypsum board with paint, or wood paneling);
- (4) door locations and types (swing) and sizes of all doors, including width, height and thickness;
- (5) location of all sinks, tubs and showers;
- (6) location and operation of windows including size and type;
- (7) location and dimension of all level changes within and outside the building, (e.g., steps or ramps);
- (8) location of fire extinguishers, heat and smoke detectors, and operational elements of alarm systems;
- (9) location of heating units, furnaces, hot water heaters, and fuel type and source;
- (10) all heating, ventilating and air conditioning/cooling systems;
- (11) location

of the building on a site/plot plan to determine surrounding conditions, include all steps, ramps, parking areas, handicapped spaces, walks and any permanent structures, including construction materials; and

(12) all existing construction, new construction, remodeled portions, and proposed additions, must be delineated on the plans, clearly indicating where existing construction ends and proposed remodeling and new construction begins.

D. Remodeling, new and proposed construction: If the proposed facility includes any remodeling, renovations or additions to an existing building or new construction of any type, building plans and specifications covering all portions of the proposed work delineating all existing construction and all new and proposed construction shall be attached to the application and submitted to the authority for review and approval as part of the application. Building plans will be reviewed by the authority for compliance with current licensing regulations, building and fire safety codes. If the facility's building plans are approved by the authority and local building officials have issued a construction permit, construction may begin. This provision is an ongoing requirement and applies to, and includes any and all construction at the facility, which occurs before and after issuance of the initial license. This provision does not generally apply to maintenance and repair. However, if the maintenance or repair impacts or alters any of the facility requirements under these regulations, the applicant or licensee must notify the authority and verify ongoing compliance with these regulations. The authority shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and proposed construction, the applicant or licensee must submit for approval by the authority before

construction begins, the following:

(1) one copy of building plans and specifications, including a site plan, that are of professional quality, on substantial paper measuring at least 24" x 36" and drawn to an accurate scale of one-eighth inch to one foot;

(2) the building plans must be drawn to scale and show the general arrangement of the buildings, and include a room schedule, show fixed equipment for each room, and list room numbers, together with all other pertinent explanatory information addressing the requirements in applicable regulations;

(3) any changes in the approved building plans affecting compliance with these rules shall be shown on the approved plans and shall be submitted to the authority for approval before construction is undertaken;

(4) any and all completed new construction shall comply with the plans and specifications approved by the authority prior to construction, these rules, and any and all other applicable rules and codes; and

(5) any of the authority's approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities.

E. Initial survey phase: Upon receipt of a properly completed application with all necessary supporting documentation, an initial life safety survey of the proposed facility will be scheduled by the licensing authority. Upon completion of the initial life safety survey and determination that the facility is in compliance with all life safety and building requirements, the licensing authority may issue a temporary license pending completion of its initial health survey or an annual license if allowed or applicable under these regulations.

[8.370.17.11 NMAC - N, 7/1/2024]

8.370.17.12 ADDITIONAL DOCUMENTS REQUIRED WITH LICENSE APPLICATION: The

authority reserves the right to require an applicant to provide any and all additional documents, as part of its license application, in order for the authority to determine whether the applicant and the facility are in full compliance with these regulations, as well as any and all other applicable statutes and regulations. At a minimum, additional documents required to be attached to the initial license application, include, but are not limited to:

A. Building approvals: The applicant must submit all building approvals required for the facility to operate in the jurisdiction in which it is located, including, but not limited to:

(1) written building approvals and certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and

(2) written fire safety approvals from the fire safety authority having jurisdiction.

B. Environment approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:

(1) private water supply;

(2) private waste or sewage disposal; and

(3) ultrasound equipment.

C. Board of pharmacy approvals: A copy of facility's drug permit issued by the state board of pharmacy must be provided.

D. Program outline: The applicant must submit with its license application a program outline consistent with these regulations which includes at a minimum, the following information:

(1) a list of all services and the scope of those services to be provided by the proposed facility;

(2) projected number of clients to be served monthly;

(3) a list of

staffing and personnel requirements and duties to be performed;

(4)

a list of all services that will be contracted or arranged with any other health providers including ambulance services, admitting hospitals, consultation with medical practitioners, laboratory work and equipment providers;

(5) the number

of examination rooms, birth rooms, family rooms and other rooms for diagnostic or other use including, but not limited to, ultrasound, laboratory, clean linen storage and waste disposal;

(6) an

organizational structure diagram or chart including the administrator, advisory body or board of directors, if any, staff, clinical director, internal quality committee and external quality committee; and

(7) quality

improvement systems and quality assurance processes.

E. Policies and

procedures: The applicant must submit with its license application a copy of the facility's policies and procedures which must comply with these regulations.

[8.370.17.12 NMAC - N, 7/1/2024]

8.370.17.13 LICENSE TYPES, VARIANCES & WAIVERS:

A. Temporary license:

The licensing authority may, at its sole discretion, issue a temporary license to a new freestanding birth center before clients are admitted or for facilities that existed prior to enactment of these regulations, provided that the freestanding birth center has submitted a license application, supporting documents, has met all of the applicable life safety code requirements, and its program, policies, and procedures have been reviewed for compliance with these regulations. A temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(1) a period of

time, not to exceed 120 days, during which the facility must correct all

specified deficiencies;

(2) no more

than two consecutive temporary licenses shall be issued in accordance with applicable statutes and regulations;

(3) the facility

being allowed to accept clients and provide care services, subject to any requirements and restrictions attached to the temporary license;

(4) a finding

that the applicant is qualified and in full compliance with applicable life safety code requirements; and

(5) any

determination of compliance or noncompliance for a temporary license or initial license shall be made at the licensing authority's sole discretion based upon the health, safety, or welfare of the facility's clients, patients and staff and proof by the applicant that it is not in violation of other applicable state and federal statutes and regulations.

B. Annual license:

An annual license is issued for a one-year period to a freestanding birth center facility which has met all requirements of these regulations. If a temporary license is issued, once the authority has issued a written determination of full compliance with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

C. Amended license:

A licensee must apply to the licensing authority for an amended license when there is a change of administrator or when there is a change of name for the facility, but an amended license shall only be issued if the administrator is not an owner. If the administrator is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

(1) be on

a form, or filed electronically if available, as required by the licensing authority;

(2) be

accompanied by the required fee for

the amended license; and

(3) be

submitted within 10 working days of the change.

D. Variances and

waivers: At the licensing authority's sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the facility's clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations. All variances and waivers shall be in writing attached to the license and shall be limited to the term of the license. Upon renewal of a license, any variances and waivers shall only be extended or continued at the sole discretion of the licensing authority providing such variance or waiver shall not jeopardize the health, safety or welfare of the facility's clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations at the time of renewal. Variances and waivers are non-transferrable and shall not be granted indefinitely.

[8.370.17.13 NMAC - N, 7/1/2024]

8.370.17.14 LICENSE RENEWAL:

A. Licensee must

submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the facility complies with all applicable state and federal regulations in force at the time of renewal and that there has been no new construction or remodeling or additions which differ from the plans provided and reviewed with the prior license application. If there has been any construction or remodeling or additions to the facility since issuance of the last license, and the construction has not been previously approved, the license renewal applicant shall be required to comply with all construction documentation requirements under

these regulations when applying for the license renewal. The authority reserves the right to require that a renewal applicant provide any and all additional documents, including any necessary proof of current compliance, as part of its license renewal application in order for the authority to determine whether the applicant and the facility are in full compliance with these regulations.

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

C. If the existing license expires and the licensee has failed to submit a renewal application, the authority may charge the applicant a late fee of \$100 for each month or portion of a month that the facility continues to operate without a license providing that during such time the facility remains in full compliance with these regulations. If the facility does not renew its license and continues to operate without paying late fees and without being in full compliance with these regulations, the facility shall cease operations until it obtains a new license through the initial licensure procedures, and shall still be required to pay late fees. Under Section 24-1-5 NMSA 1978, as amended, no freestanding birth center shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be responsible to notify the facility of the renewal date or the expiration date of the facility's license.

E. After issuance of the initial license, if there has been no construction or remodeling

or additions to the facility and the facility is in substantially the same condition as the plans on file with the authority, the facility may be issued a license renewal based upon its accreditation status if it has been fully accredited by an approved national accrediting organization such as, the commission for the accreditation of birth centers or its successor, and the facility maintains its accreditation status throughout the course of the license term. The licensee shall be responsible for providing verifiable evidence of accreditation status with its license renewal application and any time during the term of its license upon request. The authority, at its sole discretion, reserves the right to require additional documentation of compliance with these regulations and all applicable state and federal statutes and regulations by the licensee at the time of license renewal, even if the facility is accredited by an approved national accrediting organization.

[8.370.17.14 NMAC - N, 7/1/2024]

8.370.17.15 POSTING OF LICENSE: The facility's license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

[8.370.17.15 NMAC - N, 7/1/2024]

8.370.17.16 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A. A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The authority shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

- (1) any ownership interest in the facility changes;
- (2) the facility changes location;
- (3) the

licensee of the facility changes; or
(4) the facility discontinues operation.

B. Any owner or applicant wishing to continue operation of an already licensed facility must submit a new application for an initial license in accordance with these regulations at least 30 days prior to the anticipated change and shall not be guaranteed issuance of a license under the same terms and conditions of an existing license. Failure by any owner or new owner to apply for a new license under these conditions, while continuing to operate under these regulations, shall be considered a violation of these regulations and consent to the imposition of late fees, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[8.370.17.16 NMAC - N, 7/1/2024]

8.370.17.17 AUTOMATIC EXPIRATION OR TERMINATION OF LICENSE:

An existing license shall automatically expire at midnight on the day indicated on the license, unless it is renewed sooner or it has been suspended or revoked. If a facility discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action. Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and consent to the imposition of late fees, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[8.370.17.17 NMAC - N, 7/1/2024]

8.370.17.18 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: If immediate action is required to protect human health and safety, the licensing authority may act in accordance with Section 24-

1-5 NMSA 1978, as amended, and suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee. [8.370.17.18 NMAC - N, 7/1/2024]

8.370.17.19 GROUNDS FOR DENIAL OF INITIAL OR RENEWAL LICENSE APPLICATION, SUSPENSION OR REVOCATION OF LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY

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

- A. failure to comply with any provision of these regulations;
- B. failure to allow access to the facility and survey(s) by authorized representatives of the licensing authority;
- C. allowing any person to work at the facility while impaired physically or mentally or under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the clients, newborns, staff or visitors;
- D. allowing any person, subject to all applicable statutes and regulations, to work at the facility if that person is listed on the employee abuse registry or considered an unemployable caregiver under the Caregivers Criminal History Screen Act, as amended, and related regulations, as amended or has a felony conviction for:

- (1) homicide;
- (2) trafficking controlled substances;
- (3) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual

- offenses;
- (5) crimes involving adult abuse, neglect or financial exploitation;
- (6) crimes involving child abuse or neglect;
- (7) robbery, larceny, burglary, fraud, extortion, forgery, embezzlement, credit card fraud or receiving stolen property; or
- (8) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.
- E. misrepresentation or falsification of any information on application forms or on other documents provided to the licensing authority or used by the licensing authority in granting or renewing a license;
- F. repeat violations of these regulations or discovery of repeat violations during survey(s); or
- G. failure to provide the required care and services specified in these regulations or providing care and services beyond the scope of the facility's license at the facility;
- H. the list above shall not limit the authority from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[8.370.17.19 NMAC - N, 7/1/2024]

8.370.17.20 HEARING PROCEDURES:

Hearing procedures for an administrative appeal of an adverse action taken by the authority against a facility's license will be held in accordance with applicable rules relating to adjudicatory hearings, including, but not limited to, 8.370.2 NMAC. A copy of the above regulations will be furnished at the time an adverse action is taken against a facility's license by the licensing authority, if the regulations cannot be obtained from a public website.

[8.370.17.20 NMAC - N, 7/1/2024]

8.370.17.21 FACILITY SURVEYS:

- A. Application for licensure, whether initial or renewal, shall constitute permission for

unrestricted entry into and survey of a facility by authorized licensing authority representatives at times of operation during the pendency of the license application, and if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority. If, at the time of a facility survey, a client is in labor, birthing, or immediately postpartum, the survey may be rescheduled at the sole discretion of the licensing authority without penalty to the facility.

C. Upon receipt of a notice of deficiency from the licensing authority, the licensee or their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion. All plans of correction for state or federal deficiencies, if any, shall be disclosed in compliance with applicable state or federal statutes and regulations. A state plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a facility license, including to prove licensee compliance violations.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

[8.370.17.21 NMAC - N, 7/1/2024]

8.370.17.22 REPORTING OF INCIDENTS:

All facilities licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with any and all other applicable statutes and regulations. All facilities shall report to the licensing authority any serious incidents or unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the clients, including, but not limited to:

- A. fire, flood or other man-made or natural disasters

including any damage to the facility caused by such disasters and any incident which poses or creates any life safety or health hazards;

B. any outbreak of contagious diseases and diseases dangerous to the public health;

C. any human errors by staff and employees which may or has resulted in the death, serious illness, or physical impairment of a client or newborn or staff; and

D. abuse, neglect, exploitation, injuries of unknown origin and other reportable incidents in accordance with 8.370.9 NMAC, as may be amended from time to time. [8.370.17.22 NMAC - N, 7/1/2024]

8.370.17.23 QUALITY ASSURANCE, QUALITY IMPROVEMENT SYSTEM, INTERNAL QUALITY COMMITTEE, EXTERNAL QUALITY COMMITTEE AND POLICIES AND PROCEDURES:

Each facility shall establish and maintain policies and procedures for quality assurance and quality improvement systems, as well as an internal quality committee and an external quality committee.

A. Policies and procedures: The administrator shall establish written policies and procedures which govern the facility's complete operation. The facility shall ensure that these policies are adopted, administered and enforced to provide quality health services in a safe environment. At a minimum, the facility's written policies and procedures shall include how the facility intends to comply with all requirements of these regulations and address:

(1) the facility organization including the legal entity or organization which owns the facility, any management companies or managers which manage the facility, the identity and credentials of the administrator responsible for establishing lines of responsibility and accountability for both licensed and non-licensed staff, and the administrator's responsibility to direct employees or contractually

retain qualified individuals providing fiscal management and all operations in the facility, as well as maintaining records of disclosure of conflicts of interest and all ownership interests and controlling parties;

(2) the facility administration including designation of an administrator with authority, responsibility, and accountability for overall administration and operation, including plans for the administrator's absence;

(3) the maintenance of the facility, equipment and supplies including sterilization and disinfection of supplies, equipment and instruments; cleaning of birthing room after each use; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures; and proper disposal of waste liquids used for cleaning contaminated areas;

(4) quality of care and services including appropriate and inappropriate admission criteria; client rights; client risk assessment; administration and preparation of drugs; quality assurance and performance improvement programs; referral of clients for additional services including, but not limited to,, laboratory and sonography; transfer of clients to a hospital; ambulance transfer services; emergency procedures and resuscitative techniques; aseptic techniques; infectious waste and biohazard disposal in accordance with all applicable statutes and regulations; and safe handling of the placenta for families requesting to keep the placenta;

(5) staffing and personnel including written job descriptions for all staff with necessary qualifications consistent with these rules; minimum staffing and staff qualifications; and staff development and evaluation;

(6) maintenance of the client health record including protection of client

confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of client records including appropriate document destruction procedures; and

(7) research procedures for any research being conducted at the facility in compliance with these regulations.

B. Internal quality committee: The internal quality committee is comprised at a minimum of the administrator and clinical director. If the administrator and the clinical director are the same person, another staff person with clinical experience shall be made a member of this committee. This committee shall establish and implement quality assurance and quality improvement systems monitoring and promoting quality care to clients through reviews that include chart review, data collection, client satisfaction surveys, and other program monitoring processes; data analyses; identification of areas for improvement; intervention plans, including action steps, responsible parties, and response time; and, evaluation of the effectiveness of interventions. The internal quality committee shall at a minimum, implement a thorough chart review process, as defined in these regulations, which considers and reviews outcome data analysis, targeted concern and improvement areas, client satisfaction surveys, and evidence based research to identify necessary quality improvement areas and processes. When areas of concern or potential problems are identified by the committee, the facility shall act as soon as possible to avoid and prevent risks to clients. The internal quality committee shall take and maintain meeting minutes. The internal quality committee shall, at a minimum, meet or convene:

(1) within 72 hours of every emergent or sentinel event to conduct an initial review and follow-up; if the internal quality committee consists of less than three people, the external quality committee shall convene to review emergent and

sentinel events;

(2) monthly to document any significant events and any necessary quality care improvement steps to be applied to future events;

(3) quarterly for a detailed chart review, as provided in these regulations, of a minimum of five charts consisting of a minimum of one chart for each midwife and physician practicing at the facility; charts of all labor, postpartum, and newborn transfers; Apgar scores less than seven at five minutes; hemorrhage greater than 1000 ml; and any other significant problems encountered within the quarter;

(4) annually for review of policies and procedures, including, but not limited to:

(a) environment of care;

(b) testing and maintenance of equipment according to manufacturer’s recommendations;

(c) housekeeping procedures;

(d) infection control procedures;

(e) privacy and security processes;

(f) compliance with policies and procedures for all emergency drills, including, but not limited to,, fire, maternal/newborn emergencies, power failures, and natural disasters;

(g) evaluation of maintenance policies and procedures for heat, ventilation, emergency lighting, waste disposal, water supply, laundry, and nourishment station;

(h) annual employee performance evaluations;

(i) clinical practice guidelines; and

(5) submission of an annual quality report to the external quality committee.

C. External quality committee: The facility shall establish an external quality committee which includes the

members of the internal quality committee, an external peer reviewer or a clinical consultant and other healthcare partners, if available. The external quality committee shall meet at least quarterly and perform an in-depth peer review case study on a minimum of five charts which include at a minimum one case for each midwife and physician practicing at the facility. The external quality committee shall also review the care of individual clients, targeted types of clients, and appropriateness of the clinical practitioner’s judgment and management of the case under the facility’s standards of care and policies, and make recommendations for care improvements. The external quality committee shall also discuss relevant evidence based research and make recommendations relating to clinical practice guidelines to improve quality of care.

[8.370.17.23 NMAC - N, 7/1/2024]

8.370.17.24 RISK ASSESSMENT, CLIENT ACCEPTANCE AND LABOR ADMISSION CRITERIA:

All licensed facilities shall follow and maintain written clinical practice guidelines which address, at a minimum, eligibility for care, on-going eligibility, medical consultation, and transfer criteria in accordance with the scope of practice authorized under each practitioner’s individual license(s) to be reviewed and updated by the internal quality committee at least annually.

A. Risk assessment: A licensed practitioner shall make risk assessments of all clients that at a minimum include:

(1) an initial assessment which documents the general health and eligibility of a potential client and which includes a detailed medical, social and family history, a physical examination, and routine prenatal labs; the assessment may also include ultrasounds to determine whether the client meets the criteria for the facility’s scope of care;

(2)

completing, maintaining, and documenting an initial risk assessment and an on-going risk assessment in the client record which include compliance with admission criteria prior to client acceptance and throughout the pregnancy with the clinical director making the final determination of each client’s risk;

(3) if a client before 32 weeks gestation has failed to register for freestanding birth center care and has not received prenatal care, the client shall not be accepted for care at the facility unless the client obtains a medical consultation outside of the facility, meets all other eligibility criteria, and a written, signed exception is made by the clinical director on a case-by-case basis;

(4) clear documentation of referrals, consultations and transfers to other providers for ineligible clients or medical transfers;

(5) assessing each client’s risk status on admission in labor and throughout labor for continuation of services;

(6) whether the facility will have adequate space and sufficient staff to support the client newborn during labor, birth and postpartum;

(7) written criteria for antepartum, intrapartum, postpartum and newborn acceptance and transfer to a hospital which delineates the transfer process from the facility to an accepting hospital; and

(8) limitations on the number of active labor clients at the facility to the number of birth rooms available at the facility.

B. Ineligibility for admission: If any of the following conditions exist, birth at the facility shall be considered inappropriate or improper:

(1) breech or non-vertex presentation at labor and delivery;

(2) gestation less than 37 weeks or greater than 42 weeks;

(3) multiple

gestation;

(4) medication controlled gestational diabetes mellitus; or

(5) vaginal birth after cesarean (VBAC) candidates with more than one previous cesarean section, previous incision that is not low transverse, placenta location, anterior and low-lying over the old scar.
[8.370.17.24 NMAC - N, 7/1/2024]

8.370.17.25 CLIENT

RIGHTS: All facilities licensed pursuant to these regulations shall support, protect, and respect clients' rights. Facility staff shall receive training on client rights and demonstrate understanding and competence in the policies and procedures regarding client rights. Client rights will be posted or made available to facility clients in English or their preferred language. The method by which a client may register a complaint against the facility will be posted or otherwise made available to clients. The facility shall have and enforce policies and procedures which guarantee:

A. the right to equal service, regardless of race, gender, gender identity, religion, ethnic background, sexual orientation, education, social class, physical or mental handicap, or economic status;

B. the right to considerate, courteous and respectful care from all staff;

C. the right to complete information using terms the average client can reasonably be expected to understand;

D. the right to informed consent, full discussion of risks and benefits prior to any invasive procedure, except in an emergency, and advice regarding alternatives to the proposed procedure(s);

E. the right to receive a written list of all services available, service costs and advanced notice of any changes;

F. the right to receive care that is consistent with current scientific evidence about benefits and risks;

G. the right for non-

English speaking clients to obtain assistance in interpretation;

H. the right to know the names, titles, professions and specific types and licenses held by the facility staff to whom the client speaks to and from whom services or information are received;

I. the right to refuse examinations and procedures to the extent permitted by law and to be informed of the health and legal consequences of any refusal;

J. the right of access to the client's personal health records;

K. the right of respect for the client's privacy;

L. the right of confidentiality of the client's personal health records as provided by law;

M. the right to expect reasonable continuity of care within the scope of services and staffing;

N. the right to have the client's civil rights, cultural background and religious opinions respected;

O. the right to present complaints to the management of the facility without fear of reprisal; and

P. the right to examine and receive a full explanation of any charges made by the facility regardless of source of payment.
[8.370.17.25 NMAC - N, 7/1/2024]

8.370.17.26 CLIENT

HEALTH RECORD: The facility shall maintain client health records in a legible, uniform, complete and accurate format that provides continuity and documentation of maternal and newborn information which is readily accessible to health care practitioners, while protecting confidentiality, using a system that allows for reliable and safe storage, retrieval and loss prevention. The facility must use a record form appropriate for use by the practitioners in the facility which contains the required information necessary for transfer to an acute care maternal and newborn hospital.

A. Record contents:
Each licensed facility must maintain a medical record for each client which may be in a paper or

electronic format but which can be easily accessible, copied, provided, reviewed and transported in the event of any emergency or transfer. Every record must be accurate, legible and promptly completed. At a minimum, facility health records for each client must include written documentation of the following:

(1) client demographics;

(2) client consent forms;

(3) pertinent medical, social, family, reproductive and nutritional history;

(4) a list of medications that are currently prescribed for the client, including any self-administered over-the-counter medication or neutraceuticals, including dose of medication, route of administration, and frequency of use;

(5) allergy list;

(6) initial physical exam;

(7) initial and on-going risk assessment and status;

(8) laboratory, radiology and other diagnostic reports;

(9) assessment of the health status and health care needs of the client;

(10) evidence of continuous prenatal care including progress notes;

(11) evidence of prenatal educational resources;

(12) labor and birth summary;

(13) postpartum care with evidence of follow-up within 48 hours of birth;

(14) newborn care and follow-up;

(15) appropriate referral of ineligible clients and documentation of transfer of care;

(16) documentation of any consultations, special examinations and procedures;

(17) discharge summary and applicable instructions to the client;

(18) list of staff present during labor, birth and postpartum;

(19) evidence

that client rights have been provided to each client; and

(20) consent form for participation in research signed by the client, if applicable.

B. Client records maintenance:

(1) current client records shall be maintained on-site and stored in an organized, accessible and permanent manner, with copies easily accessible for review, transfers or in an emergency;

(2) the facility shall have in place policies and procedures in compliance with applicable law, for maintaining and ensuring the confidentiality of client records, which include the authorized release of information from the client records; and the retention and transfer of client records at closure or ownership changes;

(3) non-current client records shall be maintained by the facility against loss, destruction and unauthorized use for a period of not less than five years from the date of discharge and be readily available within 24 hours of request; if, any other applicable statutes or regulations require a longer term of record retention than five years, the longer term shall apply to the facility.

C. Chart review: At a minimum, a chart review performed by the internal quality committee shall consider written documentation of:

(1) appropriateness of admissions and continuation of services;

(2) complete client demographic information;

(3) signed informed consent(s);

(4) appropriate referral of ineligible clients;

(5) continuous prenatal visits, beginning no later than 32 weeks;

(6) continuous risk assessment throughout prenatal care and for admission in labor;

(7) appropriate maternal and newborn follow-up after birth;

(8)

appropriateness of diagnostic and screening procedures;

(9) complete initial history;

(10) complete initial physical exam;

(11) complete prenatal labs and screenings;

(12) appropriateness of medications prescribed, dispensed or administered;

(13) documentation of medical consultation, if indicated;

(14) appropriate identification and management of complications;

(15) appropriate transfer of care for maternal/fetal/newborn indications;

(16) compliance with these rules;

(17) compliance with policies, procedures and clinical practice guidelines for maternal and fetal assessment during labor and postpartum;

(18) compliance with evidence based standards of practice;

(19) effectiveness of staff utilization and training;

(20) completeness of client records;

(21) review of the management of care of individual clients or targeted types of clients or cases for the appropriateness of the clinical judgment of the practitioner(s) in obtaining consultation and managing the case relative to standards of care and policies; and make recommendations for any improvements of care; and

(22) review and analyze outcome data and trends, and client satisfaction survey results. [8.370.17.26 NMAC - N, 7/1/2024]

8.370.17.27 MINIMUM STAFFING REQUIREMENTS:

Qualified and properly licensed professional and clinical staff shall provide quality family centered maternal and newborn care consistent with the scope of practice authorized under each individual

practitioner's license(s). Direct care staff shall have access to consulting clinical specialists and support by administrative and ancillary personnel consistent with the volume of clients enrolled for care and the scope of services offered. The facility shall maintain adequate numbers of professional and support staff on duty, present on premises, and on-call to meet routine service demands, as well as high service demands and emergencies in order to assure client safety, satisfaction, and that no mother in active labor is unattended. The facility shall have on staff at a minimum:

A. a midwife or physician on duty whenever there is a client in the facility in active labor or immediately postpartum;

B. a midwife or physician on immediate call whenever clients are in the facility receiving clinical services;

C. personnel trained in the use of emergency equipment and in BLS and NRP must be on duty whenever a client is within the freestanding birth center receiving clinical services; this includes nighttime hours when clients are within the freestanding birth center in labor or postpartum;

D. an on-site administrator managing the daily operations and implementing the policies and procedures;

E. a clinical director responsible for implementing facility clinical policies;

F. an internal quality committee that ensures the effectiveness of the quality assurance and performance improvement process at the facility; and

G. an external quality committee that provides in-depth peer review. [8.370.17.27 NMAC - N, 7/1/2024]

8.370.17.28 MINIMUM STAFF QUALIFICATIONS: The facility staff minimum qualifications shall be:

A. Administrator qualifications: The administrator must:

(1) be at least

age 21;

(2) have a high school diploma or general educational development (GED) certificate and two years of administrative or management experience;

(3) be a licensed healthcare professional; and

(4) if not a licensed healthcare professional, be a forty percent or greater owner in the facility with relevant business experience.

B. Clinical director qualifications: The clinical director shall be at least 21 years of age and must have the following qualifications:

(1) must be professionally licensed in a health care field;

(2) must have two years of birthing and labor experience; and

(3) must have two years of experience performing risk assessments to determine low risk pregnancy eligibility.

C. Other clinical staff qualifications: All other clinical staff must have the following qualifications:

(1) must be at least 18 years of age;

(2) must be licensed, certified or trained appropriately for the care provided; prior to providing direct client care, the clinical director shall verify qualifications and competence;

(3) must comply with any and all caregiver criminal history screening requirements and not be currently shown on any federal or state caregiver disqualification lists or certified nursing assistant (CNA) disqualification lists or the employee abuse registry.

D. Staff at birth: In addition to any and all other requirements for licensed professionals, each birth shall be attended by two persons currently trained in:

(1) adult cardiopulmonary resuscitation equivalent to American heart

association class C BLS; and

(2) neonatal resuscitation endorsed by American academy of pediatrics/American heart association.

E. Direct service staff:

Each staff member who provides direct medical services to clients, such as physicians, midwives, nurses, nurse practitioners and physician's assistants, who are required to be licensed, registered or certified by the state of New Mexico, must have a current license, registration or certificate from the state of New Mexico at the time they provide the services.

[8.370.17.28 NMAC - N, 7/1/2024]

8.370.17.29 STAFF

RECORDS: At a minimum, staff records shall include:

A. Personnel records:

Each facility licensed pursuant to these regulations must maintain complete written records for each staff member, employee, contractor and volunteer working at the facility, that are available for review upon request by the licensing authority. At a minimum, each person's records must contain the following:

(1) personal identification and demographic information;

(2) all qualifications;

(3) all current license(s) and training certification(s), including inoculations, if applicable;

(4) annual performance evaluations;

(5) documentation that the employee has read and received the personnel policies;

(6) documentation of required occupational safety and health administration (OSHA) and Health Insurance Portability and Accountability Act (HIPAA) training; and

(7) copy of caregiver criminal history screening clearance letter for all applicable caregivers including any volunteers acting as caregivers and

documentation that the employee abuse registry has been reviewed to verify the staff person or caregiver is not a risk to client or newborn health, safety and welfare.

B. Staff scheduling records: The facility must:

(1) keep weekly or monthly schedules covering all services;

(2) document in each client record all staff present at labor, birth and postpartum through discharge; and

(3) keep all schedules on file for a minimum of six months.

C. Staff evaluation and development: The facility must have written documented policies and procedures for staff orientation, on-going staff development, staff supervision and staff evaluation, which include but are not limited to the following:

(1) client and facility emergency and safety procedures;

(2) quality assurance and performance improvement programs; and

(3) documentation of staff compliance with current licensure, certification, training and position requirements, including initial and annual training requirements.

[8.370.17.29 NMAC - N, 7/1/2024]

8.370.17.30 RESEARCH:

A. If a facility is conducting research activities, the facility must have written policies and procedures for conducting the research being done, documentation that the study has received institutional review board (IRB) approval and a consent form for each client involved in the research in the client's record.

B. When research is conducted by the facility or by the employees or by affiliates of the freestanding birth center or when the facility is used as a research site, such that the facility's clients and staff are involved in or the subjects of research; the research must be

conducted by qualified researchers, having evidence in formal training and experience in the conduct of clinical, epidemiologic or sociologic research, in accordance with the written, approved research policies and procedures, by staff trained to conduct such research and in a manner that protects the client's health, safety and right to privacy and the facility and its clients from unsafe practices.
[8.370.17.30 NMAC - N, 7/1/2024]

8.370.17.31 PHARMACEUTICAL SERVICES:

- A.** One individual shall be designated responsibility for pharmaceutical services to include accountability and safeguarding.
- B.** Keys to the drug room or pharmacy must only be made available to authorized personnel by the individual having responsibility for pharmaceutical services.
- C.** Drugs and biologicals must be stored, prepared and administered in accordance with acceptable standards of practice, in compliance with all New Mexico state board of pharmacy requirements and in compliance with any and all other applicable federal and state statutes and regulations.
- D.** Outdated drugs and biologicals must be disposed of in accordance with methods required by the New Mexico state board of pharmacy.
- E.** Adverse reactions and allergies to medications must be reported to the licensed provider responsible for the client and must be documented in the client's record.
- F.** Blood products are limited to those used to prevent isoimmunization during and after pregnancy and shall only be administered by a properly licensed personnel acting within the scope of their license.
- G.** Medication administration shall only be performed by a licensed provider acting within the scope of their license.
- H.** Blood, including whole blood, packed red cells,

plasma, cryoprecipitate, or other blood factors may not be administered in a freestanding birth center facility.
[8.370.17.31 NMAC - N, 7/1/2024]

8.370.17.32 LABORATORY SERVICES:

- A.** A facility that provides on-site laboratory services shall meet all current CLIA regulations and must have a CLIA certificate appropriate to the level of testing (e.g., certificate of waiver, provider performed microscopy (PPM) or certification for moderately complex testing or waiver).
- B.** A facility that contracts out its laboratory services shall only contract with a laboratory that meets all current CLIA regulations and has CLIA certificates appropriate for all testing requested by the facility.
- C.** All lab test results performed either at the facility, or by contract, or by other arrangement must be entered into the client record(s).
- D.** All laboratory procedures shall be conducted in accordance with acceptable standards of practice.
- E.** Facilities that provide laboratory services or collect specimens for testing by outside CLIA laboratories must provide the following:
 - (1)** laboratory work counter(s) with a sink and electrical outlets;
 - (2)** lavatory or counter sink(s) equipped for hand washing, or alcohol-based hand sanitizer to decontaminate hands;
 - (3)** adequate storage for lab supplies;
 - (4)** specimen collection facilities with a toilet and lavatory;
 - (5)** blood collection facilities shall have seating space, a work counter and hand washing facilities;
 - (6)** appropriate storage facilities to ensure specimens are maintained at correct temperatures

and to prevent any deterioration or contamination.
[8.370.17.32 NMAC - N, 7/1/2024]

8.370.17.33 INFECTION CONTROL:

- A.** The facility shall develop, implement and enforce written infection control policies and procedures to minimize the transmission of infection. Policies shall include educational course requirements; decontamination, disinfection, sterilization, and storage of sterile supplies; and cleaning and laundry requirements.
- B.** The facility shall provide sterilization equipment adequate to meet the requirements for sterilization of critical items. Equipment shall be maintained in accordance with the manufacturers' specifications, and operated to perform with accuracy, the sterilization of critical items. Live spore testing for the effectiveness of sterilization will be performed as defined by facility policy. Devices such as steri-gauges or sterilization tape will not be sufficient to assess the effectiveness of the sterilizers. The facility shall have a methodology to permit the backtracking of equipment use in case a sterilizer or any other medical equipment fails.
- C.** Where cleaning, preparation and sterilization functions are performed in the same room or unit, soiled or contaminated supplies and equipment shall be physically separated from the clean or sterilized supplies and equipment.
- D.** Each facility shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.
- E.** All special waste including blood, body fluids, placentas, sharps and biological indicators, shall be disposed of in accordance with OSHA and the New Mexico environment department standards for bio hazardous waste.
- F.** Each facility shall have written policies and procedures on terminal cleaning of birthing rooms to ensure infection control and

client safety.

[8.370.17.33 NMAC - N, 7/1/2024]

8.370.17.34 EMERGENCY

MEDICAL SERVICES: All freestanding birth centers shall have a written policy regarding emergency transfer for clients or newborns including emergency response personnel and accepting hospital facility which shall be followed in the event of an emergency.

A. Each facility must maintain and have easily accessible an emergency response cart(s) or emergency response tray(s) to provide emergency lifesaving procedures for an adult and newborn and comply with the following:

(1) emergency response carts or trays shall be supplied with the drugs and biologicals commonly used in life saving procedures, along with supplies and equipment determined by the clinical director of the facility;

(2) each emergency response cart or tray shall have lists of equipment and supplies to be maintained and ready and for use as an inventory guide;

(3) emergency response carts or trays must be replenished as supplies or equipment are used;

(4) emergency response carts or trays shall be checked on a monthly basis for completeness and a log maintained with date and by whom the check was made; and

(5) all clinical staff must know the location of and be trained in the use of the emergency response.

B. Provisions for emergency calls:

(1) an easily accessible hard wired telephone for summoning help, in case of emergency, must be available in the facility and in the birthing room during a labor; and

(2) a list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital and poison control center

must be prominently posted by the telephone(s).

[8.370.17.34 NMAC - N, 7/1/2024]

8.370.17.35 BUSINESS HOURS AND OPERATIONAL RECORDS:

The facility shall post its hours of operation in a public location that can be seen by clients and visitors both inside and outside the facility. The facility shall keep all operational reports and records on file at the facility and make them available for review to document compliance with these regulations upon request of the licensing authority. Business and operational records shall include, but are not limited to:

A. names and addresses of all license owners, controlling parties, management company, if applicable, administrator, clinical director and all of the members of the internal and external quality committees;

B. a copy of the most recent version of the licensing regulations;

C. any and all agreements and contracts with other health care providers to provide services;

D. the most recent life safety and health surveys conducted by the licensing authority and any variances or waivers granted;

E. the most recent fire inspection report by the fire authority having jurisdiction;

F. a log of fire and emergency evacuation drills conducted by the freestanding birth center;

G. a valid and current state board of pharmacy drug permit;

H. the most recent state board of pharmacy inspection of the drug room;

I. the most recent CLIA certificate applicable for the type of specimens tested or waiver(s) for any specimen testing;

J. a log tracking infection control and sterilization processes demonstrating compliance with these regulations and all other applicable statutes and regulations;

K. if applicable, New Mexico environment department approval of private water system;

L. if applicable, New Mexico environment department approval of private waste and sewage disposal.

[8.370.17.35 NMAC - N, 7/1/2024]

8.370.17.36 BUILDING STANDARDS FOR FREESTANDING BIRTH CENTERS:

The purpose of a freestanding birth centers is to establish a safe, homelike environment for healthy women anticipating a low risk birth so long as there is sufficient space, furnishings, equipment and supplies to comfortably accommodate the number of families, mothers, newborns and infants served by the facility and the staff necessary for providing the services.

A. The facilities may be in a house or residential structure adapted or renovated for birth center use, if allowed and approved by the local zoning authority.

B. If the facility is based in an office building, consultation and examining rooms must be separate from the dedicated birth room(s).

C. Freestanding birth centers must comply with life safety code requirements in accordance with the applicable national fire protection association (NFPA) 101 life safety code edition. Birth centers may be classified as business occupancies if their capacity is restricted to occupancy by fewer than four active births at any one time and the physical layout shall not render clients, not including infants, incapable of self-preservation.

D. All freestanding birth center facilities licensed under these regulations must be accessible to and useable by handicapped clients, employees, staff and visitors.

[8.370.17.36 NMAC - N, 7/1/2024]

8.370.17.37 MINIMUM FACILITY SPACE REQUIREMENTS:

Each facility shall include and provide sufficient

space for the following areas:

A. Public areas: The facility shall provide in the public areas:

- (1) sufficient parking space(s) for the public, each birthing room and each employee present on any single shift;
- (2) a reception and information counter or desk;
- (3) a waiting area for visitors;
- (4) convenient and accessible wheelchair storage;
- (5) convenient and accessible drinking fountain or bottled water.

B. Administrative and work areas: The facility shall provide administration and work areas including:

- (1) general or individual office(s) for business transactions, records, administrative and professional staff;
- (2) storage for staff personal effects which can be locked in drawers or cabinets.

C. Toilets, lavatories and bathing facilities: All fixtures and plumbing in the facility shall be installed in compliance with applicable state and local building codes and shall include:

- (1) a toilet and sink in each birth room, and a tub or shower available for use by the laboring mother within the facility;
- (2) a separate toilet and sink for staff use;
- (3) at least one public and visitor restroom conveniently located and accessible to the handicapped which includes a toilet and sink;
- (4) a hand washing sink in all toilet rooms which shall be kept supplied with single use or individual use towels for hand drying or provided with mechanical blower;
- (5) automatic hand sanitizer units may be used instead of a sink.

D. Nourishment station: A facility nourishment center shall be provided and include the following:

- (1) work

counter;

- (2) sink;
- (3)

refrigerator;

- (4) storage

cabinets; and

- (5) equipment

for hot and cold nourishment; the nourishment area may be available for staff use, and may within space limited facilities also function as the staff lounge.

E. Examination rooms:

If prenatal or other health care is provided at the facility, exam rooms shall be separated from the dedicated birth room(s) and shall have:

- (1) sufficient size to accommodate the necessary equipment and personnel consistent with the purpose of the room;
- (2) all walls in an exam room shall be a minimum of eight feet long; and

(3) a hand washing sink shall be located in each exam room or immediately adjacent to the exam room.

F. Birth rooms: The facility shall have one birth room available for each client in active labor which is and includes:

- (1) sufficient size to accommodate necessary equipment and personnel consistent with the purpose of the room;
- (2) all walls constructed to a minimum length of 10 feet long;

(3) birth rooms and bathrooms located to provide for complete privacy during use;

(4) clear floor space to permit unimpeded egress and access for emergency transportation equipment;

(5) located to provide unimpeded rapid access to a facility exit which accommodates emergency transportation vehicles and equipment; and

(6) furniture arrangement in the birth room that permits a minimum clear dimension of 36 inches on at least one side for the full length of the bed where birthing can occur.

G. Equipment and supplies:

(1)

Equipment: The facility shall be equipped with all necessary items and equipment needed to provide low-risk maternity delivery and care, as well as all equipment available and ready to provide emergency medical services, including emergency carts or emergency trays, in life threatening events to mother and baby including, but not limited to,:

(a)

cardiopulmonary resuscitation (CPR) equipment, oxygen, positive pressure mask, suction, intravenous (IV) equipment, equipment for maintaining infant temperature and ventilation, blood expanders, and medications identified in professional staff protocols to meet emergency needs of mother and baby at the facility and during transport to an acute care setting;

(b)

equipment for performing standard screening, laboratory tests, and for sterilizing instruments and other materials, including programs for regular inspection and training in the use of resuscitation and other equipment as outlined in the policies and procedures manual which shall be available on site at all times; and

(c)

maintenance of all equipment in accordance with manufacturer's specifications.

(2) Supplies:

The facility's supply inventory shall be sufficient to care for the number of childbearing women and families registered for care at any one time.

H. Housekeeping and support areas: The facility shall provide housekeeping and support areas, including:

(1) general

storage facilities for supplies and equipment;

(2) drug

storage and administration areas which comply with New Mexico board of pharmacy regulations;

(3) clean

storage consisting of a separate room, space or closet for storing clean and

sterile supplies;

(4) soiled holding with separate collection, storage and disposal for all soiled materials used and stored at the facility.

I. Laundry services:

The facility shall provide laundry services for both facility use and client care, on the premises or through laundry and linen services:

(1) on-site laundry facilities shall be provided with necessary washing and drying equipment;

(2) soiled laundry shall be kept in a separate storage area from the clean laundry storage area;

(3) soiled laundry shall not be stored in the nourishment, kitchen or dining areas;

(4) in facilities with four or more birthing rooms, washers shall be located in separate rooms from the dryers and shall have negative air pressure from the other rooms in the facility.

[8.370.17.37 NMAC - N, 7/1/2024]

8.370.17.38 MINIMUM SAFETY REQUIREMENTS:

Each facility shall comply with the following minimum safety requirements:

A. Exits:

(1) Each facility and each floor of the facility shall have exits as required and permitted by current fire protection and life safety codes adopted by the state.

(2) Exit ways must be kept free from obstructions at all times.

(3) All exit and exit access doors must be at least 36 inches wide and accommodate wheelchairs.

B. Corridors:

(1) Minimum corridor width shall be three feet where the occupancy load is less than 50, or three feet eight inches, if the occupant load is greater than 50.

(2) Narrower corridor widths may be allowed in staff areas not in the exit pathway

if not in conflict with applicable building or fire codes and approved by the licensing authority prior to occupying the facility.

C. Doors and windows:

(1) All doors in spaces occupied or used by clients shall be solid core and have a minimum width of 32 inches wide and be a minimum of one and three-quarter inches thick.

(2) Each birthing room must have an operable window or alternate means to provide adequate ventilation and emergency egress.

D. Emergency lighting:

The facility shall provide emergency lighting which:

(1) activates automatically upon any disruption of electrical service;

(2) is sufficient to illuminate paths of egress and exits in the facility; and

(3) for facilities with four or more birth rooms, is located in each birth room.

[8.370.17.38 NMAC - N, 7/1/2024]

8.370.17.39 MINIMUM ENVIRONMENTAL REQUIREMENTS:

Each facility shall comply with the following minimum environmental requirements:

A. Floors and walls:

All finishes shall be kept clean and shall be of the type that is appropriate for the cleaning methods and solutions used to maintain a clean and safe environment.

(1) Floor material shall be readily cleanable and wear resistant.

(2) In all areas subject to wet cleaning, floor materials shall not be physically affected by liquid germicidal or cleaning solution.

(3) Floors subject to traffic while wet including showers and bath areas shall have a slip resistant surface.

(4) Wall finishes shall be washable and in the proximity of plumbing fixtures, shall

be smooth and moisture resistant.

(5) In areas subject to wet cleaning, the intersection of the floor and wall shall be sealed with a coved base or a wood bases tightly sealed connection without voids.

(6) Floor and wall areas penetrated by pipes, ducts and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(7) Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

B. Water: The facility shall provide water in sufficient quantity to support all services provided and shall:

(1) insure that if the water is obtained from a private water system and not a publicly approved system, the water supply is inspected, tested and approved by the New Mexico environment department or appropriate authority prior to licensure; the facility shall be responsible for insuring that subsequent periodic testing and inspection of any private water systems is made at intervals prescribed by the New Mexico environment department or the legally responsible authority which oversees or inspects, tests, and approves the specific system;

(2) provide hot water at each hot water outlet at all times with hot water for hand washing facilities, tubs and showers not exceeding 120 degrees Fahrenheit at the delivery point.

C. Water heaters:

(1) Must be able to supply hot water to all hot water taps within the facility at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees Fahrenheit.

(2) Must be enclosed and separated from other parts of the building premises by construction as required by applicable state and local building codes, if using fired fuel.

(3) Must be

equipped with an operable pressure relief valve (pop-off-valve) which is tested on a schedule recommended by the manufacturer.

D. Sewage and waste disposal: The facility shall provide for proper sewage and waste disposal at all times including:

(1) If the facility sewage and liquid waste system is not part of an approved public system, the private sewage system must be inspected, tested and approved by the New Mexico environment department prior to licensure. The facility shall be responsible to insure that periodic testing or inspection of its private sewage disposal systems is made as required by the New Mexico environment department or the legally responsible authority which oversee or inspects the specific system.

(2) If municipal or community garbage collection and disposal services are not available, the method of collection and disposal of the facility's solid waste must be inspected and approved by the New Mexico environment department or the legally responsible authority which oversee or inspects the specific system.

(3) All external garbage and refuse receptacles must be kept clean, durable, have tight fitting lids, must be insect, rodent and animal proof, washable, leak proof, and constructed of materials which will not absorb liquids.

E. Environmental services: The facility shall provide:

(1) A separate lockable storage area or closet for environmental cleaning supplies.

(2) Proper disposal of all liquids and waste resulting from cleaning contaminated areas.

(3) Proper procedures shall be maintained, and techniques used, consistent with the facility's policies and procedures and applicable regulations for disposal of bio-waste and sanitary disposal of all other wastes.

F. Cleaning:

(1) The facility must be kept clean and free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.

(2) Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

(3) Safe and effective procedures for cleaning and sanitizing all facility areas and equipment shall be followed consistently to safeguard the health of the clients, staff, and visitors.
[8.370.17.39 NMAC - N, 7/1/2024]

8.370.17.40 MINIMUM LIGHTING AND ELECTRICAL STANDARDS:

A. Electrical standards: The facility shall provide that:

(1) all facility electrical sources, supplies, and equipment comply with all applicable national, state and local electrical codes;

(2) all circuit breakers or fused switches provide electrical disconnection and over current protection and are:

(a) readily accessible for use and maintenance;

(b) set apart from traffic lanes; and

(c) located in a dry, ventilated space.

(3) all panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as the circuits they serve; and

(4) each panel board shall be marked showing the service area of each circuit breaker or fused switch.

B. Lighting: The facility shall insure that:

(1) all spaces occupied by people, machinery or equipment within buildings, at outside building approaches and at parking areas have adequate lighting to prevent injury;

(2) lighting shall be sufficient to make all parts of an area clearly visible;

(3) lighting

fixtures shall be shielded as required by code;

(4) lighting fixtures shall be selected and located for the comfort and convenience of the clients, staff and public; and

(5) a fixed or portable examination light shall be provided for all examination and birth rooms.

C. Electrical cords and electrical receptacles: Power strips may not be used as a substitute for adequate electrical outlets in a facility. Power strips may be used for a computer, monitor and printer. Power strips shall not be used with medical devices. The facility shall take precautions if power strips are used, including: installing internal ground fault and over-current protection devices, preventing cords from becoming tripping hazards, and using power strips that are adequate for the number and types of devices used. The facility shall take all necessary precautions to insure power overloads and excessive power demands on any circuit do not cause overheating or fire. Ground fault circuit interrupter (GFCI) shall be installed in locations near water sources to prevent electrocution of persons.

(1) All electrical cords and extension cords must be:

(a) U/L approved;

(b) replaced as soon as they show wear;

(c) not used under any circumstances as a general wiring method;

(d) plugged into an electrical receptacle within the room where used and not be connected in one room and extended to anything outside the room; and

(e) not be used in series.

(2) Electrical receptacles must be:

(a) installed as required by applicable codes;

(b)

appropriately rated for each use and function; and

(c)

any use of wall mounted outlets to expand the receptacle capacity or to be used as a surge protector and connected to any medical equipment is prohibited.

[8.370.17.40 NMAC - N, 7/1/2024]

8.370.17.41 MINIMUM HEATING, VENTILATION AND AIR CONDITIONING STANDARDS:

The facility shall provide and maintain heating, ventilating and air conditioning or air cooling systems sufficient to keep all facility occupants comfortable which include but are not limited to:

A. Heating, air-conditioning or air cooling, piping, boilers and ventilation equipment furnished, installed and maintained to meet all requirements of applicable state and local mechanical, electrical and construction codes.

B. Use of a heating method that consistently provides a minimum indoor winter design capacity of 75 degrees fahrenheit with accessible temperature adjustment controls appropriate for all occupants' comfort.

C. A prohibition against the use of unvented heaters, open flame heaters or portable heaters.

D. An ample supply of outside air shall be provided in all spaces where fuel fired boilers, furnaces or heaters are located to assure proper combustion.

E. All fuel fired boilers, furnaces or heaters shall be connected to an approved venting system which takes all combustion products directly to the outside air.

F. Adequate ventilation at all times to provide fresh air and the control of unpleasant odors inside the facility.

G. A one hundred percent automatic cutoff control valve in event of pilot failure for all gas-fired heating equipment.

H. A system for maintaining all occupants' comfort

during periods of hot weather.

I. Protection of all boiler, furnace or heater rooms from other parts of the building by construction having a fire resistance rating of not less than one hour with doors that open to the interior being self-closing with a three-quarter hour fire resistance rating.

J. Filters having efficiencies as required by state codes for all central ventilation and air conditioning systems.

[8.370.17.41 NMAC - N, 7/1/2024]

8.370.17.42 FIRE SAFETY:

All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility including, but not limited to:

A. Fire clearance and inspections: Each facility must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the freestanding birth center, the facility must document the date the request was made and to whom. If the fire authorities make annual inspections, a copy of the latest inspection must be kept on file in the facility.

B. Staff fire safety training:

(1) All facility staff must know the location of and be instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility shall request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

(2) Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways and any other condition which could cause burns, fall, or other personal injury.

(3) Fire and evacuation drills: The facility must conduct at a minimum on

a quarterly basis at least one fire drill and evacuation drill. A log must be maintained by the facility showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill.

C. Evacuation plan and preparedness plans: Each facility must have a fire and disaster evacuation plan conspicuously posted in each separate area of the building showing routes of evacuation in case of fire or disaster or other emergency, as well as a disaster preparedness plan in the event of man-made or natural disaster.

D. Provisions for emergency calls: An easily accessible hard wired telephone for summoning help, in case of emergency, must be available in the facility and a list of emergency numbers, including, but not limited to, fire department, police department, ambulance services and poison control center must be prominently posted by the telephone(s).

E. Fire extinguishers:
(1) fire extinguishers as approved by the state fire marshal or fire prevention authority having jurisdiction must be located in the freestanding birth center;

(2) fire extinguishers must be properly maintained as recommended by the manufacturer, state fire marshal or fire authority having jurisdiction; and

(3) all fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal or fire authority having jurisdiction; all fire extinguishers must be tagged, noting the date of inspection.

F. Alarm system: A manually operated, electrically supervised fire alarm system shall be installed in each facility as required by applicable national fire protection association (life safety code) 101 (NFPA 101). Facilities located in multi-story buildings must have a fire alarm system as required by NFPA 101.

G. Fire detection

system: The facility must be equipped with smoke detectors as required by the NFPA 101 (life safety code) and approved as to number, type and placement in writing by the fire authority having jurisdiction. [8.370.17.42 NMAC - N, 7/1/2024]

8.370.17.43 INCORPORATED AND RELATED STATUTES, RULES AND CODES:

The facilities that are subject to this rule are also subject to other statutes, rules, codes and standards that may, from time to time, be amended, including all authorizing statutes under which any applicable regulations have been promulgated. Applicable regulations include, but are not limited to the following:

- A.** Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
- B.** Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.
- C.** Adjudicatory hearings for licensed facilities, New Mexico health care authority, 8.370.2 NMAC.
- D.** Caregiver’s criminal history screening requirements, 8.370.5 NMAC.
- E.** Employee abuse registry, 8.370.8 NMAC.
- F.** Incident reporting, intake processing and training requirements, 8.370.9 NMAC. [8.370.17.43 NMAC - N, 7/1/2024]

8.370.17.44 SEVERABILITY:

If any section or provision or application of these regulations is held to be invalid, the remainder and its application to other situations or persons shall not be affected or interfere with the remaining requirements provided by these regulations. [8.370.17.44 NMAC - N, 7/1/2024]

HISTORY OF 8.370.17 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS PART 18 REQUIREMENTS FOR FACILITIES PROVIDING OUTPATIENT MEDICAL SERVICES AND INFIRMARIES

8.370.18.1 ISSUING AGENCY: New Mexico Health Care Authority. [8.370.18.1 NMAC - N, 7/1/2024]

8.370.18.2 SCOPE:
A. These regulations apply to the following:
(1) public, profit or nonprofit outpatient facilities, ambulatory surgical centers, diagnostic and treatment centers, or infirmaries, providing services as outlined by these regulations; or
(2) any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
B. These regulations do not apply to the following: offices and treatment rooms of licensed private practitioners. [8.370.18.2 NMAC - N, 7/1/2024]

8.370.18.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation. [8.370.18.3 NMAC - N, 7/1/2024]

8.370.18.4 DURATION: Permanent. [8.370.18.4 NMAC - N, 7/1/2024]

8.370.18.5 EFFECTIVE DATE: July 1, 2024, unless a later date is specified at the end of a section. [8.370.18.5 NMAC - N, 7/1/2024]

8.370.18.6 OBJECTIVE:
A. Establish minimum standards for licensing of health facilities who provide outpatient medical services and infirmaries.
B. Monitor health facilities providing outpatient medical services and infirmaries with these regulations through surveys to identify any areas which could be dangerous or harmful to the patients or staff.
C. Encourage the establishment and maintenance of health facilities to provide outpatient medical services and infirmaries to the citizens of New Mexico that provide quality services that maintains or improves the health and quality of life to the patients. [8.370.18.6 NMAC - N, 7/1/2024]

8.370.18.7 DEFINITIONS:
A. “Applicant” means the individual who, or organization which, applies for a license; if the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization; the applicant must be the owner.
B. “Certified registered nurse anesthetist” means an advanced practice professional registered nurse permitted by law to provide anesthesia care; in an interdependent role as a member of a health care team in which medical care of the patient is directed by a medical physician, osteopathic physician, dentist or podiatrist licensed in the state of New Mexico; the certified registered nurse anesthetist shall collaborate with the medical physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care or the patient; collaboration means the

process in which each health care provider contributes their respective expertise.

C. “Deficiency” means a violation of or failure to comply with a provision(s) of these regulations.

D. “Dentist” means a person licensed to practice dentistry in the state of New Mexico under the Dental Act, Sections 61-5-1 to 61-5-22 NMSA 1978.

E. “Facility” means a building or buildings in which outpatient medical services are provided to the public and which is licensed pursuant to this rule.

F. “Governing body” means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a facility licensed pursuant to these regulations.

G. “License” means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.

H. “Licensed practical nurse” means a person licensed as a trained practical nurse under the Nursing Practice Act, Section 61-3-19 NMSA 1978.

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

J. “Licensing authority” means the New Mexico health care authority.

K. “NMSA” means the New Mexico Statutes Annotated, 1978 compilation, and all the revisions and compilations thereof.

L. “Physician” means a person licensed to practice medicine or osteopathy by the New Mexico board of medical examiners, pursuant to Section 61-6-10 NMSA 1978 or the osteopathic medical examiners board pursuant to Sections 61-10-1 through 61-10-21, NMSA 1978.

M. “Physician’s assistant” means a person licensed as a physician’s assistant by the New Mexico board of medical examiners, in accordance with Section 61-6-6 NMSA 1978.

N. “Plan of correction” means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.

O. “Policy” means a statement of principle that guides and determines present and future decisions and actions.

P. “Premises” means all parts of buildings, grounds, and equipment of a facility.

Q. “Procedure” means the action(s) that must be taken in order to implement a policy.

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

S. “Resident” as defined in Section 3 (I) of the Resident Abuse and Neglect Act means any person who receives treatment from a health facility.

T. “U/L approved” means approved for safety by the national underwriters laboratory.

U. “Variance” means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a facility, and is at the sole discretion of the licensing authority.

V. “Waive or waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the patients and staff are not in danger; waivers are issued at the sole discretion of the licensing authority. [8.370.18.7 NMAC - N, 7/1/2024]

8.370.18.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide out-patient services to the public in facilities governed by these regulations. [8.370.18.8 NMAC - N, 7/1/2024]

8.370.18.9 TYPES OF FACILITIES AND SCOPE OF SERVICES:

A. Ambulatory surgical center: means any distinct entity that operates exclusively for the purpose of providing surgical services without anticipation of overnight stay of patients. This type of facility may be integrated with the surgical department of an existing hospital and its outpatient department utilizing many of their services and resources. Those facilities which are freestanding may provide some services such as specialized diagnostic and laboratory by agreement or contract with another health care provider.

B. Diagnostic and treatment center: means a facility which provides a service to the public on an outpatient basis for the diagnosis and treatment of medical conditions not requiring hospitalization. Services provided are those diagnostic and therapeutic services commonly furnished in a physician’s office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status and treatment for a variety of medical conditions.

C. Limited diagnostic and treatment center: means a facility which provides on an outpatient basis a limited scope of services. This type of facility provides services usually in only one or two areas of preventive health, such as family planning, hypertension, child health, prenatal,

dental health etc; their services rely heavily on consultation, referral and counseling. Because of their limited scope of services and amounts of medical supplies and equipment less stringent standards in building and fire codes are permitted.

D. Rural health clinic: means a facility which provides services to the public in a rural area where there is a limited population and a shortage of physicians and other health care providers. Services are the same as those of a diagnostic and treatment center which are normally provided by a physician, but in a rural health clinic may be provided by a nurse practitioner or a physician's assistant. Facilities licensed as a rural health clinic must be located in a geographic area in which it has been determined by the New Mexico health care authority or federal government, through the use of indices and other standards set by them, that a shortage of physicians and health care personnel exist to provide primary health care to the citizens of that area.

E. Infirmary: is a short term emergency medical and nursing care facility of an educational institution which in conjunction with providing diagnostic and treatment services to the members, has on a continuing 24-hour basis, inpatient facilities and resources for short-term emergency medical and nursing care.

F. New or innovative clinic: When a professional organization has shown a need for a new or innovative type of outpatient service which does not fit into one of the categories of Subsections A through E of 8.370.18.9 NMAC of these regulations, it may be licensed at the sole discretion of the licensing authority, if all requirements outlined in 8.370.18.10 NMAC below have been met.
[8.370.18.9 NMAC - N, 7/1/2024]

8.370.18.10 INITIAL LICENSURE PROCEDURES:

To obtain an initial license for a facility pursuant to these regulations the following procedures must be followed by the applicant.

A. Initial Phase:

These regulations should be thoroughly understood by the applicant and used as a reference for design of a new building or renovation or addition to an existing building for licensure as a facility pursuant to these regulations. Prior to starting construction, renovations or additions to an existing building the applicant of the proposed facility shall:

(1) advise the licensing authority of intention to open a facility pursuant to these regulations and depending on the type of facility submit the following:

(a) ambulatory surgical centers, diagnostic and treatment centers, rural health clinics and infirmaries will submit a complete set of construction documents (blueprints) for the total building;

(b) limited diagnostic and treatment centers will submit a set of floor plans for the building which must be of professional quality, be on substantial paper of at least 18" x 24", and be drawn to an accurate scale of 1/4" to 1"; these plans must include:

(i) proposed use of each room e.g., waiting room, examination room, office, etc.;

(ii) interior dimensions of all rooms;

(iii) one building or wall section showing exterior and interior wall construction; section must include floor, wall, ceiling, and the finishes, e.g., carpet, tile, gyp board with paint, wood paneling;

(iv) door types, swing, and sizes of all doors, e.g. solid core, hollow core, 3'0" x 6'8", 1 3/4" thick;

(v) if building is air conditioned;

(vi) indicate all sinks, tubs, showers;

(vii) indicate furnaces, and hot water heaters and if fuel fired, or electric;

(viii) indicate windows to include size and type;

(ix) indicate any level changes within the building e.g. steps or ramps;

(x) indicate fire extinguishers, heat and smoke detectors and alarm systems;

(xi) locate the building on a site/plot plan to determine surrounding conditions, include all steps, ramps, parking areas, walks, and any permanent structures;

(xii) indicate on plans if building is new construction, remodeled or alteration, or an addition; if remodeled or an addition indicate existing and new construction on the plans;

(2) the proposed facility must also submit to the licensing authority a functional program outline that provides the following information:

(a) scope of services to be provided by the proposed facility;

(b) projected number of patients to be served daily;

(c) number of staff and duties to be performed;

(d) services that will be contracted or arranged with another health provider i.e.; x-ray, laboratory, etc.;

(e) number of examination rooms, operating rooms, treatment rooms, and other rooms for diagnostic use such as x-ray, laboratory, etc.;

(3) new or innovative outpatient services will also submit a proposal to the licensing authority for review and approval; the proposal must include at least the following:

(a) information supporting the need for a special type of outpatient service;

(b) explanation of the special problems and needs of the patients who will be receiving services;

(c) specify portions of these regulations with which the new or innovative outpatient services would be in conflict;

(d) information on how the proposed facility would resolve these conflicts with alternative measures which would meet the intent of these regulations, e.g., increased staffing or fire and safety precautions;

(4) if at its sole discretion the licensing authority approves the proposal for the new or innovative outpatient services, a license may be granted with variances for those portions of the regulations with which the program would be in conflict;

(5) blueprints or floor plans will be reviewed by the licensing authority for compliance with current licensing regulations building and fire codes;

(6) if blueprints or plans are approved the licensing authority will advise the applicant that construction may begin.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building the applicant will submit to the licensing authority the following:

(1) Application form:

(a) will be provided by the licensing authority;

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

(c) will be printed or typed;

(d) will be dated and signed;

(e) will be notarized.

(2) Fees: all applications for licensure must be accompanied by the required fee.

(a) Current fee schedules will be provided by the licensing authority.

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

(c) Fees are non refundable.

(3) Zoning and building approval:

(a) All initial applications must be accompanied with written zoning approval from the appropriate authority (city, county or municipality).

(b) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).

(4) Fire authority approval: all initial applications must be accompanied with written approval of the fire authority having jurisdiction.

(5) New Mexico environment department approval: all initial applications must be accompanied by written approval of the New Mexico environment department for the following:

(a) private water supply, if applicable;

(b) private waste or sewage disposal, if applicable;

(c) kitchen approval for infirmaries if meals are prepared on site;

(d) x-ray installation, if applicable.

(6) Copy of appropriate drug permit issued by the state board of pharmacy.

D. Initial survey: Upon receipt of a properly completed application with all supporting documentation as outlined above an initial survey of the proposed facility will be scheduled by the licensing authority.

E. Issuance of license: Upon completion of the initial survey and determination that the facility is in compliance with these regulations the licensing authority will issue a license.

[8.370.18.10 NMAC - N, 7/1/2024]

8.370.18.11 LICENSES:

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

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

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

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

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director or when there is a change of name for the facility.

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

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

(3) Application must be submitted within 10 working days of the change.
[8.370.18.11 NMAC - N, 7/1/2024]

8.370.18.12 LICENSE RENEWAL:

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

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

C. If a licensee fails to submit a renewal application with the required fee and the current

license expires, the facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license. [8.370.18.12 NMAC - N, 7/1/2024]

8.370.18.13 POSTING OF LICENSE: The facility’s license must be posted in a conspicuous place on the licensed premises in an area visible to the public. [8.370.18.13 NMAC - N, 7/1/2024]

8.370.18.14 NONTRANSFERABLE RESTRICTION ON LICENSE:
A. A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occurs:
 (1) ownership of the facility changes;
 (2) the facility changes location;
 (3) licensee of the facility changes;
 (4) the facility discontinues operation.
B. A facility wishing to continue operation as a licensed facility under circumstances Paragraphs (1) - (4) of Subsection A of 8.370.18.14 NMAC above must submit an application for initial licensure in accordance with 8.370.18.10 NMAC of these regulations at least 30 days prior to the anticipated change. [8.370.18.14 NMAC - N, 7/1/2024]

8.370.18.15 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked: or
A. on the day a facility discontinues operation; or
B. on the day a facility is sold, leased, or otherwise changes ownership or license; or

C. on the day a facility changes location. [8.370.18.15 NMAC - N, 7/1/2024]

8.370.18.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING. In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee. [8.370.18.16 NMAC - N, 7/1/2024]

8.370.18.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following:
A. failure to comply with any provision of these regulations;
B. failure to allow survey by authorized representatives of the licensing authority;
C. any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
E. discovery of repeat violations of these regulations during surveys; or
F. failure to provide the required care and services as outlined by these regulations for the patients receiving care at the facility. [8.370.18.17 NMAC - N, 7/1/2024]

8.370.18.18 HEARING PROCEDURES:

A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against a facility’s license as outlined in 8.370.18.16 and 8.370.18.17 NMAC above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations will be furnished to a facility at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority. [8.370.18.18 NMAC - N, 7/1/2024]

8.370.18.19 CURRENTLY LICENSED FACILITIES: Any facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements, may continue to be licensed under the appropriate type of outpatient facility.

A. Variance may be granted for those building requirements the facility cannot meet provided the variances granted will not create a hazard to the health, safety and welfare of the patients and staff; and

B. the building requirements for which variances are granted cannot be corrected without an unreasonable expense to the facility; and

C. variances granted will be recorded and made a permanent part of the facility file. [8.370.18.19 NMAC - N, 7/1/2024]

8.370.18.20 NEW FACILITY:
A. A new facility may be opened in an existing building or a newly constructed building. If opened in an existing building a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in Subsections A, B and C of 8.370.18.19 NMAC of these regulations, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

B. A new facility opened in a newly constructed building must meet all requirements of these regulations. [8.370.18.20 NMAC - N, 7/1/2024]

8.370.18.21 FACILITY SURVEYS:

A. Application for licensure, whether initial or renewal, shall constitute permission for entry into and survey of a facility by authorized licensing authority representatives at reasonable times during the pendency of the application and, if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

C. Upon receipt of a notice of deficiency from the licensing authority the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee. [8.370.18.21 NMAC - N, 7/1/2024]

8.370.18.22 REPORTING OF INCIDENTS: All facilities licensed pursuant to these regulations must report to the licensing authority any serious incident or unusual occurrence which has, or could threaten the health, safety, and welfare of the patients or staff, such as but not limited to:

A. fire, flood, or other natural disaster which creates structural damages to the facility or poses health hazards;

B. any serious outbreak of contagious diseases dangerous to the public health;

C. any serious human errors by staff members of the facility which has resulted in the death, serious illness, or physical impairment of a patient; or

D. in accordance with

Section 8A of the “Resident, Abuse, and Neglect Act”. [8.370.18.22 NMAC - N, 7/1/2024]

8.370.18.23 QUALITY ASSURANCE: All facilities licensed pursuant to these regulations must have an ongoing, comprehensive self-assessment of the services provided by the facility. The assessment must include the total operation of the facility.

A. To be considered comprehensive the assessment for quality assurance must include, but is not limited to the following:

- (1) condition of patients and services rendered;
- (2) completeness of patient records;
- (3) organization of the facility;
- (4) administration;
- (5) staff utilization and training; and
- (6) policies and procedures.

B. Where problems (or potential problems) are identified, the facility must act as soon as possible to avoid any risks to patients such as, but not limited to the following:

- (1) changes in policies and procedures;
- (2) staffing and assignment changes;
- (3) additional education and training for the staff;
- (4) changes in equipment or physical plant; or
- (5) deletion or addition of services.

C. The governing body of the facility shall ensure that the effectiveness of the quality assurance program is evaluated by medical and administrative staff at least once a year. If the evaluation is not done all at once, no more than a year must lapse between evaluations of the same parts.

D. Documentation of the quality assurance program must be maintained by the facility. [8.370.18.23 NMAC - N, 7/1/2024]

8.370.18.24 PATIENT

RECORDS: Each facility licensed pursuant to these regulations must maintain a medical record for each patient. Every record must be accurate, legible and promptly completed. Medical records must include at least the following:

A. Ambulatory surgical centers:

- (1) patient identification;
- (2) significant medical history and results of physical examination;
- (3) pre-operative diagnostic studies (entered before surgery), if performed;
- (4) findings and techniques of the operation, including a pathologist’s report on all tissues removed during surgery, except those exempted by the governing body;
- (5) any allergies and abnormal drug reactions;
- (6) entries related to anesthesia administration;
- (7) documentation of properly executed informed patient consent; and
- (8) discharge diagnosis;

B. Diagnostic and treatment centers, rural health clinics, limited diagnostic and treatment centers:

- (1) patient identification;
- (2) patient consent forms (if applicable);
- (3) pertinent medical history;
- (4) assessment of the health status and health care needs of the patient;
- (5) brief summary of the episode for which the patient is requiring care;
- (6) disposition, and instructions to the patient;
- (7) reports of physical examinations, diagnostic and laboratory test results, and consultative findings; and
- (8) all physician’s orders, reports of treatments and medication and other

pertinent information necessary to monitor the patient’s progress;

C. Infirmaries:

(1) same as Paragraphs (1) through (8) of Subsection B of 8.370.18.24 NMAC above;

(2) nursing notes (for those patients requiring overnight care or observation); and

(3) medication chart (if applicable);

D. New or innovative outpatient service:

(1) same as Paragraphs (1) through (8) of Subsection B of 8.370.18.24 NMAC] above;

(2) any other information deemed necessary by the licensing authority after review and approval of the new or innovative service.

[8.370.18.24 NMAC - N, 7/1/2024]

8.370.18.25 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE FACILITY:

Each facility licensed pursuant to these regulations must keep the following reports and records on file and make them available for review upon request of the licensing authority.

A. A copy of the latest fire inspection report by the fire authority having jurisdiction.

B. A copy of the last survey conducted by the licensing authority and any variances granted.

C. Record of fire and emergency evacuation drills conducted by the facility.

D. Licensing regulations: A copy of these regulations: Requirements For Facilities Providing Outpatient Medical Services and Infirmaries, New Mexico health care authority, 8.370.18 NMAC.

E. Health certificates of staff.

F. A copy of the current license, registration or certificate, of each staff member for which a license, registration, or certification is required by the state of New Mexico.

G. Latest inspection by New Mexico environment department of radiological equipment, if applicable.

H. Valid drug permit as required by the state board of pharmacy.

I. Agreements or contracts with other health care providers to provide services not available in the facility, if applicable.

J. Latest inspection of drug room by state board of pharmacy.

K. New Mexico environment department approval of private water system, if applicable.

L. New Mexico environment department approval of private waste or sewage disposal, if applicable.
[8.370.18.25 NMAC - N, 7/1/2024]

8.370.18.26 PATIENT RIGHTS:

A. All facilities licensed pursuant to these regulations shall support, protect and enhance the rights of patients as shown below:

(1) the right to efficient and equal service, regardless of their race, sex, religion, ethnic background, education, social class, physical or mental handicap, or economic status;

(2) the right of considerate, courteous and respectful care from all staff of the facility;

(3) the right of complete information in terms the average patient can reasonably be expected to understand;

(4) the right to informed consent and full discussion of risks and benefits prior to any invasive procedure, except in an emergency; alternatives to the proposed procedure must be discussed with the patient;

(5) the right to obtain assistance in interpretation for non-English speaking patients;

(6) the right to know the names, titles, and professions of the facility staff to whom the patient’s speaks and from whom services or information are received;

(7) the right to refuse examination, discussion and procedures to the extent permitted by law and to be informed of the health and legal consequences of this refusal;

(8) the right of access to patient’s personal health records;

(9) the right of respect for the patient’s privacy;

(10) the right of confidentiality of the patient’s personal health records as provided by law;

(11) the right to expect reasonable continuity of care within the scope of services and staffing of the facility;

(12) the right to respect for the patient’s civil rights and religious opinions;

(13) the right to present complaints to the management of the facility without fear of reprisal;

(14) the right to examine and receive a full explanation of any charges made by the facility regardless of source of payment.

B. Facility staff shall be informed of and demonstrate their understanding of the policies on patient rights and responsibilities through orientation and in-service training activities.

C. Patient rights will be posted in the facility both in English and Spanish where they may be readily seen by the public.

D. The method by which a patient may register a complaint will be posted in the facility where it may be readily seen by the public.

[8.370.18.26 NMAC - N, 7/1/2024]

8.370.18.27 STAFF

RECORDS: Each facility licensed pursuant to these regulations must maintain a complete record on file for each staff member or volunteer working more than half-time. Staff records will be made available for review upon request of the licensing authority.

A. Staff records will contain at least the following:

(1) name;

(2) address and telephone number;

(3) position for which employed;

(4) date of employment;

(5) health certificate stating that the employee is free from tuberculosis in a transmissible form as required by New Mexico health care authority regulations, control of communicable disease in health facility personnel, 7.4.4 NMAC.

B. A daily attendance record of all staff must be kept in the facility.

C. The facility must keep weekly or monthly schedules of all staff. These schedules must be kept on file for at least six months. [8.370.18.27 NMAC - N, 7/1/2024]

8.370.18.28 POLICIES AND PROCEDURES:

A. All facilities licensed pursuant to these regulations must have written policies and procedures for the following:

(1) quality assurance program;

(2) maintenance of building and equipment;

(3) fire and evacuation;

(4) staff development and evaluation;

(5) administration and preparation of drugs;

(6) referral of patients.

B. Ambulatory surgical center: In addition to those policies and procedures listed in Subsection A of 8.370.18.28 NMAC of these regulations, ambulatory surgical centers must have the following policies and procedures:

(1) transfer of patients to hospital for patients requiring emergency care;

(2) for ambulance services if applicable;

(3) transfer of medical information;

(4) resuscitative techniques;

(5) aseptic techniques and scrub procedures;

(6) care of surgical specimens;

(7) protocols of surgical procedures;

(8) cleaning of operating room after each use;

(9) sterilization and disinfection;

(10) operating room attire;

(11) care of anesthesia equipment;

(12) special provision for infected or contaminated patients; and

(13) inspection and maintenance of emergency equipment in operating room.

C. Infirmaries: In addition to those policies and procedures listed in Subsection A of 8.370.18.28 NMAC of these regulations, infirmaries must have the following policies and procedures:

(1) inpatient care;

(2) transfer of patients to hospital.

D. New or innovative outpatient services: In addition to those policies and procedures listed in Subsection A of 8.370.18.28 NMAC of these regulations, may have others required by the licensing authority after review of program and approval of the new or innovative service. [8.370.18.28 NMAC - N, 7/1/2024]

8.370.18.29 GENERAL BUILDING REQUIREMENTS:

A. New construction, additions and alterations: When construction of new buildings, additions, or alterations to existing buildings are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire facility must be submitted.

B. Access to the handicapped: All outpatient facilities

licensed pursuant to these regulations must be accessible to and useable by handicapped employees, staff, visitors, and patients.

C. Extent of a facility: All buildings of the premises providing patient care and services will be considered part of the facility and must meet all requirements of these regulations. Where a part of the facility services are contained in another facility, separation and access shall be maintained as described in current building and fire codes.

D. Additional requirements: A facility applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may require these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review, consultation and on-site surveys during the licensing process. [8.370.18.29 NMAC - N, 7/1/2024]

8.370.18.30 MAINTENANCE OF BUILDING AND GROUNDS:

Facilities must maintain the building(s) in good repair at all times. Such maintenance shall include, but is not limited to, the following.

A. All electrical, signaling, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems.

B. All equipment used for patient care shall be maintained clean and in good repair.

C. All furniture and furnishings must be kept clean and in good repair.

D. The grounds of the facility must be maintained in a safe and sanitary condition at all times. [8.370.18.30 NMAC - N, 7/1/2024]

8.370.18.31 HOUSEKEEPING:

A. The facility must be kept free from offensive odors and

accumulations of dirt, rubbish, dust, and safety hazards.

B. Examination rooms, operating rooms, patient rooms, waiting areas and other areas of daily usage must be cleaned daily.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a slip resistant finish.

D. Bathrooms, lavatories, and drinking fountains must be cleaned as often as necessary to maintain a clean and sanitary condition.

E. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

F. Storage areas must be kept free from accumulation of refuse, discarded equipment, furniture, paper, and the like. [8.370.18.31 NMAC - N, 7/1/2024]

8.370.18.32 WATER:

A. A facility licensed pursuant to these regulations must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to insure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.

C. Hot and cold running water under pressure must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

D. Backflow preventors (vacuum breakers) must be installed on hose bibs, laboratory sinks, janitor's sinks, and on all other water fixtures to which hoses or tubing can be attached.

E. Water distribution systems are arranged to provide hot

water at each hot water outlet at all times. Hot water to hand washing facilities must not exceed 120 degrees fahrenheit.

[8.370.18.32 NMAC - N, 7/1/2024]

8.370.18.33 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the system used must be inspected and approved by the New Mexico environment department or recognized local authority.

C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid wastes generated by the facility must be inspected and approved by the New Mexico environment department or recognized local authority.

D. Infectious waste: Facilities licensed pursuant to these regulations which generate infectious waste must insure that the method of disposal of such wastes meets the requirements of the New Mexico environment department or recognized local authority.

E. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids.

Receptacles must be kept clean. [8.370.18.33 NMAC - N, 7/1/2024]

8.370.18.34 FIRE SAFETY COMPLIANCE:

All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility. [8.370.18.34 NMAC - N, 7/1/2024]

8.370.18.35 FIRE CLEARANCE AND INSPECTIONS:

Each facility must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide

for annual inspection of the facility, the facility must document the date the request was made and to whom. If the fire authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility. [8.370.18.35 NMAC - N, 7/1/2024]

8.370.18.36 STAFF FIRE AND SAFETY TRAINING:

A. All staff of the facility must know the location of and instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

B. Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the patients or staff.

C. Fire and evacuation drills: The facility must conduct at least one fire and evacuation drill each month. A log must be maintained by the facility showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill. [8.370.18.36 NMAC - N, 7/1/2024]

8.370.18.37 EVACUATION PLAN:

Each facility must have a fire evacuation plan conspicuously posted in each separate area of the building showing routes of evacuation in case of fire or other emergency. [8.370.18.37 NMAC - N, 7/1/2024]

8.370.18.38 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible telephone for summoning help, in case of emergency, must be available in the facility.

B. A list of emergency numbers, including, but not limited to, fire department, police department,

ambulance services, and poison control center must be prominently posted by the telephone(s).
[8.370.18.38 NMAC - N, 7/1/2024]

8.370.18.39 FIRE EXTINGUISHERS:

A. Fire extinguishers as approved by the state fire marshal or fire prevention authority having jurisdiction must be located in the facility.

B. Fire extinguishers must be properly maintained as recommended by the manufacturer, state fire marshal or fire authority having jurisdiction.

C. All fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal, or fire authority having jurisdiction. All fire extinguishers must be tagged, noting the date of inspection.
[8.370.18.39 NMAC - N, 7/1/2024]

8.370.18.40 ALARM

SYSTEM: A manually operated, electrically supervised fire alarm system shall be installed in each facility as required by national fire protection association 101 (life safety code). Infirmaries, ambulatory surgical centers, and multiple story facilities require manual alarm systems.
[8.370.18.40 NMAC - N, 7/1/2024]

8.370.18.41 FIRE

DETECTION SYSTEM: The facility must be equipped with smoke detectors as required by the NFPA 101 (life safety code) and approved in writing by the fire authority having jurisdiction as to number type and placement.
[8.370.18.41 NMAC - N, 7/1/2024]

8.370.18.42 JANITORS CLOSET(S):

A. Each facility shall have at least one janitor’s closet. If a facility is more than one story there must be a janitor’s closet on each floor.

B. Each janitor’s closet shall contain:

(1) a service sink;

(2) storage for housekeeping supplies and equipment.

C. Each janitor’s closet must be vented.

D. Janitor’s closet is a hazardous area and must be provided with one-hour fire separation and 1 3/4” solid core door.
[8.370.18.42 NMAC - N, 7/1/2024]

8.370.18.43 EMERGENCY LIGHTING:

A. A facility must be provided with emergency lighting which will activate automatically upon disruption of electrical service.

B. The emergency lighting must be sufficient to illuminate paths of egress and exits of the facility.

C. Facilities utilizing general anesthesia or life support equipment shall be provided essential electrical services in accordance with national fire protection association 99. Standard for health care facilities.
[8.370.18.43 NMAC - N, 7/1/2024]

8.370.18.44 ELECTRICAL STANDARDS:

A. All electrical installation and equipment must comply with all current state and local codes.

B. Circuit breakers or fused switches that provide electrical disconnection and over current protection shall be:

(1) enclosed or guarded to provide a dead front assembly;

(2) readily accessible for use and maintenance;

(3) set apart from traffic lanes;

(4) located in a dry, ventilated space, free of corrosive fumes or gases;

(5) able to operate properly in all temperature conditions;

(6) panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as

the circuits they serve;

(7) each panel board will be marked showing the area each circuit breaker or fused switch services;

(8) the use of jumpers or devices to bypass circuit breakers or fused switches is prohibited.
[8.370.18.44 NMAC - N, 7/1/2024]

8.370.18.45 LIGHTING: The facility must meet the following requirements for lighting:

A. all spaces occupied by people, machinery, or equipment within buildings, approaches to buildings, and parking lots shall have lighting;

B. lighting will be sufficient to make all parts of the area clearly visible;

C. all lighting fixtures must be shielded;

D. lighting fixtures must be selected and located with the comfort and convenience of the staff and patients in mind;

E. a fixed or portable examination light must be provided for all examination and treatment rooms.
[8.370.18.45 NMAC - N, 7/1/2024]

8.370.18.46 ELECTRICAL CORDS AND ELECTRICAL RECEPTACLES:

A. Electrical cords and extension cords:

(1) Electrical cords and extension cords must be U/L approved.

(2) Electrical cords and extension cords must be replaced as soon as they show wear.

(3) Under no circumstances shall extension cords be used as a general wiring method.

(4) Extension cords must be plugged into an electrical receptacle within the room where used and must not be connected in one room and extended to some other room.

(5) Extension cords must not be used in series.

B. Electrical receptacles:

(1) Duplex grounded type electrical receptacles (convenience outlets) must be installed in all areas in sufficient quantities for tasks to be performed as needed. Each examination or work table must have access to a minimum of two duplex receptacles. Exception: Limited diagnostic and treatment centers are only required to have access to one duplex receptacle for examination or work tables.

(2) The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited.
[8.370.18.46 NMAC - N, 7/1/2024]

8.370.18.47 HEATING, VENTILATION AND AIR CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes.

B. The heating method used by the facility must have a minimum indoor-winter-design-capacity of 75 degrees fahrenheit with controls provided for adjusting temperature as appropriate for patient and staff comfort.

C. The use of unvented heaters, open flame heaters or portable heaters is prohibited.

D. An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.

E. All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.

F. A facility must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.

G. All gas-fired heating equipment must be provided with a one-hundred percent automatic cutoff control valve in event of pilot failure.

H. The facility must be provided with a system

for maintaining patients and staff's comfort during periods of hot weather.

I. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Door must be self-closing with 3/4 hour fire resistance.

J. Operating room supply air shall be provided from ceiling outlets near the center of the work area. Return air from floor level with at least two return inlets located as remote as possible shall be provided.

K. All central ventilation and air condition systems shall be provided filters having efficiencies greater than twenty-five percent. Operating rooms shall have ninety percent filter efficiencies.
[8.370.18.47 NMAC - N, 7/1/2024]

8.370.18.48 WATER HEATERS:

A. Must be able to supply hot water to all hot water taps within the facility at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees fahrenheit.

B. Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.

C. All water heaters must be equipped with a pressure relief valve (pop-off-valve).
[8.370.18.48 NMAC - N, 7/1/2024]

8.370.18.49 RADIOLOGY:

A. All facilities licensed pursuant to these regulations which provide radiological services to include portable and dental units must meet the requirements of the New Mexico environment department for installation and use of the radiological equipment.

B. For those facilities providing radiological services the following is required:

(1) radiographic room meeting the

requirements as stated in Subsection A of 8.370.18.49 NMAC above;

(2) film processing facilities;

(3) storage facilities for exposed film;

(4) toilet room with hand washing facilities accessible to fluoroscopy room(s), if fluoroscopic procedures are part of the services; and

(5) dressing rooms or booths, as required by services provided with convenient toilet access.

[8.370.18.49 NMAC - N, 7/1/2024]

8.370.18.50 TOILETS, LAVATORIES AND BATHING FACILITIES:

A. All fixtures and plumbing must be installed in accordance with current state and local plumbing codes.

B. All toilets must be enclosed and vented.

C. All toilet rooms must be provided with a lavatory for hand washing.

D. All toilets must be kept supplied with toilet paper.

E. All lavatories for hand washing, except those for scrub purposes in ambulatory surgical centers, must be kept supplied with disposable towels for hand drying or provided with mechanical blower.

F. Hand washing lavatories for staff in patient care areas shall be trimmed with valves that can be operated without hands (single-level devices may be used if they meet this requirement).

G. Where blade handles are used, they shall not exceed four and a half inches, except that handles on clinical sinks shall not be less than six inches.

H. The number of and location of toilets, lavatories and bathing facilities will be mandated by requirements for each type facility. Such factors as extent of services provided and size of facility will also dictate requirements.

[8.370.18.50 NMAC - N, 7/1/2024]

8.370.18.51**EXITS:**

A. Each facility and each floor of a facility shall have exits as required/permitted by national fire protection association 101 (life safety code).

B. Each exit must be marked by illuminated signs having letters at least six inches high whose principle strokes are at least three-fourths of an inch wide. Exception: Limited diagnostic and treatment centers may in some cases not be required to have the illuminated exit signs but may use non-illuminated signs meeting the requirements as shown above.

C. Illuminated exit signs must be maintained in operable condition at all times.

D. Exit ways must be kept free from obstructions at all times.

E. Exit doors:

(1) Exit doors to all exit or exit access doors must be at least 36" wide.

(2)

Ambulatory surgical centers that use general anesthesia or have patients on life support equipment must have exit doors 44" in width.

[8.370.18.51 NMAC - N, 7/1/2024]

8.370.18.52**CORRIDORS:**

A. Ambulatory surgical centers:

(1) Minimum corridor width shall be six feet.

(2) In operating room and surgical suites where patients are transported on stretchers or beds, corridors will have a width of eight feet.

B. All other facilities: minimum corridor width shall be five feet except work corridors less than six feet in length may be four feet in width.

C. Facilities will often be contained within existing commercial or residential buildings and less stringent corridor widths may be allowed other than those contained in Subsection B of 8.370.18.52 NMAC above if not in conflict with building or fire codes and approved by the licensing authority prior to

occupying the facility.

[8.370.18.52 NMAC - N, 7/1/2024]

8.370.18.53**DOORS:**

A. The minimum door width for patient's use shall be 34" in width.

B. Patient room doors in infirmaries shall be 44" in width 1 3/4" solid core.

C. Operating rooms and recovery rooms shall have a minimum door width of 44".

D. Examination and treatment rooms shall have a minimum door width of 36".

[8.370.18.53 NMAC - N, 7/1/2024]

8.370.18.54**COMMON****ELEMENTS FOR OUTPATIENTS**

FACILITIES: The following shall apply to each outpatient facility, with additions or modifications as noted for each specific type of outpatient facility in other sections of these regulations or not applicable based on scope of services provided by the facility. Administration and public areas:

A. Entrance shall be able to accommodate wheelchairs.

B. Public services shall include:

(1)

conveniently accessible wheelchair storage;

(2) a reception

and information counter or desk;

(3) waiting

areas: where an organized pediatric service is provided by the outpatient facility, provisions shall be made for separating pediatric and adult patients;

(4)

conveniently accessible public toilets;

(5)

conveniently accessible drinking fountain(s).

C. Interview space(s) for private interviews related to social service, medical information, etc., shall be provided.

D. General or individual office(s) for business transactions, records, administrative, and professional staff shall be provided.

E. Clerical space or

rooms for typing, clerical work, and filing, separated from public areas for confidentiality, shall be provided.

F. Special storage for staff personal effects with locking drawers or cabinets (may be individual desks or cabinets) shall be provided. Such storage shall be near individual work stations and staff controlled.

G. General storage facilities for supplies and equipment shall be provided.

H. Nurses station(s) shall have a work counter, communication system, space for supplies, and provisions for charting.

I. Drug distribution station which may be part of the nurses station and shall include a work counter, sink, refrigerator, and locked storage for biologicals and drugs.

J. Clean storage consisting of a separate room or closet for storing clean and sterile supplies shall be provided and shall be in addition to that of cabinets and shelves.

K. Soiled holding which provides for separate collection, storage, and disposal of soiled materials.

L. Sterilizing procedures may be done on or off site, or disposables may be used to satisfy functional needs.

[8.370.18.54 NMAC - N, 7/1/2024]

8.370.18.55**LABORATORY:**

Facilities licensed pursuant to these regulations that provide laboratory services must provide the following:

A. laboratory work counter(s) with sink, and electric services;

B. lavatory(ies) or counter sink(s) equipped for hand washing;

C. storage cabinet(s) or closet(s);

D. specimen collection facilities with a toilet and lavatory;

E. blood collection facilities shall have seating space, a work counter, and hand washing facilities.

[8.370.18.55 NMAC - N, 7/1/2024]

8.370.18.56 FLOORS AND WALLS:

- A.** Floor material shall be readily cleanable and wear resistant.
- B.** In all areas subject to wet cleaning, floor materials shall not be physically affected by liquid germicidal or cleaning solution.
- C.** Floors subject to traffic while wet including showers and bath areas shall have a slip resistant surface.
- D.** Wall finishes shall be washable and, in the proximity of plumbing fixtures, shall be smooth and moisture resistant.
- E.** Wall bases in areas subject to wet cleaning shall be covered with the floor, tightly sealed within the wall and constructed without voids.
- F.** Floor and wall areas penetrated by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.
- G.** Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.
- H.** Floor drains are not permitted in operating rooms. [8.370.18.56 NMAC - N, 7/1/2024]

8.370.18.57 EXAMINATION ROOMS:

- A.** General purpose examination rooms: For medical, obstetrical, and similar examinations shall meet the following requirements:
 - (1) minimum floor area of 80 square feet, excluding vestibules, toilets, and closets;
 - (2) room arrangement shall permit at least two feet, eight inches clearance at each side and at the foot of the examination table;
 - (3) a lavatory or sink for hand washing; and
 - (4) a counter or shelf space for writing.
- B.** Special purpose examination rooms: For special examination such as eye, ear, nose, throat, and dental (if provided), shall

meet the following requirements:

- (1) floor area sufficient to accommodate procedures and equipment used but in no case less than 80 square feet, excluding vestibules, toilets, and closets;
- (2) a lavatory or sink for hand washing;
- (3) a counter or shelf space for writing. [8.370.18.57 NMAC - N, 7/1/2024]

8.370.18.58 TREATMENT ROOMS:

- A.** Rooms for minor surgical and cast procedures (if these services are provided) shall have a minimum floor area of 120 square feet, excluding vestibule, toilet, and closets.
- B.** The minimum room dimension shall be 10 feet.
- C.** A lavatory or sink for hand washing shall be provided.
- D.** A counter or shelf for writing shall be provided. [8.370.18.58 NMAC - N, 7/1/2024]

8.370.18.59 OBSERVATION ROOMS:

- Those facilities licensed pursuant to these regulations which require an observation room for the isolation of suspect or disturbed patients must meet the following requirements:
- A.** The minimum floor area must be 80 square feet.
 - B.** The observation room must be convenient to a nurse or control station to permit close observation of patients.
 - C.** A toilet room with lavatory must be immediately accessible.
 - D.** An examination room may be modified to use as an observation room. [8.370.18.59 NMAC - N, 7/1/2024]

8.370.18.60 SPECIAL REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS:

- In addition to all other requirements contained in these regulations ambulatory surgical centers will provide the following.
- A.** A covered entrance for pickup of patients after surgery.

- B.** A medical records room equipped for recording, and retrieval of medical records.
- C.** At least one examination or treatment room meeting the requirements outlined in Sections 57 and 58 of 8.370.18 NMAC shall be provided for examination and testing of patients prior to surgery.
- D.** Operating rooms or surgical suites:
 - (1) Each operating room will have a minimum clear area of at least 250 square feet.
 - (2) An emergency communication system connected with the surgical control station shall be provided.
 - (3) At least one x-ray film illuminator shall be provided in each operating room.
 - (4) Closed storage space for splints and traction equipment shall be provided for orthopedic surgery.
 - (5) Room(s) for post-anesthesia recovery of outpatient surgical patients shall be provided meeting the following requirements:
 - (a) at least three feet shall be provided at each side and at the foot of each bed as needed for work or circulation;
 - (b) if pediatric surgery is part of the services, separation from the adult section and space for parents shall be provided.
 - (6) A designated supervised recovery lounge shall be provided for patients who do not require post-anesthesia recovery but need additional time for their vital signs to stabilize before safely leaving the facility. This lounge shall contain:
 - (a) control station;
 - (b) space for family members;
 - (c) provisions for privacy; and
 - (d) convenient patient access to toilets large enough to accommodate patient, wheelchair, and an assistant.

(7) The following shall be provided in the surgical service areas:

(a) a control station located to permit visual surveillance of all traffic entering the operating suite;

(b) a drug distribution station; provision shall be made for storage and preparation of medications administered to patients;

(c) scrub facilities shall be provided near the entrance to each operating room which is arranged to minimize incidental splatter on nearby personnel or supply carts;

(d) a soiled workroom which shall contain a clinical sink or equivalent flushing type fixture, a work counter, a sink for hand washing, and waste receptacle(s);

(e) fluid waste disposal facilities which shall be convenient to the general operating rooms; a clinical sink or equivalent equipment in a soiled workroom shall meet this requirement;

(f) a clean workroom or a clean supply room:

(i) a clean workroom is required when clean materials are assembled within the facility prior to use and shall contain: work counter; sink equipped for hand washing; and, space for clean and sterile supplies;

(ii) a clean supply room may be used when the facility does not assemble the material and has procedures for the storage of sterile and clean supplies;

(g) anesthesia storage facilities which meet the standards as outlined in national fire protection association life safety code pamphlet 99; anesthesia may be stored inside or outside as long as the standards are met;

(h) anesthesia workroom for cleaning, testing, and storing anesthesia equipment which shall contain: work counter and sink;

(i) equipment storage room(s) for equipment and supplies used in the surgical area;

(j) staff clothing change area which shall contain: lockers; showers; toilets; lavatories for hand washing; and, space for donning scrub attire;

(k) outpatient surgery change areas for patients to change from street clothing into hospital gowns and to prepare for surgery which shall have the following: waiting room(s); lockers; clothing change or gowning areas; space for administering medications; and, provisions for securing patients' personal effects;

(l) stretcher storage area which shall be convenient for use and out of the direct line of traffic;

(m) for facilities having three or more operating rooms, a lounge and toilet facilities will be provided for the surgical staff;

(n) a nurse's toilet room shall be provided near the recovery room(s);

(o) a janitor's closet exclusively for the surgical suite which shall have: a floor receptor or service sink, and storage space exclusively for house keeping supplies and equipment for the surgical suite;

(p) space for the temporary storage of wheelchairs; and

(q) provisions for convenient access to and use of emergency crash carts at both the surgical and recovery areas.

E. Toilet rooms in surgery and recovery areas for patient use shall be equipped with doors and hardware that permit access from the outside in emergencies. When such rooms have only one opening or are small, the doors shall open outward.

F. Flammable anesthetics shall not be used in ambulatory surgical centers.

G. Ambulatory surgical centers in the same building as another provider such as hospital or

clinic must meet the following:

(1) the ambulatory surgical center is not required to be in a building separate from other health care activities (e.g., hospital, clinic, etc.); it must however, be separated physically by at least semi-permanent walls and doors;

(2) the ambulatory surgical center and another entity must not mix functions and operations in a common space during concurrent or overlapping hours of operation;

(3) sharing of a common space at non-overlapping times is acceptable if the ambulatory surgical center is able to fully function without interruption during its scheduled hours of operation;

(4) use of the ambulatory surgical center space by another entity, or host entity if the ambulatory surgical center is on the premises of another health facility, during the ambulatory surgical center's hours of operation is prohibited.

[8.370.18.60 NMAC - N, 7/1/2024]

8.370.18.61 SPECIAL REQUIREMENTS FOR INFIRMARIES: In addition to all other requirements contained in these regulations Infirmaries will provide the following:

A. patient rooms which have a minimum of 100 square feet for single occupancy or 160 square feet for double occupancy;

B. patient rooms must have a call system to summon help in case of emergency.

[8.370.18.61 NMAC - N, 7/1/2024]

8.370.18.62 GOVERNING BODY: All facilities licensed pursuant to these regulations must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the total operation of the facility and for ensuring that these policies are administered so as to provide quality health care in a safe environment. When services are provided through a contract with an outside resource,

the facility assures that these services are provided in a safe and effective manner.
[8.370.18.62 NMAC - N, 7/1/2024]

8.370.18.63 ADMINISTRATOR, DIRECTOR OR MANAGER:

Each facility must have an administrator/ director/manager hired or appointed by the governing body to whom authority has been delegated to manage the daily operation of a facility and implement the policies and procedures adopted by the governing body.[8.370.18.63 NMAC - N, 7/1/2024]

8.370.18.64 STAFF EVALUATION AND DEVELOPMENT:

A facility licensed pursuant to these regulations must have a written plan for the orientation, ongoing staff development, supervision and evaluation of all staff members, including but not limited to the following:

- A. facility’s emergency and safety procedures;
 - B. policies and procedures of the facility;
 - C. quality assurance program; and
 - D. staff training.
- [8.370.18.64 NMAC - N, 7/1/2024]

8.370.18.65 DIRECT SERVICE STAFF:

Each staff member who provides direct medical services to patients, such as physicians, dentists, certified registered nurse anesthetists, nurses, physicians assistants, etc., who are required to be licensed, registered or certified by the state of New Mexico must have a current license, registration, or certificate from the state of New Mexico.
[8.370.18.65 NMAC - N, 7/1/2024]

8.370.18.66 MINIMUM STAFFING REQUIREMENTS:

- A. Ambulatory surgical centers:
 - (1) Personnel trained in the use of emergency equipment and in cardiopulmonary resuscitation must be available

whenever there is a patient in the facility.

(2) Surgical staff of qualified physicians who have been granted clinical privileges by the governing body of the facility must perform all surgical procedures. A physician must be on duty whenever there is a patient in the facility.

(3) A certified registered nurse anesthetist or registered nurse must be available for emergency treatment whenever there is a patient in the facility.

B. Diagnostic and treatment centers:

(1) A physician must be on duty or on immediate call whenever primary medical services are being provided to patients.

(2) A certified registered nurse anesthetist, registered nurse, licensed practical nurse, nurse practitioner or physician assistant must be on duty whenever patients are in the facility.

(3) Personnel trained in the use of emergency equipment and cardiopulmonary resuscitation must be on duty whenever a patient is in the facility.

C. Limited diagnostic and treatment centers:

(1) A physician must be on call whenever medical services are being given to patients.

(2) A registered nurse, licensed practical nurse, nurse practitioner or physician assistant must be on duty whenever patients are in the facility receiving medical services.

(3) Personnel trained in the use of emergency equipment and cardiopulmonary resuscitation must be on duty whenever a patient is in the facility.

D. Rural health clinic:

(1) The physician responsible for the medical direction of the facility must be available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(2) A physician, nurse practitioner, physician’s assistant, registered nurse, or licensed practical nurse must be available to furnish patient care services at all times during the facility’s regular hours of operation.

E. Infirmaries:

(1) A physician is on duty or on immediate call whenever primary medical services are being provided to patients.

(2) A registered nurse, licensed practical nurse, nurse practitioner, or physician assistant must be on duty whenever patients are in the facility. This includes nighttime hours when patients are being kept overnight for observation or treatment.

(3) Personnel trained in the use of emergency equipment and cardiopulmonary resuscitation must be on duty whenever a patient is in the facility.

F. New or innovative clinic:

(1) Will meet the staffing requirements of Subsection B of 8.370.18.66 NMAC of these regulations.

(2) Additional staffing or modification of staffing may be determined by the licensing authority during the initial phase of the licensing process as outlined in Paragraph (3) of Subsection A of 8.370.18.10 NMAC.
[8.370.18.66 NMAC - N, 7/1/2024]

8.370.18.67 EMERGENCY MEDICAL SERVICES:

A. Each facility licensed pursuant to these regulations must maintain a crash cart or emergency medical tray to provide emergency life saving procedures which may be needed in the facility.

B. Crash carts or emergency trays will be supplied with the drugs and biologicals commonly used in life saving procedures such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids. Supplies and equipment for the crash carts or emergency trays will be

determined by the medical director of the facility.

C. Each crash cart or emergency tray will have an equipment and supply list to be used as an inventory guide. Crash carts or emergency trays must be replenished as supplies or equipment are used.

D. Crash carts or emergency trays will be checked on a weekly basis for completeness and a log maintained with date and by whom the check was made.

E. All direct service medical staff must know the location of and be trained in the use of the crash carts or emergency trays.

F. Operating rooms of ambulatory surgical centers must include at least the following:

- (1) emergency call system;
- (2) oxygen;
- (3) mechanical ventilatory assistance equipment including airways, manual breathing bag, and ventilator;
- (4) cardiac defibrillator;
- (5) cardiac monitoring equipment;
- (6) thoracotomy set;
- (7) tracheostomy set;
- (8) laryngoscopes and endotracheal tubes;
- (9) suction equipment;
- (10) emergency drugs and supplies specified by the medical staff.

[8.370.18.67 NMAC - N, 7/1/2024]

8.370.18.68 HOURS OF OPERATION: Each facility licensed pursuant to these regulations must post its hours of operation where they can be clearly seen by patients. [8.370.18.68 NMAC - N, 7/1/2024]

8.370.18.69 NURSING SERVICES: Patient care responsibilities must be delineated for all nursing personnel. Nursing services must be provided in accordance with standards of nursing practice as outlined in the current

rules and regulations of the New Mexico board of nursing. [8.370.18.69 NMAC - N, 7/1/2024]

8.370.18.70 ANESTHESIA SERVICES FOR AMBULATORY SURGICAL CENTERS:

A. A physician must examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed.

B. Before discharge from the facility each patient must be evaluated by a physician or a certified registered nurse anesthetist for proper anesthesia recovery.

C. All patients will be discharged in the company of a responsible adult, except those exempted by the attending physician.

D. Anesthetics must be administered by only:

- (1) a qualified anesthesiologist;
- (2) a physician qualified to administer anesthesia, a supervised trainee in an approved educational program or an anesthesia assistant. In those cases where a trainee or an anesthesia assistant administers the anesthesia, the anesthetist must be under the supervision of the operating physician; anesthesia assistants must have successfully completed four year education program for physician assistants that include two years of specialized academic and clinical training in anesthesia;
- (3) a certified registered nurse anesthetist; certified registered nurse anesthetists shall function in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to Chapter 61, Article 5A, 6, 8 or 10 NMSA 1978; the certified registered nurse anesthetist shall collaborate with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient; as used in this subsection, "collaboration" means the process in which each

health care provider contributes their respective expertise; collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement. [8.370.18.70 NMAC - N, 7/1/2024]

health care provider contributes their respective expertise; collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement. [8.370.18.70 NMAC - N, 7/1/2024]

8.370.18.71 PHARMACEUTICAL SERVICES:

A. Drugs and biologicals must be stored, prepared and administered in accordance to acceptable standards of practice and in compliance with the New Mexico state board of pharmacy.

B. Outdated drugs and biologicals must be disposed of in accordance with methods outlined by the New Mexico state board of pharmacy.

C. One individual shall be designated responsibility for pharmaceutical services to include accountability and safeguarding.

D. Keys to the drug room or pharmacy must be made available only to personnel authorized by the individual having responsibility for pharmaceutical services.

E. Adverse reactions to medications must be reported to the physician responsible for the patient and must be documented in the patient's record.

F. Blood and blood products must be administered by only physicians, certified registered nurse anesthetists, registered nurses, nurse practitioners, or physician's assistants. [8.370.18.71 NMAC - N, 7/1/2024]

[8.370.18.71 NMAC - N, 7/1/2024]

8.370.18.72 LABORATORY SERVICES:

A. All lab test results performed either at the facility or by contract or arrangement with another entity must be entered into the patients record.

B. All laboratory procedures will be conducted in accordance with acceptable standards of practice.

C. Special requirements for rural health clinics: Rural health clinics must provide basic laboratory services essential

to the immediate diagnosis and treatment of the patient including:

- (1) chemical examinations of urine by stick or tablet methods or both (including urine ketones).
- (2) microscopic examination of urine sediment;
- (3) hemoglobin or hematocrit;
- (4) blood sugar;
- (5) gram stain;
- (6) examination of stool specimens for occult blood;
- (7) pregnancy tests;
- (8) primary culturing for transmittal to a certified laboratory;
- (9) test for pinworms.

[8.370.18.72 NMAC - N, 7/1/2024]

8.370.18.73 RADIOLOGICAL SERVICES:

- A. All authenticated radiological reports shall be filed in the patient’s medical record.
- B. Interpretations of x-rays shall be written or dictated and signed by qualified physician or other individual authorized by the medical director.

[8.370.18.73 NMAC - N, 7/1/2024]

8.370.18.74 PATIENT CARE FOR INFIRMARIES:

- A. Each patient will have a hospital type bed complete with:
 - (1) mattress and water proof mattress cover with pad;
 - (2) pillow with pillow case;
 - (3) two sheets and blankets adequate for comfort.
- B. Each bed will be provided with a bedside table.
- C. Locker or closet will be provided for storage of patient’s personal clothing.
- D. Unless otherwise ordered by the patient’s physician, each patient shall be provided with

three nutritionally adequate meals each day and snacks as appropriate or ordered by the physician.
[8.370.18.74 NMAC - N, 7/1/2024]

8.370.18.75 RELATED REGULATIONS AND CODES:

Facilities or agencies subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

- A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
 - B. Health facility sanctions and civil monetary penalties, 8.370.4 NMAC.
 - C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- [8.370.18.75 NMAC - N, 7/1/2024]

HISTORY OF 8.370.18 NMAC: RESERVED

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 19 REQUIREMENTS FOR INHOME AND INPATIENT HOSPICE CARE**

8.370.19.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.19.1 NMAC - N, 7/1/2024]

8.370.19.2 SCOPE:

- A. These regulations apply to any hospice facility licensed or required to be licensed pursuant to these regulations which provides inpatient hospice services on a 24 hour basis.
- B. These regulations apply to any hospital, skilled nursing facility, or intermediate care facility which also provides hospice services and is licensed or required to be

licensed to provide these services pursuant to these regulations.

- C. These regulations apply to any agency licensed or required to be licensed which provides hospice services in the patient’s own home.
[8.370.19.2 NMAC - N, 7/1/2024]

8.370.19.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978, as amended; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.19.3 NMAC - N, 7/1/2024]

8.370.19.4 DURATION: Permanent.
[8.370.19.4 NMAC - N, 7/1/2024]

8.370.19.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.19.5 NMAC - N, 7/1/2024]

8.370.19.6 OBJECTIVE: The purpose of these regulations is:

- A. Establish minimum standards for licensing of hospice facilities and agencies that provide inhome and inpatient hospice care.
- B. To monitor hospice facilities and agencies providing inhome and inpatient hospice services with these regulations through surveys to identify any area which could be dangerous or harmful to the patients, family, or staff.
[8.370.19.6 NMAC - N, 7/1/2024]

8.370.19.7 DEFINITIONS: For purposes of these regulations the following shall apply.

- A. “Administrator” means the person appointed by the governing body to be in charge of the

day-to-day operation of a facility or agency providing hospice services.

B. “Applicant” means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

C. “Bereavement” means a period of mourning following the death of a loved one.

D. “Certified” means that a determination has been made by the New Mexico health care authority that a health facility such as a hospital, skilled nursing facility or intermediate care facility is in compliance with Conditions of Participation and Conditions of Coverage under Title XVIII (Medicare) or Title XIX (Medicaid) of the United States federal Social Security Act.

E. “Dietitian” means a person eligible or required to be licensed under the New Mexico Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978.

F. “Exploitation” of a patient/client consists of the act or process, performed intentionally, knowingly, or recklessly, of using any patient/client/residents money or property, for another person’s profit, advantage, or benefit. Exploitation includes but is not limited to:

(1) manipulating the patient/client/resident by whatever mechanism to give money or property to any agency staff or management member;

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

(3) loans of any kind from patient/clients/resident to agency staff or management;

(4) accepting monetary or other gifts from a patient/client/resident or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one

year; all gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient. Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

G. “Governing body” means the person, persons, board of trustees, directors, or other body in which the final authority and responsibility is vested in determining, implementing, and monitoring policies governing the total operation of the hospice facility or agency providing hospice services.

H. “Health certificate” means a completed New Mexico health care authority approved health certificate form signed by a physician licensed in New Mexico or a public health nurse in one of the public health division health offices who is acting for the state tuberculosis control officer.

I. “Hospice agency” means an organization, company, profit or non-profit corporation or any other entity which provides hospice services in the patient’s own home and is required to be licensed pursuant to these regulations.

J. “Hospice facility” means a building equipped and staffed to provide hospice services to patients and family on a 24 hour basis and is required to be licensed pursuant to these regulations.

K. “Hospice services” means a program of palliative and supportive services which provides physical, psychological, social and spiritual care for terminally ill patients and their family members.

L. “Inhome care” means hospice services delivered in a private home or alternative home site to a single patient on an intermittent basis.

M. “Inpatient care” means hospice services delivered to a patient who has been admitted to a hospice facility on a continuous 24 hour period.

N. “License” means the document issued by the licensing authority pursuant to these regulations

granting the legal right to operate for a specified period of time, not to exceed one year.

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

P. “Licensing authority” means the New Mexico health care authority.

Q. “Medical director” means a doctor of medicine or osteopathy who assumes overall responsibility for the medical component of a hospice facility or agency.

R. “NMSA” means the New Mexico Statutes Annotated 1978 compilation, and all the revisions and compilations thereof.

S. “Physician” means a person licensed to practice medicine or osteopathy by the New Mexico board of medical examiners, or the osteopathic medical examiners board.

T. “Plan of correction” means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.

U. “Policy” means a statement of principle that guides and determines present and future decisions and actions.

V. “Procedure” means the action(s) that must be taken in order to implement a policy.

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

X. “Short term inpatient care” is care provided to a hospice patient on a short term basis, either in a hospital or skilled nursing facility for acute symptom control or in a skilled or intermediate care facility for respite for the usual caregiver.

Y. “Social worker” means a person required to be

licensed under the Social Work Practice Act, Sections 61-31-1 through 61-31-25 NMSA 1978.

Z. “Staff” means the paid and volunteer workers supervised by the hospice facility or hospice agency administration.

AA. “Terminally ill” means a diagnosis by a physician with a prognosis that a patient has six months or less to live.

BB. “Variance” means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a hospice facility and is at the sole discretion of the licensing authority.

CC. “Waive/waivers” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of patients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
[8.370.19.7 NMAC - N, 7/1/2024]

8.370.19.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, “appropriate” and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide hospice services to the public and are governed by these regulations.
[8.370.19.8 NMAC - N, 7/1/2024]

8.370.19.9 INITIAL APPLICATIONS:

A. All initial applications shall be made on forms provided by the licensing authority.

B. Shall be fully completed.

C. Signed by the person who shall be the licensee.

D. And shall be notarized.

E. All initial applications shall be accompanied by a resume and three character references for the person in charge of the day-to-day operation of the hospice.

(1) References shall not be from a relative or employee.

(2) License fees are authorized by law, and will be payable to the extent, if any, set out by other licensing authority regulations.
[8.370.19.9 NMAC - N, 7/1/2024]

8.370.19.10 INITIAL LICENSURE PROCEDURES: No license shall be issued without the following:

A. Receipt of the application with all attachments listed in Section 9 of these regulations.

B. Survey conducted by the licensing authority.
[8.370.19.10 NMAC - N, 7/1/2024]

8.370.19.11 INITIAL SURVEY: Upon receipt of a properly completed application and all required documentation an initial survey of the proposed hospice facility or agency will be scheduled by the licensing authority.
[8.370.19.11 NMAC - N, 7/1/2024]

8.370.19.12 ISSUANCE OF LICENSE: Upon completion of the initial survey and determination that the hospice facility or agency is in compliance with these regulations the licensing authority will issue a license.
[8.370.19.12 NMAC - N, 7/1/2024]

8.370.19.13 LICENSES:

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

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

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

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

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.

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

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

(3) Application must be submitted within 10 working days of the change.
[8.370.19.13 NMAC - N, 7/1/2024]

8.370.19.14 LICENSE RENEWAL:

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

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

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the hospice facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.
[8.370.19.14 NMAC - N, 7/1/2024]

8.370.19.15 NON-TRANSFERABLE RESTRICTION

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

- A. ownership of the facility changes;
 - B. the facility changes location;
 - C. licensee of the facility changes;
 - D. the facility discontinues operation;
 - E. a facility wishing to continue operation as a licensed hospice facility under circumstances found in Subsections A through D of 8.370.19.15 NMAC above must submit an application for initial licensure in accordance with 8.370.19.10 NMAC of these regulations, at least 30 days prior to the anticipated change.
- [8.370.19.15 NMAC - N, 7/1/2024]

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

- A. on the day a facility discontinues operation;
 - B. on the day a facility is sold, leased, or otherwise changes ownership or licensee;
 - C. on the day a facility changes location.
- [8.370.19.16 NMAC - N, 7/1/2024]

8.370.19.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.19.17 NMAC - N, 7/1/2024]

8.370.19.18 GROUNDS FOR REVOCATION OR

SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY

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

- A. failure to comply with any provision of these regulations;
 - B. failure to allow survey by authorized representatives of the licensing authority;
 - C. any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
 - D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
 - E. discovery of repeat violations of these regulations during surveys;
 - F. failure to provide the required care and services as outlined by these regulations for the patients receiving care at the hospice facility or from the hospice agency.
- [8.370.19.18 NMAC - N, 7/1/2024]

8.370.19.19 HEARING PROCEDURES:

A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against a hospice facility as outlined in Section 17 and 18 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the adjudicatory hearing procedures will be furnished to a hospice facility or agency at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.

[8.370.19.19 NMAC - N, 7/1/2024]

8.370.19.20 GOVERNING

BODY: A hospice must have a governing body or individual who assumes full legal responsibility for determining, implementing and monitoring policies governing the hospice's total operations. The governing body must also ensure that all services provided are consistent with accepted standards of practice. The governing body shall appoint an administrator to implement its policies and procedures.

[8.370.19.20 NMAC - N, 7/1/2024]

8.370.19.21

INTERDISCIPLINARY TEAM: The hospice shall establish an interdisciplinary team to provide or supervise the care and services offered by the hospice.

A. The hospice must have an interdisciplinary team that includes at least the following disciplines:

- (1) a doctor of medicine or osteopathy;
- (2) a registered nurse;
- (3) a social worker;
- (4) a pastoral or other counselor.

B. The interdisciplinary team is responsible for:

- (1) establishment of the plan of care;
- (2) provision or supervision of hospice care and services;
- (3) review and revision, at least every two weeks (see 29.2) [now Subsection B of 8.370.19.29 NMAC], of the plan of care for each individual receiving hospice care;
- (4) establishment of written policies governing the day-to-day provision of hospice care and services.

C. The hospice must designate a registered nurse to coordinate the overall plan of care for each patient.

[8.370.19.21 NMAC - N, 7/1/2024]

8.370.19.22 CARE

SERVICES: A hospice must ensure that all services described below are provided directly by hospice staff, or under arrangements made by the hospice as specified in Section 23 of these regulations:

- A.** Nursing care provided by or under the supervision of a registered nurse. Nursing care must be available on call 24 hours a day, seven days each week;
- B.** Medical social services provided by a social worker;
- C.** Physician’s services performed by a doctor of medicine or osteopathy;
- D.** Counseling services provided to the terminally ill individual and the family members or other persons caring for the individual. Bereavement counseling must be available for a 12 month period following the death of the patient.
- E.** Short term inpatient care provided to patients of a hospice agency in a facility licensed as a hospital or long term care facility. Services provided in an inpatient setting must conform to the written plan of care.
- F.** Volunteer services. The hospice facility or agency must have an ongoing program to recruit, train, utilize, and retain volunteer staff.

- (1)** Volunteers may be used in administration or direct patient care roles.
- (2)** Volunteers must work under the supervision of a designated hospice facility or agency employee. [8.370.19.22 NMAC - N, 7/1/2024]

8.370.19.23 ARRANGEMENTS FOR SERVICES:

A hospice may arrange for another individual or entity to furnish services to the hospice’s patients. Services provided under arrangement must meet the following standards:

- A.** The hospice shall have a written agreement for the provision of such services.
- B.** The hospice ensures that inpatient care is furnished only

in a facility licensed as a hospital, skilled nursing facility (nursing home), or intermediate care facility. For inpatient care furnished under arrangements, the hospice must have an arrangement under which:

- (1)** The hospice furnished to the inpatient provider, a copy of the individual’s plan of care that specified the care that has been furnished.
- (2)** The regimen described in the established plan of care is continued while the individual receives care from the inpatient provider.
- (3)** All inpatient services and events (e.g. treatments, tests, consultations, evaluations, etc.) furnished by the inpatient provider are entered in the hospice’s medical record.
- (4)** The interdisciplinary team reviews the medical record to ensure conformance with the established plan of care.
- (5)** A copy of the inpatient medical record and discharge summary is retained as part of the hospice medical record. [8.370.19.23 NMAC - N, 7/1/2024]

8.370.19.24 ANNUAL REVIEW:

A hospice must conduct an annual comprehensive self-assessment of the quality and appropriateness of care provided, including inpatient care. The findings are to be used by the hospice to correct identified problems and to revise hospice policies, if necessary. A mechanism must be established in writing for the collection of pertinent data to assist in the evaluation process. The data to be considered shall include, but are not limited to:

- A.** the number of patients receiving each service offered;
- B.** the number of patient visits;
- C.** reasons for discharge;
- D.** a breakdown by diagnoses;
- E.** any sources of referral;
- F.** the number of

patients not accepted and the reasons therefor;

- G.** the total staff days, hours, or visits for each service offered.

[8.370.19.24 NMAC - N, 7/1/2024]

8.370.19.25 MEDICAL RECORDS:

In accordance with accepted principles of practice, the hospice must establish and maintain a clinical record for every individual receiving care and services. The record must be complete, promptly and accurately documented, readily accessible to staff, and systematically organized to facilitate retrieval.

A. Each clinical record is a comprehensive and chronological compilation of information. Entries are made for all services provided. Entries are made and signed by the staff providing the services. The record includes all services whether furnished directly or under arrangements made by the hospice. Each individual’s record shall contain:

- (1)** the initial and subsequent assessments;
- (2)** the plan of care;
- (3)** identification data;
- (4)** consent, authorization and election forms;
- (5)** pertinent medical history;
- (6)** complete documentation of all services and events (including evaluations, treatments, progress notes, etc.).

B. The hospice must safeguard the clinical record against loss, destruction, and unauthorized use.

C. Clinical records shall be retained on each patient for at least 10 years after hospice services have ceased. Clinical records shall be maintained for the requisite period even if the hospice discontinues operations. If the patient is transferred to another health facility, a copy of the record must be made available to the receiving facility. Consultation shall be provided to the receiving facility prior to transfer.

[8.370.19.25 NMAC - N, 7/1/2024]

8.370.19.26 STAFF

TRAINING: A hospice must provide an ongoing program of employee psychological support, and continuing education of its staff in hospice care. At least 12 clock hours of training per year in hospice care shall be provided. [8.370.19.26 NMAC - N, 7/1/2024]

8.370.19.27 HEALTH

CERTIFICATE: Prior to employment, any paid volunteer staff working with patients shall present a certificate from a licensed physician that the person is free from tuberculosis. All certificates shall be filed in the hospice office and be available for inspection. [8.370.19.27 NMAC - N, 7/1/2024]

8.370.19.28 STAFF

SUPERVISION: A hospice shall ensure that licensed professional staff are supervised as required under the relevant professional licensing act. All other staff including volunteers must be adequately supervised. [8.370.19.28 NMAC - N, 7/1/2024]

8.370.19.29 PLAN OF CARE:

A written plan of care must be established and maintained for each individual admitted to a hospice program, and the care provided to an individual must be in accordance with the plan.

A. A plan must be established by the attending physician and interdisciplinary team within five days of admission to the program. The signed orders, and the plan, shall be incorporated within the hospice medical record within 14 days of admission.

B. The plan must be reviewed and updated, at least every two weeks, by the interdisciplinary team. These reviews must be documented, and plan changes signed by the attending physician or the medical director as the attending physician's designee.

C. The plan must be based upon assessment of the individual's and family's needs and identification of the services including

the management of discomfort and symptom relief and describing any isolation techniques for routine or specialized treatments.

[8.370.19.29 NMAC - N, 7/1/2024]

8.370.19.30 PATIENT

RIGHTS: All hospice facilities and agencies licensed pursuant to these regulations shall support, protect and enhance the rights of patients.

[8.370.19.30 NMAC - N, 7/1/2024]

8.370.19.31 INFORMED

CONSENT: Each hospice facility or agency must obtain from each patient a signed informed consent form. The informed consent form shall specify the type of hospice care and services that will be provided during the course of illness.

[8.370.19.31 NMAC - N, 7/1/2024]

8.370.19.32 AVAILABILITY OF SUPPLIES AND

APPLIANCES: Medical supplies and appliances, including drugs and biologicals, must be available as needed for the palliation and management of the terminal illness, although the hospice need not supply these directly.

[8.370.19.32 NMAC - N, 7/1/2024]

8.370.19.33 SERVICES/ INDIVIDUAL CARE:

A. Nursing services: The hospice facility shall provide 24 hour nursing services which are sufficient to meet the total nursing needs of the patient and which are in accordance with each patient's plan of care.

B. Treatments: Each patient shall receive treatments, including medications and diet, as prescribed, and shall be kept clean, well-groomed, comfortable and protected from accident, injury and infection.

C. Palliative care: Each patient shall be provided necessary palliative procedures to meet individual needs as defined in the plan of care.

[8.370.19.33 NMAC - N, 7/1/2024]

8.370.19.34

PHARMACEUTICAL SERVICES:

Each hospice facility shall maintain a pharmaceutical service that is conducted in accordance with current standards of practice and all applicable laws and regulations:

A. A pharmaceutical service shall be directed by a licensed pharmacist.

B. The scope of pharmaceutical services shall be consistent with the drug therapy needs of the patients as determined by the physician.

C. The pharmacist must develop policies and procedures for ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals.

[8.370.19.34 NMAC - N, 7/1/2024]

8.370.19.35 MEDICATION

ADMINISTRATION: Medications can only be administered by the following individuals:

A. a licensed nurse or physician; or

B. a patient on order of the physician; or

C. a licensed respiratory therapist for drug administration during respiratory therapy.

[8.370.19.35 NMAC - N, 7/1/2024]

8.370.19.36 DIETARY

SERVICES: The hospice facility shall provide or contract for a dietary service which meets the nutritional needs of each client.

A. Supervision of the dietary services shall be provided by:
(1) a dietitian;

or
(2) a staff person experienced in food service who shall receive consultation from a dietitian.

B. Other staff requirements: There shall be sufficient staff on duty to meet the nutritional needs of the patients.

C. Meal services: The hospice facility must:

(1) Serve at least three meals or their equivalent each day at regular times with no

more than 14 hours between supper and breakfast.

(2) Snacks of nourishing quality shall be available as needed by patients.

(3) To the extent medically possible, menus will be planned in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.

(a) For patients experiencing difficulties in eating, every effort will be made to develop menus tolerated by the patient and served at intervals tolerated by the patient.

(b) All medically prescribed special diets shall be ordered by a physician and shall have menus developed by a professional dietitian.
[8.370.19.36 NMAC - N, 7/1/2024]

8.370.19.37 SANITATION:

A. Storage and handling of food: All food shall be purchased, stored, prepared, distributed and served under sanitary conditions which prevent contamination.

B. All equipment, appliances and utensils used in preparation or serving of food shall be maintained in a functional, sanitary and safe condition.

C. The hospice facility will ensure that requirements of the environmental health authority having jurisdiction are met. The dietary area will be inspected by the environmental health authority and the inspection results will be posted in the dietary area. Exception: Hospice facilities with four or less patients will be exempt from this requirement if the environmental health authority waives this requirement and a letter of the exemption is on file with the health facility licensing and certification bureau.
[8.370.19.37 NMAC - N, 7/1/2024]

8.370.19.38 INFECTION CONTROL: The hospice facility shall develop and implement an infection control program which shall

have as its purpose the protection of the patient, family, and facility personnel from infections associated with patients admitted to home care, inpatient respite, or day care programs.

A. The hospice facility shall develop policies and procedures governing the infection control program.

(1) The hospice facility shall develop a procedure to assure the infection control program is monitored on a monthly basis.

(2) The hospice facility shall isolate only those patients with diseases that are considered to be at a high risk for transmission. Where applicable, isolation rooms shall have access to private bathing, toileting, and handwashing facilities. The room shall be ventilated directly to the outside (there shall be no recirculation of the air from any isolation room to any other room).

B. All biohazardous waste or infectious material must be disposed of in accordance with:

(1) center for disease control currently accepted guidelines for universal precautions.

(2) occupational safety and health administration requirements in 29 Code of Federal Regulations 1910.

(3) state Environment Improvement Act requirements.

(4) center of disease control currently accepted recommended procedures for body substance isolation.

[8.370.19.38 NMAC - N, 7/1/2024]

8.370.19.39 GENERAL BUILDING REQUIREMENTS:

The building of the hospice facility shall be constructed and maintained so that it is functional for the delivery of services appropriate to the needs of the hospice patient.

A. The hospice facility shall meet all state and local laws, regulations and zoning requirements.

B. The hospice facility shall meet the requirements of the

latest edition of the *national fire protection association, life safety code handbook* adopted by the New Mexico state fire marshal.

C. The hospice facility must meet the requirements of the latest edition of the Uniform Building Code enacted by the international conference of building officials, adopted by the New Mexico construction industries division.

Exception: Hospice facilities housing four or fewer patients will be required to meet residential occupancy building requirements.

[8.370.19.39 NMAC - N, 7/1/2024]

8.370.19.40 PATIENT LIVING AREA:

A. Rooms:
(1) Each patient room shall be directly accessible from a corridor, activity room, or common area.

(2) Each sleeping room shall have a clear window or relite area of approximately one-tenth of the usable floor area providing for patient visibility of the out-of-doors.

(a) Windows shall be at least 24 feet from other buildings or the opposite wall of a court or at least 10 feet from a property line, except on the street side.

(b) Outside window walls shall be at least eight feet from an outside public walkway.

(c) Operable windows or openings that serve for ventilation shall be provided with proper screening.

(3) No room more than two feet, six inches below grade shall be used for the housing of patients. Private patient rooms have at least 100 square feet of usable floor space. Multi-patient rooms shall provide not less than 80 square feet of usable floor area per bed. There shall not be less than seven and one-half foot ceiling height over the usable floor area.

(4) Each patient shall be provided an enclosed space suitable for hanging garments

and storage of personal belongings within their room or in an area nearby patient rooms. There shall be a provision for secure storage of patient valuables.

(5) Each patient shall be provided a bed appropriate to the special needs and size of the patient with a cleanable mattress which is in good repair and a cleanable or disposable pillow.

(6) Room furnishing shall be provided and maintained in a clean and safe condition.

(7) Patient beds shall be spaced so that they do not interfere with entrance, exit or traffic flow within the room. Patient rooms shall be of a dimension and conformation allowing not less than three feet between beds.

B. The hospice facility shall endeavor to provide decor which is homelike in design and function. [8.370.19.40 NMAC - N, 7/1/2024]

8.370.19.41 TOILET AND BATHING AREAS:

A. There shall be, minimally, one bathing facility for each six patients within the inpatient hospice facility, or major fraction thereof (tub, shower, portable shower, portable tub or equivalent).

B. Toilets shall be in a ratio of at least one toilet for every four patients, or major fraction thereof.

C. Lavatories shall be provided in a ratio of at least one lavatory for each toilet located in toilet rooms(s). Lavatories shall be provided in a ratio of at least one per four patients. Lavatories shall be located at the entry of patient rooms used for isolation.

D. At least one toilet and lavatory shall be provided on each floor for use by those who are not patients. [8.370.19.41 NMAC - N, 7/1/2024]

8.370.19.42 CARPETING:

Carpets may be used in patient and non-patient occupied areas with the following exceptions: toilet rooms, bathing facilities, isolation

rooms, laundry rooms, utility rooms, examination or treatment rooms, housekeeping closets:

A. Specifications for acceptable carpeting include:

(1) carpet material which meets the standards of the state fire marshal and is easily cleanable;

(2) pile tufts shall be a minimum of 64 per square inch or equivalent density;

(3) rows shall be a minimum of eight per square inch or equivalent density.

B. Installation of carpet material:

(1) Pad and carpet shall be installed according to manufacturer recommendations;

(2) Edges of carpet shall be covered and cove or base shoe used at all wall junctures. Seams shall be sewn or bonded together with manufacturer recommended cement. [8.370.19.42 NMAC - N, 7/1/2024]

8.370.19.43 SPECIAL AREAS:

A. There shall be provision for adequate personal privacy for personal and private activities such as toileting, bathing, dressing, sleeping, communicating with family and time alone.

B. There shall be adequate visiting and lounge areas. A ratio of 15 square feet per patient bed and not less than 180 square feet per facility is required, excluding hallways and corridors.

C. There shall be adequate meeting rooms and office areas for use by the interdisciplinary care team. Other rooms or areas may serve as meeting rooms provided confidentiality is maintained.

D. The hospice facility must have:

(1) Physical space for private patient/family visits;

(2) Accommodations for family members to remain with the patient throughout the night;

(3) Accommodations for family privacy after a patient's death.

E. A hospice facility will designate a room exclusively for a nebulizer treatment room (if applicable). The room will have a minimum usable floor area of 100 square feet. The nebulizer room will be ventilated directly to the outside of the building. (There shall be no recirculation of the air from the nebulizer treatment room to other rooms of the facility.) [8.370.19.43 NMAC - N, 7/1/2024]

8.370.19.44 LINEN AND LAUNDRY:

The hospice facility shall have available at all times a quantity of linen essential for proper care and comfort of patients. Linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection.

A. A safe and adequate clean linen storage area shall be provided with a supply of clean linen available for patient use.

B. Any laundry done in the facility shall be done in a laundry room separate from the kitchen, dining area, clean and soiled storage and handling areas.

C. The soiled laundry storage and sorting area shall be in a well ventilated area separate from the clean linen handling area, clean storage area, and food preparation areas. If linen or laundry is washed on the premises, an adequate supply of hot water shall be available to provide water at a minimum of 160 degrees fahrenheit in the washing machine. [8.370.19.44 NMAC - N, 7/1/2024]

8.370.19.45 UTILITY AND STORAGE FACILITIES:

A. Sufficient clean storage and handling room(s) shall provide closed storage for clean and sterile supplies and equipment.

B. Washing, disinfection, storage and other handling of medical and nursing supplies and equipment shall be accomplished in a manner which ensures segregation of clean and sterile supplies and equipment from those that are contaminated.

C. Soiled utility

room(s) shall provide:

- (1) clinic service sink, siphon jet or equivalent;
- (2) space for soiled linen or laundry containers;
- (3) counter top, double compartment sink, and goose-neck spout or equivalent;
- (4) storage for cleaning supplies and equipment. [8.370.19.45 NMAC - N, 7/1/2024]

8.370.19.46 HOUSEKEEPING:

- A.** Adequate and clean housekeeping equipment shall be maintained.
- B.** At least one service sink and housekeeping closet or enclosed cabinet equipped with shelving shall be provided in a suitable setting within the facility or combined with a soiled utility room. A clinic service sink may be considered equivalent to a service sink. [8.370.19.46 NMAC - N, 7/1/2024]

8.370.19.47 COMMUNICATIONS:

- A.** There shall be a telephone readily available for patients to make and receive confidential calls.
- B.** There shall be at least one “non-pay” telephone per floor readily accessible in event of fire and other emergencies.
- C.** A nurse call system shall be provided at each bed and in each toilet room and bathing facility. [8.370.19.47 NMAC - N, 7/1/2024]

8.370.19.48 WATER SUPPLY AND PLUMBING:

- The water supply and the waste and drainage system of the hospice shall be maintained to avoid unsanitary conditions.
- A.** There shall be an adequate supply of hot and cold running water under pressure.
 - B.** Hot water shall be of a safe temperature at all fixtures used by patients. Hot water temperatures at bathing fixtures used by patients shall be automatically regulated so as not to exceed 110 degrees fahrenheit.

C. There shall be devices to prevent backflow into the water supply system. [8.370.19.48 NMAC - N, 7/1/2024]

8.370.19.49 HEATING: The heating system in all patient areas shall be operated and maintained to provide a comfortable temperature of between 70 degrees and 75 degrees fahrenheit. [8.370.19.49 NMAC - N, 7/1/2024]

8.370.19.50 VENTILATION: There shall be ventilation for all rooms used by patients and personnel sufficient to remove any objectionable odors, excess heat, and condensation. Inside rooms, including toilets, bath rooms, smoking rooms, and other rooms in which excessive moisture, odors or contaminants originate shall be provided with mechanical exhaust ventilation. [8.370.19.50 NMAC - N, 7/1/2024]

8.370.19.51 LIGHTING: Adequate lighting appropriate to the function shall be provided in all usable areas of the hospice.

- A.** Appropriate, adequate, and safe electrical service shall be provided.
- B.** Adequate emergency lighting for means of egress, (battery operated acceptable) shall be provided.
- C.** Adequate emergency power shall be available, (battery operated acceptable). [8.370.19.51 NMAC - N, 7/1/2024]

8.370.19.52 HANDICAP ACCESS: The hospice facility shall be accessible and equipped to accommodate physically handicapped individuals. [8.370.19.52 NMAC - N, 7/1/2024]

8.370.19.53 DISASTER PREPAREDNESS: The hospice facility shall have an acceptable plan, periodically rehearsed with staff, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (patients and personnel) arising from such disaster. [8.370.19.53 NMAC - N, 7/1/2024]

8.370.19.54 RELATED REGULATIONS AND CODES: Hospice facilities providing inhome and inpatient hospice services subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:

- A.** Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
- B.** Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.
- C.** Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC. [8.370.19.54 NMAC - N, 7/1/2024]

HISTORY OF 8.370.19 NMAC: RESERVED

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS PART 20 REQUIREMENTS FOR ADULT DAY CARE FACILITIES

8.370.20.1 ISSUING AGENCY: New Mexico Health Care Authority. [8.370.20.1 NMAC - N, 7/01/2024]

8.370.20.2 SCOPE: These regulations apply to public or private facilities that provide care, services, and supervision for three or more non-resident adults for less than 24 hours of any day, and come within the statutory definition of “health facilities” set out in Subsection D of Section 24-1-2 of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority. [8.370.20.2 NMAC - N, 7/01/2024]

8.370.20.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of adult day care facilities have been promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation. [8.370.20.3 NMAC - N, 7/01/2024]

8.370.20.4 DURATION: Permanent. [8.370.20.4 NMAC - N, 7/01/2024]

8.370.20.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section. [8.370.20.5 NMAC - N, 7/01/2024]

8.370.20.6 OBJECTIVE: The purpose of these regulations is to:

A. establish minimum standards for licensing facilities providing day care to adults, in order to ensure that participants receive safe and adequate services and that the health, safety and welfare of participants and employees are protected;

B. direct such facilities to provide and organize program of services in the community group setting for the purpose of supporting adult's personal independence, and promoting their social, physical, and emotional well-being;

C. establish standards for the construction, maintenance and operation of such facilities;

D. monitor facility compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to the health, safety, and welfare of the participants and staff.

[8.370.20.6 NMAC - N, 7/01/2024]

8.370.20.7 DEFINITIONS: For purposes of these regulations the following shall apply.

A. "Abuse" means any single or repeated act of force, violence, harassment, deprivation, neglect or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.

B. "Adult" means an individual eighteen years of age or older, and or who otherwise qualifies as an adult under New Mexico law, and who is elderly, disabled or handicapped person having impairments which prevents the person from living independently without supportive services.

C. "Adult day care center" means a commercial building licensed pursuant to these regulations, where care, services, and supervision are provided to adults.

D. "Adult day care home" means a private residence licensed pursuant to these regulations where care, services and supervision are provided to adults.

E. "Ambulatory" means a person who is fully mobile and does not need the continuing help of a person or object for support (except a walking cane).

F. "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

G. "Capacity" means the maximum number of participants allowed to be cared for at any one time in the facility.

H. "Deficiencies" means violations of, or failure to comply with, these regulations.

I. "Director" means the person who is in charge of the day to day operation and program of an adult day care center.

J. "Dropin" means an adult who attends the facility on an occasional or unscheduled basis.

K. "Facility" means a private residence or a commercial building licensed pursuant to these

regulations where care, services, and supervision are provided to adults.

L. "Governing body" means the individual, agency, group or corporation appointed, elected or otherwise designated in which the ultimate responsibility and authority for the conduct of the facility is vested.

M. "Guardian" means one who has the legal responsibility for the care of a person.

N. "Imminent danger" means a danger which could reasonably be expected to cause death or serious physical harm or illness to participants or staff.

O. "License" means the document issued by the authority which constitutes the authority to provide services included within the scope of this rule.

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

Q. "Maintenance" means the care of building(s) by keeping them in a repaired and safe condition and the grounds in a safe, sanitary and presentable condition.

R. "Mobile non-ambulatory" means unable to walk without assistance, but able to move from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.

S. "NMSA" means the New Mexico Statutes Annotated, 1978 compilation and all the revisions and compilations thereof.

T. "Participant" means a person enrolled in an adult day care facility.

U. "Plan of correction" means the plan submitted by the licensee, applicant, or operator addressing how and when deficiencies identified at time of a survey will be corrected.

V. "Policy" means a statement of principle that guides and determines present and future decisions and actions.

W. “Premises” means all parts of the buildings, grounds, equipment and vehicles of a facility licensed pursuant to these regulations.

X. “Private residence” means the dwelling, where the operator resides on a 24 hour basis, to include provisions for sleeping, eating, bathing, cooking, etc.

Y. “Relative” means husband, wife, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, mother-in-law, grandfather, grandmother, half-brothers, includes adoptive, natural and foster parents, grandparents or adult children.

Z. “Respite care” accommodates the family or guardian by providing an alternate place for the participant to stay when the family or guardian needs a rest from the everyday physical and emotional strain of caring for the participant.

AA. “Staff member” means any person who provides direct care, services and supervision to the participants in a facility licensed pursuant to these regulations.

BB. “Supervision” means the direct observation and guidance of adults at all times and requires being physically present with them.

CC. “Survey” means an entry into, and examination of, the facility’s premises, records and staff interviews.

DD. “U/L approved” means approved for safety by the national underwriters laboratory.

EE. “Unattended” means a caregiver is not physically present with an adult under care.

FF. “Variance” means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time for facilities which were in existence at the time these regulations were promulgated, new facilities in existing construction, or for a new or innovative service where the granting of a variance will not create a danger to the health, safety and welfare of adults or staff of a facility, and is at

the sole discretion of the licensing authority.

GG. “Waive/waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety or welfare of the adults and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
[8.370.20.7 NMAC - N, 7/01/2024]

8.370.20.8 TYPES OF FACILITIES AND SCOPE OF SERVICES:

A. Adult day care center is a facility required to be licensed pursuant to these regulations which provides care, services and supervision to three or more adults, who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day. An adult day care center may be located in any building which meets the applicable state and local building and safety codes.

B. Adult day care home is private residence required to be licensed pursuant to these regulations which provides care, services and supervision to at least three adults but not more than five adults who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day.

C. New or innovative programs for providing adult day care: Professional organizations which have demonstrated a need for new or innovative services for day care for three or more adults with special needs which do not fit into one of the types of facilities outlined in Subsections A and B of 8.370.20.8 NMAC above may be licensed at the sole discretion of the licensing authority, if all requirements outlined in section nine are met.

D. These facilities must be able to provide oversight to the participants such as reminding them of medications and appointments, providing meals and monitoring their activities while on

the premises of the facility. Hours of operation are limited from 6 a.m. to 9 p.m.

E. Participants must be able to ambulate on their own or in a wheelchair with minimal assistance. They must be ambulatory or mobile non-ambulatory.

F. In the event federal regulations are promulgated to govern health-related adult day care (“the medical model”), these regulations shall continue to apply except to the extent a provision of these regulations is in conflict with the federal, in which case the federal regulation shall control.
[8.370.20.8 NMAC - N, 7/01/2024]

8.370.20.9 INITIAL LICENSURE PROCEDURES: To obtain an initial license for an adult day care facility pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations must be thoroughly understood by the applicant and used as reference prior to applying for licensure.

B. Application form: Will be provided by the licensing authority.

(1) All information requested on the application must be provided and complete.

(2) Must be printed or typed.

(3) Must be dated and signed.

(4) Must be notarized.

C. Fees: All applications for license must be accompanied by the required fee.

(1) Current fee schedules will be provided by the licensing authority.

(2) Fees must be in the form of a check or money order made payable to the state of New Mexico.

(3) Fees are not refundable.

D. Floor plans: All applications for initial licensure must be accompanied by a set of floor plans for the facility.

(1) Floor plans must be of professional quality, be on substantial paper of at least 18 inches by 24 inches, and be drawn to an accurate scale of one-quarter of an inch to one inch.

(2) Floor plans must include at least the following information:

(a) proposed use of each room i.e., staff office, toilets, activity room(s), kitchen, etc.;

(b) interior dimensions of all rooms must be included on floor plans;

(c) floor plans must include one building or wall section showing exterior and interior wall construction; section must include floor, wall, ceiling and the finishes, i.e., carpet, tile, gyp board with paint, wood paneling, etc.;

(d) door types, swing, and sized of all doors, i.e., solid core, hollow core, three feet by six feet eight inches;

(e) if building is air conditioned;

(f) all sinks, tubs, showers, and toilets;

(g) size, type, sill height, and openable area of windows indicated;

(h) any level changes within the building i.e., sunken activity room, ramps, steps, etc.;

(i) the location of the building on a site/ plot plan to determine surrounding conditions, including all steps, ramps, parking, walks, and any permanent structures;

(j) if building is new construction, renovated, or an addition, indicate both the existing and new construction on the floor plans.

(3) Floor plans will be reviewed by the licensing authority for compliance with current building and fire codes, and comments will be sent to the applicant specifying any needed changes or requesting any additional information. Exception: Adult day care homes are not required to submit floor plans.

E. Zoning and building approvals:

(1) All initial applications must be accompanied with original written zoning approval from the appropriate authority, city, county, or municipality.

(2) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority, city, county, or municipality. Exception: Adult day care homes are not required to submit building approval.

F. Fire authority approval: All initial applications must be accompanied by original written approval of the appropriate fire prevention authority having jurisdiction: i.e., city, county, or state fire marshal's office. Exception: Adult day care homes are not required to submit fire authority approval.

G. New Mexico environment department approval: All initial applications must be accompanied by original written approval of the New Mexico environment department for the following:

(1) kitchen approval if meals are prepared or served in the facility;

(2) private water supply, if applicable;

(3) private waste or sewage disposal, if applicable;

(4) exception: adult day care homes are not required to submit New Mexico environment department approval.

H. Health certificates: Copies of health certificates of the licensee, caregivers, and staff must accompany all initial application.

I. Custodial drug permit: Any facility licensed pursuant to these regulations which supervises self-administration of medication for the participants or safeguards medication for participants, must have an appropriate custodial drug permit as determined by the state board of pharmacy.

J. A list of equipment for adult activities that the facility

will provide on the first day of operation must accompany all initial applications.

K. A description of the facility's proposed activities and daily schedule must accompany all initial applications.

L. Initial survey: An initial survey of the proposed facility will be scheduled by the licensing authority upon receipt of a properly completed application with all supporting documentation, as outlined in these regulations.

M. Issuance of license: A license will be issued by the licensing authority if the initial survey determines that the facility is in compliance with these regulations. [8.370.20.9 NMAC - N, 7/01/2024]

8.370.20.10 SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE ADULT DAY CARE SERVICES:

A. Applicants for new or innovative adult day care services which do not fit into any one of the types of facilities as outlined in Subsections A and B of 8.370.20.8 NMAC must submit a proposal to the licensing authority for review and approval. The proposal must include the following:

(1) statistical data supporting the need for a special type of adult day care service;

(2) explanation of the special problems and needs of the adults who will be receiving these services;

(3) identify portions of these regulations which would be in conflict with the proposed facility;

(4) how the proposed facility would resolve these conflicts with alternative measures which would meet the intent of these regulations, i.e., increased staffing or fire and safety precautions.

B. If, at its sole discretion, the licensing authority approves the proposal a license may be granted with variances for those portions of the regulations where the program would be in conflict. [8.370.20.10 NMAC - N, 7/01/2024]

8.370.20.11 LICENSES:

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

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

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

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

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, when there is a change of name of the facility, or if a change of capacity is sought.

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

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

(3) Application must be submitted within 10 working days of the change.

(4) Application for increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine if the facility meets all applicable codes and regulations. A facility must not accept additional participants or change the layout of the facility until the licensing authority has approved and issued the amended license. [8.370.20.11 NMAC - N, 7/01/2024]

8.370.20.12 LICENSE RENEWAL:

A. Licensee must submit a notarized renewal application on forms provided by the

licensing authority, along with the required fee, at least 30 days prior to expiration of the current license.

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

C. If a licensee fails to submit a notarized renewal application, with the required fee, before the current license expires, the licensee must submit an initial license application, and the facility shall cease operations until initial licensure procedures are completed. [8.370.20.12 NMAC - N, 7/01/2024]

8.370.20.13 POSTING OF LICENSE: The facility license shall be posted in a conspicuous place on the licensed premises, in an area visible to staff and visitors. [8.370.20.13 NMAC - N, 7/01/2024]

8.370.20.14 NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A license shall not be transferred by assignment or otherwise to other persons or location. The license shall be void and must be returned to the Licensing Authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. the facility discontinues operations;

E. a facility wishing to continue operation as a licensed facility under circumstances Subsections A through D of 8.370.20.14 NMAC above shall submit an application for initial licensure in accordance with Section 8 of these regulations at least 30 days prior to the anticipated change. [8.370.20.14 NMAC - N, 7/01/2024]

8.370.20.15 AUTOMATIC

EXPIRATION OF LICENSE: A license shall automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended or revoked, or:

A. on the day a facility discontinues operation.

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

C. on the day a facility changes location. [8.370.20.15 NMAC - N, 7/01/2024]

8.370.20.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee. [8.370.20.16 NMAC - N, 7/01/2024]

8.370.20.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY

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

A. failure to comply with any provision of these regulations.

B. failure to allow survey by authorized representatives of the licensing authority.

C. any person active in the operation of a facility licensed pursuant to these regulations, to include all adults and teenaged children living in an adult day care home shall not be under the influence of alcohol or narcotics or convicted of a felony.

D. misrepresentation

or falsification of any information on application forms or other documents provided by the licensing authority.

E. discovery of repeat violations of these regulations during surveys.

F. hiring of or continuing to employ any person whose health or conduct impairs their ability to properly protect the health, safety, and welfare of the participants.

G. exceeding licensed capacity.
[8.370.20.17 NMAC - N, 7/01/2024]

8.370.20.18 HEARING PROCEDURES:

A. Hearing procedures for adverse action initiated by the licensing authority against a facility license as outlined in Sections 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations will be furnished to a facility at the time an adverse action is initiated against its license by the licensing authority, or a copy may be requested at any time by contacting the licensing authority.
[8.370.20.18 NMAC - N, 7/01/2024]

8.370.20.19 NEW FACILITY:

A new facility may be located in an existing building or a newly constructed building:

A. If opened in an existing building, a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in these regulations, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

B. A new facility opened in a newly constructed building shall meet all of the requirements of these regulations.
[8.370.20.19 NMAC - N, 7/01/2024]

8.370.20.20 FACILITY SURVEYS:

A. Surveys are meant to be constructive and informative to the licensee and staff of a facility,

to insure that the facility meets the requirements of these regulations, and to identify any area which could be dangerous or harmful to the health, safety, and welfare of the participants and staff.

B. A survey will be conducted at least once annually in each facility licensed pursuant to these regulations by personnel of the licensing authority using these regulations as criteria. Additional surveys or visits may be made to assist the facility with technical advice, to check on progress in correction of violations found on previous survey, or to investigate complaints.

C. At the completion of a survey, the findings shall be discussed with the licensee or representative and a plan of correction will be requested. If a plan of correction is not given at the time of survey the licensee, director or operator must submit within 10 working days after receiving the official written report of survey, a plan of correction to the licensing authority for violations found during the survey. The plan of correction must give specifics as to how the violation will be corrected and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.

E. Application for licensure, whether initial or renewal, shall constitute permission for entry into and survey of a facility by authorized licensing authority representative during the pendency of the application and, if licensed, during the licensure period.

F. Surveyors have the right to enter upon and into the premises of any facility which is licensed or required to be licensed, whether or not an application for licensure has been made, at any reasonable time for the purpose of determining the state of compliance with these regulations.

G. The licensing authority shall perform, as it deems

necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility.

H. At all times, there must be a person present in the facility who can represent the licensee or director for survey purposes. This person must be able to provide access to all records and keys to any locked area.
[8.370.20.20 NMAC - N, 7/01/2024]

8.370.20.21 COMPLAINT PROCEDURES:

A. Submission of complaints: Complaints regarding any facility licensed or required to be licensed pursuant to these regulations should be submitted to the licensing authority.

(1) Complaints should be submitted in writing and signed by the complainant.

(2) Complainants telephoning the licensing authority should identify themselves and be able to provide necessary information needed by the licensing authority in order to document the complaint.

B. Written acknowledgement: The licensing authority shall, whenever possible acknowledge in writing, within 10 working days, receipt of all complaints.

C. Initiation of investigation: If it is probable that the health, safety, and welfare of an adult or adults is in jeopardy, the complaint will be investigated promptly. Otherwise the licensing authority shall initiate an investigation within 20 working days from receipt of a complaint.

D. Results of investigation: Both the licensee of the facility against whom a complaint is lodged, and the complainant, shall be notified in writing of the results of the investigation.

E. Anonymity may be requested by the complainant but cannot be assured.

F. Action by the

licensing authority:

(1) Complaint unsubstantiated: A complaint which is unsubstantiated by the licensing authority is not made part of the facility file and the licensing authority takes no further action.

(2) Substantiated complaint: The licensing authority may take the following actions if a complaint is substantiated:

(a) Require the facility to submit a written plan of correction to the licensing authority if violations of these regulations are found.

(b) Other administrative sanctions such as the suspension or revocation of a license, or the filing of criminal charges, or a civil action may be instituted by the licensing authority if deemed appropriate. [8.370.20.21 NMAC - N, 7/01/2024]

8.370.20.22 CAPACITY OF A FACILITY: The capacity of a facility licensed pursuant to these regulations is determined by the following:

A. By the type of facility:
(1) An adult day care center may be licensed for at least three adults but is not limited as to maximum number of participants. Adult relatives of staff and volunteers receiving care in the facility must be counted in the licensed capacity.

(2) An adult day care home may be licensed for at least three adults but not more than five (5) participants. The licensee's own adult relatives under the care of the facility must be counted in the licensed capacity when present in the facility.

B. By useable space for activities:
(1) Adult day care centers and adult day care homes are required to have 40 square feet of activity area for each adult included in the licensed capacity.

(2) The capacity as reflected on the license issued to a facility licensed pursuant

to these regulations must not be exceeded at any time. [8.370.20.22 NMAC - N, 7/01/2024]

8.370.20.23 REPORTING OF INCIDENTS: All facilities licensed pursuant to these regulations shall report to the licensing authority any incident or unusual occurrence which has, or could threaten the health, safety, and welfare of the participants or staff, such as, but not limited to:
A. lost or missing participant;
B. sexual or physical abuse of a participant;
C. accidents or injuries requiring medical care;
D. fire, flood or other natural disaster which creates structural damages to the facility or poses health hazards.
E. notifiable diseases. [8.370.20.23 NMAC - N, 7/01/2024]

8.370.20.24 GENERAL RECORDS: The following records must be kept on file in the facility and available for inspection by the licensing authority during survey:
A. a copy of the report of the latest survey conducted by the licensing authority and a copy of any variances granted by it.
B. record of fire drills held.
C. a copy of the latest fire prevention inspection by the authority having jurisdiction. Exception: Adult day care homes are not required to have fire authority inspections.
D. a copy of the latest environmental improvement division inspection of the kitchen if meals are served in the facility. Exception: Adult day care homes are not required to have environmental improvement division approvals of kitchen.
E. initial and periodic inspection reports from environmental improvement division for those facilities which have private water, sewage, or waste disposal systems, when applicable.
F. documentation of staff training as required by Section

58 of these regulations.
G. documentation of current first aid certificates as required by these regulations. [8.370.20.24 NMAC - N, 7/01/2024]

8.370.20.25 PARTICIPANT RECORDS: There must be maintained a complete record on file for each adult receiving care within a facility licensed pursuant to these regulations, which must contain at least the following:
A. Personal information:
(1) name of participant;
(2) date of birth;
(3) sex;
(4) home address (mailing address and location of residence) and telephone number;
(5) name of responsible party;
(6) current place of employment, address and work telephone number of responsible party.
B. Emergency information.
(1) record of any allergies or medical conditions the participant may have;
(2) name and telephone number of two persons to be called in case of emergency when the responsible party cannot be reached;
(3) name and telephone number of physician or emergency medical facility authorized by guardian to be called in case of illness or emergency;
(4) permission for emergency medical transportation and guardian's consent for treatment.
C. Date of enrollment.
D. Date of disenrollment.
E. The following must be recorded in each participant's file when applicable:
(1) accidents and illnesses which require first aid or medical attention;
(2)

observation of recent bruises, injuries or signs of abuse or neglect;

(3) use of physical restraints.

F. Medications prescribed for the resident, including time and dosage.

G. Written authorization from the participant, responsible party or guardian, must be in the participants record for the removal of the participant's from the grounds of the facility to participate in field trips, nature walks, or other activities whether or not the activity includes transportation by vehicle.

H. Daily attendance of the participant.

I. Enrollment agreement signed by the participant, responsible party or guardian which clearly outlines the following:

(1) services to be provided by the facility and costs for the same;

(2) acknowledgement by the participant, responsible party or guardian that they clearly understand the policies of the facility and agree to them.

J. General: (1) each participant's record must be kept on file in the facility at least six months after disenrollment.

(2) participant's records must be made available to those persons authorized by law or regulation to review or inspect such records, such as guardians, staff, or representatives of the licensing authority.

(3) participant's records must be complete with all documentation at the time of admission, to include drop ins. [8.370.20.25 NMAC - N, 7/01/2024]

8.370.20.26 STAFF RECORDS:

A. There must be maintained a complete record on file for each staff member or volunteer working more than eight hours of any week and having direct contact with the participants which must contain at least the following:

(1) name.

(2) address and telephone number.

(3) position for which employed.

(4) date of employment and termination, when applicable.

(5) certificate signed by a physician or recognized health facility stating that the staff member, or volunteer is free from tuberculosis in a transmissible form as required by the New Mexico health care authority regulations, control of communicable disease in health facility personnel, 7.4.4 NMAC.

B. A daily attendance record of all employed staff must be kept by the facility.

C. The facility must maintain weekly work schedules of all employed staff and caregivers. These schedules must be kept on file for at least six months.

D. Staff records must be available for review by representatives of the licensing authority at all times. [8.370.20.26 NMAC - N, 7/01/2024]

8.370.20.27 FACILITY

RULES: Each facility must have written rules pertaining to the following:

A. admission and disenrollment of participants.

B. duties and responsibilities of all employed staff and volunteers regarding the care, services, and supervision of the participants, which must be updated when staff duties change. [8.370.20.27 NMAC - N, 7/01/2024]

8.370.20.28 POLICIES AND

PROCEDURES: All facilities licensed pursuant to these regulations must have written policies and procedures covering the following areas:

A. actions to be taken in case of accidents or emergencies involving a participant;

B. policies and procedures on reporting suspected adult abuse or neglect;

C. policies and procedures for admission and

disenrollment of participants;

D. policies and procedures for action to be taken in the event a participant is found missing from the facility;

E. policies and procedures for handling of medications;

F. policies and procedures for handling of complaints received from guardians or any other person;

G. the facility must have policies and procedures prohibiting the following:

(1) abusing or neglecting a participant (e.g., slapping, hitting, striking, withholding food as a punishment, verbally threatening, or failing to provide a participant with the level of services and degree of supervision;

(2) retaliation against a participant because of complaints or suggestions regarding the management of the facility;

(3) social isolation;

(4) the use of chemical restraint.

H. If at any time a participant's rights are restricted in order to protect the health, safety, and welfare of the participant the reasons for the restriction of the rights must be clearly documented in the participant's record.

I. Policies and procedures for the use of restraints.

J. These policies and procedures may be adopted from other sources. [8.370.20.28 NMAC - N, 7/01/2024]

8.370.20.29 GENERAL BUILDING(S), GROUNDS, AND SAFETY REQUIREMENTS:

A. **New construction, additions and alternation:** When construction of building, additions, or alterations to existing building are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire

facility must be submitted.

B. Number of stories: All building requirements contained in these regulations are based on building of one story in which care for adults is not being provided above or below ground level. Facilities housed in multi-storied buildings and wishing to provide services to adults above or below ground level will have additional requirements due to the complexities of the building and fire codes. These additional requirements will be outlined by the appropriate building and fire authorities and by the licensing authority through plan review and on site surveys during the licensing process.

C. Energy conservation: New buildings for a facility must be constructed to provide energy conservation as required by applicable building codes.

D. Access to the handicapped: All facilities must provide access to the handicapped as required in current building codes and other state and federal regulations. Exception: Adult day care homes are not required to comply with Subsections A through D of 8.370.20.29 NMAC above.

E. Prohibition on mobile homes: Trailers and mobile homes shall not be used for adult day care.

F. Extent of a facility: All buildings on the premises used for the care of adults will be considered part of the facility and must meet all requirements of these regulations. Adults being cared for in any building on the premises will be counted in the capacity of the facility. [8.370.20.29 NMAC - N, 7/01/2024]

8.370.20.30 SPACE REQUIREMENTS: Facilities licensed pursuant to these regulations must meet the following space requirements for capacity and service:

A. Adult day care centers and adult day care homes are required to have 40 square feet of activity area for each adult for which the facility is licensed to provide care.

B. Indoor activity area is computed by measuring the activity

areas used for the participants, excluding kitchens, corridors, bathrooms, storage areas and closets. Measurements are taken from wall to wall in each room, deducting offsets and built in fixtures.

C. An outside activity area must be provided. [8.370.20.30 NMAC - N, 7/01/2024]

8.370.20.31 MAINTENANCE OF BUILDING(S) AND GROUNDS:

A. All electrical, signaling, mechanical, water supply, heating, fire protection and sewage systems must be maintained in a safe and functioning condition, including regular inspections of these systems.

B. All furniture and furnishing must be kept clean and in good repair. Furnishings or decorations of an explosive or highly flammable character shall not be used.

C. The buildings and grounds of the facility must be maintained in a safe, sanitary, and presentable condition at all times. [8.370.20.31 NMAC - N, 7/01/2024]

8.370.20.32 HOUSEKEEPING:

A. The facility must be kept free from offensive odors and accumulations of dirt, rubbish, dust and safety hazards.

B. Activity areas for participants must be cleaned and tidied daily.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a non-slip finish.

D. Bathrooms and lavatories shall be cleaned as often as necessary to maintain a clean and sanitary condition.

E. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

F. Storage areas must be kept free from accumulations of refuse, discarded furniture, old newspapers, and the like.

G. Combustibles, such as cleaning rags and compounds, must be kept in closed metal containers in areas providing adequate ventilation

and away from participant activity and sleeping areas.

H. Poisonous or flammable substances must not be stored in participant's activity areas, or food storage areas. [8.370.20.32 NMAC - N, 7/01/2024]

8.370.20.33 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes.

B. The heating method used by the facility must provide a minimum temperature of 68 degrees fahrenheit in all rooms used by the participants.

C. The use of unvented heaters, open flame heaters or portable heaters, is prohibited.

D. An ample supply of outside air must be provided in all spaces where fuel fired boilers or heaters are located to assure proper combustion.

E. All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

F. Each building where gas is used must have the outside gas shutoff valve conspicuously painted red. The facility must have a tool readily available which will operate the shut-off valve. The tool will also be painted red. All staff of the facility must be instructed as to location of the gas shut-off valve and must know how to shut off the gas supply in case of fire or gas leakage. Exception: Adult day care homes are not required to comply with Subsection F of 8.370.20.33 NMAC above.

G. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be at least one and three-quarters inches solid core. Exception: Adult day care homes are permitted to have

the normal residential type heating system.

H. A facility must be adequately ventilated at all times by either mechanical or natural means to provide fresh air and the control of unpleasant odors.

I. All gas burning heating and cooking equipment must be connected to an approved venting system to take the products of combustion directly to the outside air. Exception: Adult day care homes are not required to vent cooking stoves.

J. All openings to the outer air used for ventilation must be screened with screening material of not less than sixteen (16) meshes per lineal inch.

K. The facility must be provided with a system for maintaining participant's comfort during periods of hot weather. [8.370.20.33 NMAC - N, 7/01/2024]

8.370.20.34 WATER:

A. A facility must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department.

C. Hot and cold running water, under pressure, must be distributed to all food preparation areas, lavatories, washrooms, laundries and bathrooms. [8.370.20.34 NMAC - N, 7/01/2024]

8.370.20.35 WATER HEATERS:

A. All fuel-fired water heaters must be separated from other parts of the facility by partitions having a fire-resistive rating of one hour. Doors to the enclosure must be 1 3/4" solid core. Exception: Adult

day care homes.

B. All water heaters must be equipped with a pressure relief valve (pop-off-valve) complete with relief drain line to the outside of the facility.

C. Water heaters must not be located in participant areas used for activity or sleeping.

D. Temperature of hot water for lavatories must not be above 110 degrees fahrenheit. [8.370.20.35 NMAC - N, 7/01/2024]

8.370.20.36 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the systems used must be inspected and approved by the New Mexico environment department, and the construction industries division.

Exception: Adult day care homes.

C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of garbage used by the facility must be inspected and approved by the New Mexico environment department. Exception: Adult day care homes.

D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof, and constructed of materials which will not absorb liquids. Receptacles must be kept clean. [8.370.20.36 NMAC - N, 7/01/2024]

8.370.20.37 LIGHTING AND LIGHTING FIXTURES:

A. All areas of the facility, including storerooms, stairways, hallways, and entrances must be lighted sufficiently to make all parts of the area clearly visible.

B. All lighting fixtures must be shielded in participant activity areas and food preparation areas.

C. Adult day care centers must be provided with emergency lighting which will

activate automatically upon disruption of electrical service.

D. Adult day care homes must have at least a flashlight readily available and in operable condition for use as emergency lighting. [8.370.20.37 NMAC - N, 7/01/2024]

8.370.20.38 ELEMENTS OF FACILITY ELECTRICAL SYSTEM:

A. Electrical installations and electrical equipment must comply with all current state and local codes.

B. All fuse and breaker boxes must be labeled to indicate the area of the facility to which each fuse or circuit breaker provides services.

C. The main electrical service line must have a readily available disconnect switch. All staff and caregivers must know the location of the electrical disconnect switch and how to operate it in case of emergency.

D. The use of jumpers or devices to bypass circuit breakers or fuses is prohibited. [8.370.20.38 NMAC - N, 7/01/2024]

8.370.20.39 ELECTRICAL CORDS, APPLIANCES, AND OUTLETS:

A. Electrical cords and appliances must be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Under no circumstances shall extension cords be used as a general wiring method.

(3) Extension cords must be plugged into an electrical outlet within the room where used and must not be connected in one room and extended to another room.

B. The use of multiple sockets (gang plugs) in electrical outlets is strictly prohibited. [8.370.20.39 NMAC - N, 7/01/2024]

8.370.20.40 WINDOWS: All activity areas for participants must have a least one (1) window or skylight area of at least 1/20 of the

floor area.
[8.370.20.40 NMAC - N, 7/01/2024]

8.370.20.41 EXITS:

A. There must be at least two exits remote from each other from each floor of the facility.

B. Exit ways must be kept free from obstructions at all times.

C. All exits must be marked by signs having letters at least six inches high whose principal strokes are at least three-fourths of an inch wide.

D. Exit signs, when applicable, must be visible at all times. Exception: Adult day care homes are not required to have exit signs.
[8.370.20.41 NMAC - N, 7/01/2024]

8.370.20.42 DOORS:

A. Required exit doors must be openable from the inside at all times the facility is in operation.

B. All required exit doors must have a minimum width of 36 inches. Exception: Adult day care homes.

C. Required exit doors in facilities having a capacity of 50 or more must open outward.

D. Locks and latches on closets and bathrooms must be of the type that the lock can be released from the outside.
[8.370.20.42 NMAC - N, 7/01/2024]

8.370.20.43 OUTDOOR AREAS:

A. Outdoor area must be located on the premises of the facility.

B. If required by the agency, the outdoor area must be fenced and have at least one latched gate available for emergency exit.

C. Outdoor areas must be kept free of sharp objects, trash, weeds, or other hazardous items.

D. Outdoor areas must be designed to permit direct supervision of the participants at all times.
[8.370.20.43 NMAC - N, 7/01/2024]

8.370.20.44 TOILET AND

BATHING FACILITIES:

A. Bathrooms must be completely enclosed. A window or mechanical system for ventilation must be provided.

B. Toilets and lavatories (hand washing sinks) must be provided for each sex in the following ratios in adult day care centers:

(1) One toilet for one to 15 participants.

(2) One toilet for each additional 15 participants or fraction thereof.

(3) Lavatories must be provided within each toilet room at a ratio of one to 40 participants.

(4) Toilet paper, soap, and disposable towels must be provided in all toilet rooms.

(5) The use of a common towel or wash cloth is prohibited.

(6) Bathrooms and lavatories must be cleaned as often as necessary to maintain a clean and sanitary condition.

C. Adult day care homes are required to have at least one toilet and one lavatory.

D. Facilities accepting participants with special bathing needs, or provide bathing as a service, will provide approved bathing facilities.
[8.370.20.44 NMAC - N, 7/01/2024]

8.370.20.45 FIRE SAFETY COMPLIANCE:

All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility.
[8.370.20.45 NMAC - N, 7/01/2024]

8.370.20.46 FIRE CLEARANCE AND INSPECTIONS:

A. Written documentation from the state fire marshal's office or fire authority having jurisdiction evidencing a facility's compliance with applicable fire prevention codes must be submitted to the licensing authority prior to issuance of an initial license. Exception: Adult day care homes are

not required to have fire authority inspections.

B. Each facility shall request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the facility, the facility must document the date the request was made and to whom. If the fire authority having jurisdiction does make annual inspections, a copy of the latest inspection must be kept on file in the facility. Exception: Adult day care homes are not required to have annual fire inspections.
[8.370.20.46 NMAC - N, 7/01/2024]

8.370.20.47 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:

A. The facility must be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction. Exception: Adult day care homes are not required to have manually operated alarm systems.

B. The facility must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement. Exception: Adult day care homes are only required to have one smoke detector in the participants activity rooms which may be battery operated.

C. Fire extinguishers as approved by the state fire marshal or fire authority having jurisdiction must be located in the facility. Facilities must as a minimum have two 2A10BC fire extinguishers, one centrally located in the facility activity areas. Exception: Adult day care homes are only required to have one 2A10BC fire extinguisher located in the kitchen or food preparation area.

D. Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting equipment must be properly maintained and inspected at least yearly, and more often if recommended by the manufacturer,

state fire marshal, or fire authority having jurisdiction. Fire extinguishers must be tagged noting the date of inspection.

E. All fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal or local fire prevention authorities. All fire extinguishers must be tagged noting the date of inspection. [8.370.20.47 NMAC - N, 7/01/2024]

8.370.20.48 STAFF FIRE AND SAFETY TRAINING:

A. All staff of a facility must know the location of and be instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instruction in fire prevention and techniques of evacuation.

B. The staff of a facility must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the participants or staff.

C. Fire drills: The facility must conduct at least one fire drill each month.

(1) Fire drills must be held at different times of the day.

(2) The fire alarm system or detector system in the facility shall be used in the conduct of fire drills.

(3) In the conduct of fire drills, emphasis must be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of fire drills held must be maintained on file in the facility. Such record must show date and time of the drill, number of personnel participating in the drill, and any problem noted during the drill.

(5) The local

fire department should be requested to supervise and participate in fire drills.

D. Each facility must have a fire evacuation plan conspicuously posted in the facility, and all staff must be familiar with the evacuation plan. Exception: Adult day care homes are not required to have evacuation. [8.370.20.48 NMAC - N, 7/01/2024]

8.370.20.49 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible telephone for summoning help in case of emergency must be available in each facility. A pay telephone will not fulfill this requirement.

B. A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, and poison control center shall be posted by each telephone in the facility. [8.370.20.49 NMAC - N, 7/01/2024]

8.370.20.50 SMOKING:

A. Smoking in the kitchen or food preparation areas is strictly prohibited.

B. Separate smoking areas must be designated and provided with suitable ashtrays.

C. Smoking must never be permitted in any area where oxygen is in use. [8.370.20.50 NMAC - N, 7/01/2024]

8.370.20.51 CARPETS:

A. Carpeting, if used in new facilities, must be of at least class II rating. Existing facilities, as they replace carpeting, must replace with carpet having at least a class II rating.

B. Carpets must be of a stable and regular surface to prevent tripping or slipping hazards and allow wheelchair mobility. [8.370.20.51 NMAC - N, 7/01/2024]

8.370.20.52 ACCESS REQUIREMENTS FOR THE HANDICAPPED:

A. Accessibility to the handicapped must be provided in all facilities and shall include the following: Exception: Adult day care homes are not required to have access

for the handicapped.

(1) Main entry into the facility must be ground level or ramped to allow wheelchair access.

(2) Building must allow access to participant's activity areas.

(3) Access to at least one toilet is required to have a minimum door clearance of 32 inches, 36 inches is recommended. Toilet room must also provide a 60 inch diameter clear space (turning radius for a wheelchair).

(4) If ramps are provided to the building, the slope must be at least 12 inches horizontal run for each one inch of vertical rise.

(5) Ramps leading to doorways must have a five foot by five foot level area at the doorway.

(6) Ramps exceeding a six inch rise shall be provided with handrails.

B. Requirements contained herein are minimum and additional handicap requirements may apply depending on size and complexity of the facility.

C. Consultation will be given to new facilities on handicap requirements upon submission of floor plans during the initial licensing process.

[8.370.20.52 NMAC - N, 7/01/2024]

8.370.20.53 ADULT DAY CARE CENTERS IN MULTI-USE FACILITIES:

A. An adult day care program must be self-contained with its own staff and separate area.

B. Depending on the nature of other activities in the building, it may or may not be appropriate for day care participants to share in them on a planned basis. Such involvement must be as part of the day care program plan and must be supervised by a day care staff member, i.e., senior center crafts and social events and lunch at a congregate meal site.

C. It is not appropriate for persons from other activity groups in the building to move through the day care area at will or to attend day

care activities on an informal basis. The day care program is in a sense a “closed” program in that participation is open only to persons enrolled in the program and to visitors on a planned basis.

[8.370.20.53 NMAC - N, 7/01/2024]

8.370.20.54 GENERAL PERSONNEL AND STAFFING REQUIREMENTS:

A. All persons involved with the care of participants shall be of good character and physically, mentally and emotionally equipped to provide good care and maintain responsible supervision for the participants.

B. All involved with the care of participants must be screened by the licensee. Their qualifications, references and employment history must be verified prior to employment.

C. A person who has been convicted of a felony or of a misdemeanor involving moral turpitude shall not be allowed to work as an administrator/director/operator, direct service staff, or support staff member in a facility licensed pursuant to these regulations. This includes family members who work or reside in an adult day care home.

D. All persons volunteering with the facility, are deemed to be staff and are subject to these regulations.

E. Staff members who work directly with participants and who are counted in the staff/participant ratio must be 18 years of age or older.

F. Persons under the age of 18 shall at all times work directly under the supervision of a staff member who is physically present.

G. Persons employed solely for clerical, cooking and maintenance shall not be included in the staff/participant ratio.

H. Substitutes and part-time staff members, who are counted in the staff/participant ratios, shall meet the same requirement as regular staff.

[8.370.20.54 NMAC - N, 7/01/2024]

8.370.20.55 QUALIFICATIONS FOR DIRECTORS OF CENTERS:

A. The adult day care center shall have a full-time program director.

B. The program director shall have the authority and responsibility for the management of activities and direction of staff to insure that activities and services are provided appropriately and in accordance with established policies.

C. The program director shall meet all of the minimum qualifications and personal characteristics stated below.

(1) 18 years of age or older;

(2) shall have completed at least a baccalaureate degree from a nationally accredited institution of education in the field of geriatrics, or a health related course of study which includes the care of the elderly, or be a registered nurse;

(3) shall have a minimum of two years experience and training in services to elderly or handicapped adults;

(4) shall have demonstrated ability in supervision and administration.

D. Meet the requirements of Section 53. [8.370.20.55 NMAC - N, 7/01/2024]

8.370.20.56 QUALIFICATIONS OF OPERATORS OF ADULT DAY CARE HOMES:

Licensees of adult day care homes must have the following minimum qualifications:

A. 18 years of age or older;

B. be competent and have a demonstrated ability to manage all aspects of a day care program;

C. have a minimum of a high school education or the equivalent;

D. have at least two years of full-time work experience in services to elderly or handicapped adults;

E. provide a written statement from a physician or a recognized health facility stating that the operator is free from communicable disease;

F. have the ability to work with people;

G. provide references, including former employer(s);

H. meet the requirements of Section 53. [8.370.20.56 NMAC - N, 7/01/2024]

8.370.20.57 VOLUNTEERS:

A. When volunteers are used in an adult day care program, adequate planning prior to the placement of the volunteers will take place in order to provide the volunteer with a written description of their duties and responsibilities. This written description shall outline in detail the tasks to be performed, qualifications for performing the tasks, and specifics about hours, days and length of commitment needed from the volunteer.

B. The volunteer shall take part in a formal or informal orientation and training session to inform him/her of the goals of the program, the operation and daily schedule of the program, specific needs of the adults being served and any necessary , specialized approaches the volunteer will be expected to use.

C. Employees of the program shall be properly informed of the use of a volunteer prior to their working in the program, staff’s responsibility and role and the volunteer’s responsibility and role. Employees shall be involved in planning for the volunteer and shall assist in writing the duties the volunteer will perform.

D. Volunteers working more than half-time and having direct contact with participants shall have a certificate from a physician or medical facility stating that they are free from tuberculosis in a transmissible form. [8.370.20.57 NMAC - N, 7/01/2024]

8.370.20.58 STAFF TRAINING:

A. All facilities shall provide training for each staff member.

B. Documentation for training shall be kept on file at each facility and available for inspection

by representatives of the licensing authority.

C. Documentation may take the form of certificates or a training log with the date, name of staff member or caregiver, hours spent in training, subject and source of training.

D. Before beginning work all facilities shall provide for each staff member an orientation which includes the following as a minimum:

- (1) scope of services, activities, and program offered by the facility;
- (2) emergency first aid procedures, recognition of illness and indicators of abuse;
- (3) fire prevention measures and emergency evacuation plans;
- (4) review of licensing regulations;
- (5) special problems of the elderly and disabled;
- (6) participant rights;
- (7) sanitation procedures.

E. Emergency staff and substitutes are not required to participate in training.

F. Adult day care centers:

- (1) All staff members, including the director, shall participate in at least 40 documented clock hours of training during each year of employment.
- (2) Of the 40 hours of required training, 20 hours shall be in areas covering the physical, emotional, intellectual, and social needs of adults.
- (3) Other training may include, but is not limited to the following: nutrition, sanitation procedures, first aid, and cardiovascular resuscitation techniques.

G. Adult day care homes:

- (1) All staff members shall participate in at least 24 documented clock hours of training during each year of licensure.
- (2) The

required 24 hours of training shall be in the subjects specified in these regulations.

H. Training may be obtained from, but not limited to, the following resources:

- (1) public health division, health care authority.
- (2) social services division, health care authority.
- (3) adult day care associations and information and referral services.
- (4) university related programs.
- (5) vocational/technical schools.
- (6) county extension offices.
- (7) local fire department.
- (8) red cross.
- (9) self-study as approved by the licensing authority.
- (10) In service training by a qualified staff member whose qualifications are approved by the licensing authority.

[8.370.20.58 NMAC - N, 7/01/2024]

8.370.20.59 STAFFING REQUIREMENTS:

- A.** General:
- (1) Staff/participant ratios must be maintained at all times.
 - (2) The responsibility of staff members included in the staff/participant ratio shall be direct care of the participants.
 - (3) Each facility must keep a list on file of two readily available persons who can be called to the facility to substitute for any staff member in case of an emergency or illness. These persons names telephone numbers, and health certificates must be on file.

B. Staff/participant ratios:

- (1) Adult day care centers - One full time equivalent staff position with responsibility for direct participant care for each five participants.
- (2) Adult day care homes - One full time equivalent

staff position with responsibility for direct care for no more than five participants.

[8.370.20.59 NMAC - N, 7/01/2024]

8.370.20.60 GENERAL:

A. The health, safety, and welfare of the participants must be the primary concern in all activities and services provided by facilities licensed pursuant to these regulations.

B. Participants must never be left unattended. Staff members must be physically present with the participants at all times.

[8.370.20.60 NMAC - N, 7/01/2024]

8.370.20.61 CARE AND SERVICES FOR ADULTS WITH SPECIAL NEEDS:

In addition to all other requirements contained in these regulations, facilities providing care and services to adults with special needs including respite care, must comply with the following:

A. Facilities which are able to appropriately mainstream special needs adults may do so at their own discretion.

B. An adult with a severe diagnosed mental or physical handicap may be admitted to a facility upon the written recommendation of a licensed physician or therapist.

C. The facility must make appropriate provisions to meet the needs of adults who require special services such as additional space, wide doors, halls, ramps and specially equipped toilet rooms.

D. The licensing authority may require higher staff/adult ratios and staff qualifications to properly care for the adults with special needs, if deemed necessary.

[8.370.20.61 NMAC - N, 7/01/2024]

8.370.20.62 ACTIVITIES:

A. Adult day care activities shall be designed to meet the specific needs and interests of the participants, as determined by individual plans of care, and shall be consistent with the program's goals.

B. Activities shall be planned by staff, participants, family/caregivers, volunteers and other interested individuals and groups.

C. The day care center shall assure safe and healthy conditions for activities in and outside the facility.

D. The plan for, and conduct of, activities must be an ongoing process and shall be reviewed, revised and evaluated as necessary.

E. The adult day care program shall provide for a balance of activities to meet the interrelated needs and interest (social, intellectual, cultural, economic, emotional and physical) of participants.

F. Activities shall be designed to promote personal growth and improve the self-image of participants by providing opportunities to:

- (1) learn new skills and gain knowledge;
- (2) challenge and tap the potential of participants;
- (3) participate in activities of interest;
- (4) improve capacity for independent functioning;
- (5) develop satisfying and interpersonal relationships;
- (6) be exposed to, and involved in, activities and events within the greater community;
- (7) develop cultural enrichment;
- (8) have fun and enjoyment.

G. Activities shall respond to individual differences in health status, lifestyle, ethnicity, values, experiences, needs, interests, abilities, skills and age by providing opportunities for a variety of types and levels of involvement, including:

- (1) small and large group activities;
- (2) individualized activities;
- (3) active and spectator participation;
- (4) inter-generational experience;
- (5) involvement in the greater community;
- (6) services to individuals and to the program

H. Activities shall be flexible and responsive to changes in: (1) the needs and interests of individual participants;

(2) functional capacities of participants;

(3) the characteristics of the adult population in the service area.

I. Activities shall emphasize individual participant's strengths and abilities rather than impairments, and shall contribute to participant's feeling of competence and accomplishment.

J. All program activities shall be supervised by program staff.

K. Participants shall have the choice of refusing to participate in any given activity, and time shall be allowed for rest and relaxation.

[8.370.20.62 NMAC - N, 7/01/2024]

8.370.20.63 SCHEDULE:

A. A monthly calendar of activities shall be prepared and distributed to participants and family/caregivers.

B. Daily activities (and services) shall be posted in a visible location within the center.

C. The participant and family caregivers shall be encouraged to evaluate activities and plan future activities on a six month basis.

[8.370.20.63 NMAC - N, 7/01/2024]

8.370.20.64 EQUIPMENT:

A. Each facility shall have a living or multi-purpose room for the use of participants. Such rooms shall be provided with reading lamps, tables, chairs, and couches. These furnishings shall be well constructed, comfortable, and in good repair.

B. The living room or multi-purpose rooms shall be provided with supplies to meet the varied interests and needs of the participants, including, but not limited to games, current magazines, books, radio and television.

C. The interest areas shall be arranged so that quiet and

noisy activities can occur concurrently without disturbing each other.

D. Equipment, furniture and materials shall be kept in good condition and present no safety hazards.

[8.370.20.64 NMAC - N, 7/01/2024]

8.370.20.65 LINENS: Linens and bedding shall be kept clean at all times.

A. There shall be separate handling and storage of clean and soiled linens.

B. Clean linen shall be stored in clean storage area.

C. Linens shall be laundered and disinfected prior to re-use by another participant.

D. Any linen which has been used by a sick participant, or which has been dirtied by urine or defecation shall be collected, laundered and disinfected separately from other items.

E. New linens must be laundered before use.

[8.370.20.65 NMAC - N, 7/01/2024]

8.370.20.66 FIRST AID

REQUIREMENTS: At all times there shall be one staff member on duty who holds current first aid certificate and has completed an approved cardiopulmonary resuscitation course.

A. A first-aid, accessible to all personnel, shall be kept in the facility.

B. The first aid kit shall contain as a minimum: band aids, gauze pads, adhesive tape, scissors, soap, and syrup of ipecac.

C. In case of accidental poisoning, the facility shall immediately contact the poison control center and their directions shall be followed.

D. Syrup of Ipecac must not be given to any participant without first contacting the poison control center.

E. All facilities are strongly encouraged to send all of their personnel to an approved cardiopulmonary resuscitation course.

F. All facilities shall have a first aid manual available to the

staff or caregivers.

[8.370.20.66 NMAC - N, 7/01/2024]

8.370.20.67 PETS: The facility shall inform participants and guardians of the presence of pets in the facility.

A. There shall be no pets in the kitchen or food serving areas.

B. Pets shall be inoculated as prescribed by a veterinarian.

C. Proof of inoculation shall be kept on file in the facility.

D. Pets must be kept well groomed and healthy.

[8.370.20.67 NMAC - N, 7/01/2024]

8.370.20.68 FOOD SERVICE AND PREPARATION: Each facility that serves meals shall meet all state and local regulations governing food services establishments. **Exception: Adult day care homes.**

A. There shall be no smoking in food service and food preparation areas.

B. Refrigerators, work tables, cupboards, and stoves shall be maintained in clean condition.

C. All food and drink shall be protected from spoiling by proper storage and by putting it in airtight containers or wrapping it.

D. All raw fruits and vegetables shall be washed thoroughly before being cooked or served.

E. All foods shall be protected from insects, rodents and other vermin.

F. Foods shall be served promptly and refrigerated immediately after use.

G. Utensils that can be re-used shall be washed and sanitized.

[8.370.20.68 NMAC - N, 7/01/2024]

8.370.20.69 KITCHENS:

A. There shall be no through traffic in the kitchen during food preparation or service. **Exception: Adult day care homes.**

B. Facilities may allow participants to prepare food as a program activity under careful supervision. [8.370.20.69 NMAC -

N, 7/01/2024]

8.370.20.70 FOOD PREPARATION:

A. Outer clothing of persons preparing or serving food shall be maintained with the highest degree of cleanliness.

B. When staff members are involved in food preparation or service, these persons shall thoroughly scrub their hands and wear clean fresh outer clothing before preparing or serving formula or food.

C. In facilities not under the jurisdiction of the New Mexico environment department, only snacks which require no cooking shall be served. **Exception: Adult day care homes.**

[8.370.20.70 NMAC - N, 7/01/2024]

8.370.20.71 FOOD TEMPERATURE REQUIREMENTS:

A. All perishable food shall, except when being prepared, be kept at 45 degrees fahrenheit or below, or 140 degrees fahrenheit or above.

B. Foods requiring refrigeration shall be kept at 45 degrees fahrenheit or below. Frozen foods shall be kept at zero degrees fahrenheit or below.

C. Refrigerators and separate freezers shall have thermometers. Metal stem thermometers shall be available to measure proper internal cooking and holding temperatures.

[8.370.20.71 NMAC - N, 7/01/2024]

8.370.20.72 MENU:

A. The same menu must not be served twice in one week.

B. A copy of the current week's menu, including snacks, shall be posted in the kitchen and the entrance of the facility where it can be readily seen.

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

D. The weekly menu plans must be dated and kept on file for 30 days.

[8.370.20.72 NMAC - N, 7/01/2024]

8.370.20.73 MEAL TIMES AND NUTRITION:

A. Staff/participant ratios must be maintained at meal times.

B. Time allowed for meals shall enable the participants to eat at a leisurely rate.

C. Meals may be served in areas of main activity.

D. Dining areas shall be equipped with tables, chairs, eating utensils and dishes.

E. Nutrition:

(1) A meal shall be provided to each participant in attendance at the program during standard mealtimes. Each meal shall provide at least one-third of an adult's daily nutritional requirement.

(2) A nutritious mid-morning and mid-afternoon snack shall be offered daily to participants. Snacks shall be planned to keep sugar, salt and cholesterol intake to a minimum.

(3) Participants shall not go for more than three hours without being offered a meal or a snack.

(4) A therapeutic diet shall be provided, if prescribed in writing by a physician, for any participant. If therapeutic diets are prepared by program staff, such staff shall have training in planning and preparing therapeutic diets or shall provide documentation of previous training and education sufficient to assure ability to prepare meals in accordance with a physician's prescription.

(5) A registered dietitian/nutritionist must be consulted by the staff on basic and special nutritional needs and proper food handling techniques. Instruction in nutrition, weight control and safe food handling techniques may be provided as an ongoing part of program activities.

[8.370.20.73 NMAC - N, 7/01/2024]

8.370.20.74 NOTIFIABLE

DISEASES: Facilities shall report any notifiable disease occurring to the participants to the local public health

field office:

A. Each facility shall secure the current list of notifiable diseases published by the New Mexico health care authority and post it conspicuously in the facility.

B. Facilities shall not admit or allow the continued attendance of participants who are ill or who are known or suspected of having notifiable diseases.

C. After a participant has had a notifiable communicable disease, he or she shall be re-admitted to the facility only upon written approval of the attending physician. [8.370.20.74 NMAC - N, 7/01/2024]

8.370.20.75 ISOLATION:

A. A participant who becomes sick at the facility must be separated from the rest of the participants until leaving the facility. The guardian or responsible party must be promptly notified of the participant’s illness and arrangements must be made for the participant to be removed from the facility.

B. The facility must have a bed available for a sick participant which must be thoroughly cleaned after use.

C. The sick participant must be kept in an area where he/she can be under constant observation.

D. Staff must wash their hands thoroughly after caring for sick participants. [8.370.20.75 NMAC - N, 7/01/2024]

8.370.20.76 MEDICATIONS:

Any facility licensed pursuant to these regulations who supervises self-administration of medication for the participants or safeguards medication for residents must have an appropriate custodial drug permit as determined by the state board of pharmacy.

A. To apply for a custodial drug permit, or to obtain information concerning management of drugs and pharmaceutical, the facility should contact the state board of pharmacy.

B. Only medications which can be self-administered by the participant, unless they will be administered by a licensed physician,

dentist, or nurse, can be kept by a facility.

C. Medications prescribed for one participant must not be given to any other participant.

D. Drugs and medications shall neither be supplied nor given to participants, unless ordered or prescribed by a licensed physician, dentist, or other practitioner licensed to do so.

E. Over the counter medications may be given to a participant by the facility, if the facility has a written procedure reviewed and approved by a licensed physician for giving such medications.

F. Medications must be kept in a locked cabinet or other suitable container approved by the state board of pharmacy. Medications must be separated, by individual, in the storage area.

G. The key for the medication storage area must be made available only to personnel duly authorized by the director of the facility.

H. Medication which requires refrigeration must be kept in a separate locked box within a refrigerator, a locked refrigerator, or a refrigerator in a locked room.

I. All medications must be kept in their original containers.

J. Poisonous substances and medications labeled for “external use only” must not be accessible to participants and must be kept separate from other medications.

K. All outdated medications shall be disposed of in a manner approved by the state board of pharmacy.

L. No facility will prepare dosages of medications, in advance, to be given to participants for self-administration with assistance. The medications must be in the original container, the staff member assisting may hold the container, assist the participant in opening the container, and assist the participant in administering the medication. Exception: If a facility has on [sic] the staff nurses registered

in the state of New Mexico who prepare dosage and administer to the resident.

[8.370.20.76 NMAC - N, 7/01/2024]

8.370.20.77 USE OF PHYSICAL RESTRAINTS:

A. Physical restraints may only be used when authorized by a physician in writing for a specified period of time or in emergencies.

B. The use of physical restraints may only be applied by a licensed nurse.

C. Physical restraints must be applied in accordance with the written policies and procedures of the facility.

D. Supervision of participants in restraints shall be on a one to one basis for the duration of the time the restraints are in place. [8.370.20.77 NMAC - N, 7/01/2024]

8.370.20.78 TRANSPORTATION:

A. If a facility licensed pursuant to these regulations provides transportation to participants it is responsible for the participant from the time picked up until delivered.

B. All vehicles used for transportation of participants must be licensed and meet all applicable laws of the state of New Mexico.

C. All vehicles used for transportation of participants must be equipped with a fire extinguisher and first aid kit.

D. Participants must be loaded and unloaded at the curb side of the vehicle.

E. Drivers may leave the vehicle only to assist participants in boarding and leaving the vehicle, and must remain in sight of the vehicle at all times.

F. Drivers of vehicles used to transport participants must be licensed and abide by state and local laws.

G. Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.

H. Vehicles used to transport participants shall be equipped with seatbelts. Drivers shall insure participants use seatbelts while

being transported.

[8.370.20.78 NMAC - N, 7/01/2024]

8.370.20.79 RELATED REGULATIONS AND CODES:

Adult day care facilities subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:

A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
[8.370.20.79 NMAC - N, 7/01/2024]

HISTORY OF 8.370.20 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 21 QUALITY MANAGEMENT SYSTEM AND REVIEW REQUIREMENTS FOR PROVIDERS OF COMMUNITY BASED SERVICES**

8.370.21.1 ISSUING

AGENCY: New Mexico Health Care Authority.

[8.370.21.1 NMAC - N, 7/1/2024]

8.370.21.2 SCOPE: This rule is applicable to persons, organizations or legal entities that are under contract to provide services to the New Mexico health care authority under the following programs: developmental disability waiver (DDW), disabled and elderly waiver (D&EW), medically fragile waiver (MFW), traumatic brain injury (TBI) and family, infants and toddler (FIT) and any additional

programs that may require provider compliance with these requirements.

[8.370.21.2 NMAC - N, 7/1/2024]

8.370.21.3 STATUTORY

AUTHORITY: Subsection E of Section 9-8-6 NMSA 1978 and Subsections L, O, T and U of Section 24-1-3 of the Public Health Act, NMSA 1978 as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating health care purchasing and regulation.

[8.370.21.3 NMAC - N, 7/1/2024]

8.370.21.4 DURATION:

Permanent.

[8.370.21.4 NMAC - N, 7/1/2024]

8.370.21.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.370.21.5 NMAC - N, 7/1/2024]

8.370.21.6 OBJECTIVE:

This rule establishes standards for provider compliance with health care authority (HCA) requirements for quality assurance reviews of DDW, D&EW, MFW, TBI and FIT programs and any additional programs that may require provider compliance with these requirements and specifies that HCA authorized representatives shall have timely access to records, personnel, service locations and clients.

[8.370.21.6 NMAC - N, 7/1/2024]

8.370.21.7 DEFINITIONS:

For purposes of these regulations, the following shall apply:

A. "Client" means any person who is requesting or receiving services from one or more service providers subject to these requirements.

B. "HCA" means the New Mexico health care authority.

C. "Developmental disability waiver (DDW)" means a program offering community based services under the administration of the HCA long term services division for persons eligible based on the criteria described in Subsection B of

8.290.400.10 NMAC.

D. "Disabled & elderly waiver (D&EW)" means a program offering community based services under the administration of the MAD for persons eligible based on the criteria described in Subsection A of 8.290.400.10 NMAC.

E. "Family infant and toddler (FIT)" means a program offering community based services under the administration of the HCA long term services division for persons eligible based on the criteria described in 7.30.8 NMAC.

F. "MAD" means the medical assistance division of the New Mexico health care authority.

G. "Medically fragile waiver (MFW)" means a program offering community based services under the administration of the HCA long term services division for persons eligible based on the criteria described in Subsection C of 8.290.400.10 NMAC.

H. "Provider" means a person, organization or legal entity under contract with HCA to provide services to clients eligible for services under one or more of the following programs: developmental disability waiver (DDW), disabled and elderly waiver (D&EW), medically fragile waiver (MFW); or traumatic brain injury (TBI) and any additional programs that may require provider compliance with these requirements.

I. "Timely access" means physical or in-person, electronic or other access needed by authorized representatives of the HCA to conduct a quality review activity. Timely access means immediate access upon request. If immediate access is not possible for a legitimate reason, the access shall be as prompt as reasonably possible.

J. "Traumatic brain injury provider (TBI)" means a person, organization or other legal entity as specified in Section 24-1-24 NMSA 1978, operating under the administration of the HCA long term services division, which generally offers community based services to eligible clients.

[8.370.21.7 NMAC - N, 7/1/2024]

8.370.21.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive.
[8.370.21.8.NMAC - N, 7/1/2024]

8.370.21.9 CONFIDENTIALITY: Client specific information reviewed or obtained in the course of quality assurance reviews of providers is confidential in accordance with all applicable federal and state law and regulation and with all applicable contract provisions. Other confidential information may include, but is not limited to: personnel records, the provider’s internal incident investigations, financial documents and proprietary business information.
[8.370.21.9 NMAC - N, 7/1/2024]

8.370.21.10 ACCESS TO FACILITATE PROVIDER REVIEW QA ACTIVITIES:

A. HCA shall review the quality of care delivered by providers subject to these requirements. These reviews may be either announced or unannounced.

B. Providers of services shall facilitate timely physical or in-person access to:

C. Provider records, regardless of media, including but not limited to: financial records, all client records, ISPs, personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys and agency policy/procedures manuals;

D. All provider personnel;

E. Clients currently receiving services from the provider;

F. Any information relevant to accessing guardians, representatives and family members;

G. All records, regardless of media, relating to former and deceased clients; and

H. All administrative and service delivery sites.

I. Failure to grant and

facilitate timely physical or in-person access as defined in this rule may subject the provider to all available penalties and sanctions as provided in applicable federal, state or contract provisions.
[8.370.21.10 NMAC - N, 7/1/2024]

History of 8.370.21 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 22 REQUIREMENTS FOR HOME HEALTH AGENCIES**

8.370.22.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.22.1 NMAC - N, 7/1/2024]

8.370.22.2 SCOPE: These regulations apply to:

A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;

B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[8.370.22.2 NMAC - N, 7/1/2024]

8.370.22.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of home health agencies have been pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978, and Subsection D of Section 24-1-2, Subsection I of Section 24-1-3 and Section 24-1-5 of the Public Health Act NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department

to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.22.3 NMAC - N, 7/1/2024]

8.370.22.4 DURATION: Permanent.
[8.370.22.4 NMAC - N, 7/1/2024]

8.370.22.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.22.5 NMAC - N, 7/1/2024]

8.370.22.6 OBJECTIVE:

A. Establish minimum standards for licensing of home health agencies who provide medically directed therapeutic or supportive services to a patient/client in their place of residence.

B. Monitor home health agencies’ compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to a patient/client or staff.

C. Encourage the establishment and maintenance of home health agencies to provide medically directed therapeutic or supportive services, to a patient/client in their place of residence, that maintain or improve the health and quality of life to patients/clients who are in New Mexico.
[8.370.22.6 NMAC - N, 7/1/2024]

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

A. “Abuse” means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a patient/client, including:

(1) physical contact that harms or is likely to harm a patient/client of a home health agency;

(2) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a patient/client;

(3) inappropriate use of a physical or

chemical restraint, medication or isolation as punishment or in conflict with a physician's order;

(4) medically inappropriate conduct that causes or is likely to cause physical harm to a patient/client;

(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a patient/client;

(6) an unlawful act, a threat or menacing conduct directed toward a patient/client that results and might reasonably be expected to result in fear or emotional or mental distress to a patient/client.

B. "Administrator/director" means a qualified individual, on-site, appointed by the governing body who organizes and directs the agency's on-going functions, maintains liaison among the governing body, the group of professional personnel and other staff, employs qualified personnel, ensures adequate staff education, ensures the accuracy of public information materials and activities, and implements an effective budgeting and accounting system. A branch office must have a qualified on-site branch manager who receives direction and supervision from the parent home health agency's administrator/director.

C. "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

D. "Auxiliary work station" means a non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office.

E. "Branch office" means a licensed location or site from which a home health agency provides services and is located sufficiently close that it is not impractical for it to receive direction and supervision from the parent home health agency on a day-by-day basis.

F. "Bylaws" means a set of rules adopted by a home health agency for governing the agency's operation.

G. "Clinical/service note" means a written notation dated and signed by a member of the health team that summarizes facts about care furnished and the patient/client's response during a given period of time.

H. "Exploitation" of a patient/client consists of the act or process, performed intentionally, knowingly or recklessly, of using any patient/client's money or property, for another person's profit, advantage or benefit. Exploitation includes but is not limited to:

(1) manipulating the patient/client by whatever mechanism to give money or property to any agency staff or management member;

(2) misappropriation or misuse of monies belonging to a patient/client or the unauthorized sale, transfer or use of a patient/client's property;

(3) loans of any kind from patient/client's agency staff or management;

(4) accepting monetary or other gifts from a patient/client or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year. All gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient. Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

I. "Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a home health agency licensed pursuant to these regulations.

J. "Great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that

causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

K. "Home health agency" means any business, entity or organization primarily engaged in providing medically directed acute, restorative, rehabilitative, maintenance, preventive or supportive services through professional or paraprofessional personnel to a patient/client in the patient/client's residence. This term does not apply to any individual, licensed practitioner providing services within the scope of their practice or to any business, entity or organization providing non-medically directed services in a patient/client's place of residence.

L. "Home health aide" means a person who has successfully completed a course of training or demonstrated competency in assisting patient/client's to meet basic personal care needs. A home health aide provides medically directed personal care to patient/client's such as, but not limited to, taking and recording vital signs, bathing, grooming, feeding, ambulation, exercise, oral hygiene and skin care.

M. "Home health services" means those medically directed therapeutic or supportive services provided by a home health agency to a patient/client in their place of residence.

N. "Homemaker" means a person who has successfully demonstrated competency to provide household services such as cleaning, meal preparation, laundry, shopping and to assist a patient/client with activities of daily living.

O. "Level of care" means the long term care assessment abstract which medically qualifies a patient/client for Medicaid waiver services.

P. "Licensed practical nurse" means a person licensed as a practical nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

Q. "Licensee" means the person(s) who, or organization

which, has an ownership or similar interest in the home health agency and in whose name a license for a home health agency has been issued and who is legally responsible for compliance with these regulations.

R. “Licensing authority” means the New Mexico health care authority.

S. “Medically directed services” means in-home services that are provided in accordance with a patient/client’s plan or level of care which is reviewed and approved by a physician at least annually.

T. “Neglect” means subject to the patient/client’s right to refuse treatment and subject to the caregiver’s right to exercise sound medical discretion, the grossly negligent:

(1) failure to provide any treatment, services, care, medication or item that is necessary to maintain the health or safety of a patient/client;

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a patient/client;

(3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a patient/client.

U. “Occupational therapist” is a person who is licensed by the state of New Mexico as an occupational therapist, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

V. “Occupational therapist assistant” is a person who is licensed by the state of New Mexico as a certified occupational therapist assistant, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

W. “Parent home health agency” means an agency that develops and maintains responsibility for the operation and administrative control of branch office(s).

X. “Patient/client” means a person who is receiving home health care services.

Y. “Personal care attendant/provider” means a person who has successfully demonstrated competency to provide assistance with personal care such as bathing, grooming, bowel and bladder needs.

Z. “Physical therapist” is a person who is licensed by the state of New Mexico as a physical therapist, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

AA. “Physical therapist assistant” is a person who is licensed by the state of New Mexico as a physical therapist assistant, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

BB. “Plan of care” means a written plan of treatment which sets forth each service that the home health agency agrees to provide to a patient/client.

CC. “Plan of correction” means a plan written and signed by the licensee or representative addressing how and when the licensing authority’s identified deficiencies will be corrected.

DD. “Physician” is a person who is a doctor of medicine, osteopathy or podiatry licensed to practice medicine.

EE. “Policy” means a statement of principle that guides and determines present and future decisions and actions.

FF. “Procedure” means the action(s) that must be taken in order to implement a policy.

GG. “Professional personnel” means the staff of the agency or personnel under contract or agreement with the agency who require a license, registration or certification by the state of New Mexico.

HH. “Quality improvement” means an on-going assessment program which addresses clinical care and program evaluation.

II. “Registered nurse” means a person who holds a certificate of registration as a registered nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

JJ. “Residence” means the place in New Mexico where a patient/client is residing at the time home health services are provided.

KK. “Social worker” is a person who is licensed by the state of New Mexico as a social worker, pursuant to Sections 61-31-1 to 61-31-25 NMSA 1978.

LL. “Speech language pathologist” is a person licensed by the state of New Mexico to practice speech language pathology, pursuant to Sections 61-14B-1 to 61-14B-25 NMSA 1978.

MM. “Supervision” means direction, guidance and oversight by a qualified person, within their sphere of competence, of an individual providing services in accordance with a patient/client’s plan of care.

NN. “Supportive services” means medically or non-medically directed assistance to patient/clients to meet basic activities of daily living.

OO. “Therapeutic services” means a medically directed activity or activities to patients/clients based upon a knowledge of disease processes provided by a home health agency.

PP. “Waive/waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time in which the health, safety, or welfare of the patient/clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority. [8.370.22.7 NMAC - N, 7/1/2024]

8.370.22.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide services of home health agencies as outlined in these regulations.

[8.370.22.8 NMAC - N, 7/1/2024]

8.370.22.9 HOME HEALTH AGENCY AND SCOPE OF SERVICES:

An agency or organization meeting the following criteria must be licensed as a home health agency:

- A.** Provides at least one medically directed service, such as, but not limited to:
 - (1) skilled nursing;
 - (2) physical therapy;
 - (3) occupational therapy;
 - (4) inhalation therapy;
 - (5) infusion therapy;
 - (6) speech language pathology;
 - (7) social work;
 - (8) home health aide;
 - (9) personal care attendant;
 - (10) homemaker.

B. A home health agency must provide at least one of the above services, in its entirety, directly through employees, but may provide other services under arrangements with another agency or organization or provider.

C. A licensed home health agency may also provide non-medically directed services.

D. Home health agency excludes:

- (1) independent or sole practitioners providing in-home services under their respective professional practice acts;
- (2) medical suppliers who do not provide services listed above;
- (3) family, friends, volunteers and paid individuals not under the direct control of a home health agency.

E. Branch office: Means a licensed location from which a home health agency provides

services to patient/clients. A home health agency may not apply for a license to open a branch office unless the parent agency has been in operation for at least one year, had an annual survey conducted by the licensing authority, and is found to be in substantial compliance with these regulations.

(1) A branch office must be located within 100 miles distance from the licensed location of the parent home health agency.

(2) A branch office must have a qualified on-site administrator who receives direction and supervision from the parent home health agency's administrator/director.

(3) A branch office must be able to provide the same services as the parent home health agency.

(4) Original patient/client records, if stored at the parent home health agency, shall be made available upon request of the licensing authority within two hours.

F. Service area: A home health agency may only provide services to patient/clients who reside within one hundred (100) miles distance from the licensed location of the agency.

(1) The licensing authority may grant a temporary exception to the 100 mile distance limitation when the following conditions exist:

(a) no other home health agency service for the patient/client is available;

(b) no home health agency in the area within the 100 miles distance limitation is able or willing to provide services to the patient/client.

(2) Home health agencies not previously required to be licensed by the licensing authority shall have twelve months from the date these regulations are adopted to comply.

G. Auxiliary work station: A non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office for the limited

purposes of storage of supplies and a work area for documentation by staff where a telephone and fax may be available for communication. The auxiliary work station shall not function as a branch office and the following requirements are intended to insure that the work station does not become a branch office:

(1) must not be utilized to increase the geographical service area of a home health agency or as a substitute for a branch operation of the agency;

(2) the name of the agency must not be identified by signage at the work station;

(3) the telephone number for the work station shall not be advertised or otherwise made available to persons or individuals other than staff of the agency;

(4) patient/clients shall only be admitted by and through the licensed location of the agency;

(5) no orders for patient/client care from physicians shall be accepted by agency staff at its auxiliary work station;

(6) no original patient/client records, copies of patient/client records or personnel records shall be maintained by the agency at the auxiliary work station.

[8.370.22.9 NMAC - N, 7/1/2024]

8.370.22.10 INITIAL LICENSURE PROCEDURES:

The authority to determine if a person(s) or organization is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute and these regulations.

To obtain an initial license for a home health agency pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations should be thoroughly understood by the applicant and used as reference prior to applying for initial licensure.

B. The following documents must be submitted to the licensing authority:

- (1) Letter of intent: Submit to the licensing

authority a letter of intention to open a home health agency pursuant to these regulations.

(2)

Application for initial license: All information requested by the licensing authority must be provided. All applications for an initial license must be accompanied by the required non-refundable fee.

(3) Functional

program outline: Each application for initial licensure must be accompanied by a functional program outline that provides the following information:

(a)

scope of Services to be provided by the proposed home health agency;

(b)

estimated number of patient/clients to be served monthly;

(c)

services that will be contracted or arranged with another health provider, i.e., homemaker, I.V. therapy, etc.;

(d)

hours and days of operation.

(4) Home

health agency policies: Submit for review and approval by the licensing authority, a copy of the home health agency policies and a copy of these licensing regulations annotated to the agency's policies and procedures. Note: Each regulation must be referenced to the appropriate policy by writing the page or policy number by the corresponding regulation.

C. Upon the licensing authority's approval of documents listed above, a temporary license will be issued. Upon receipt of the temporary license, the home health agency may admit patients/clients.

D. Upon becoming fully operational and accepting a patient/client, a home health agency must submit a written request to the licensing authority for the initial survey.

E. Upon completion of the initial survey and determination that the facility is in compliance with these regulations, the licensing authority will issue an annual license. [8.370.22.10 NMAC - N, 7/1/2024]

8.370.22.11 LICENSES:

A. Annual license: An

annual license is issued for a one year period to a home health agency which has met all requirements of these regulations.

B. Temporary license:

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

(1) A

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

(2) In

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

C. Amended license:

A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.

(1) application

must be on a form provided by the licensing authority.

(2) application

must be accompanied by the required fee for an amended license.

(3) application

must be submitted within 10 working days of the change.

[8.370.22.11 NMAC - N, 7/1/2024]

8.370.22.12 LICENSE RENEWAL:

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

B. Upon receipt of renewal application, required fee and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the agency is in substantial compliance with these regulations.

C. If the licensee fails to submit a renewal application with the required fee and the current

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

[8.370.22.12 NMAC - N, 7/1/2024]

8.370.22.13 POSTING OF

LICENSE: The agency's current, original license must be posted in a conspicuous place at the licensed location, as identified in the application for licensure.

[8.370.22.13 NMAC - N, 7/1/2024]

8.370.22.14 NON-TRANSFERABLE RESTRICTION

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

A. ownership of the agency changes;

B. the agency changes location of its office;

C. licensee of the agency changes;

D. the agency discontinues operation;

E. an agency wishing to continue operation as a licensed home health agency under circumstances listed above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change.

[8.370.22.14 NMAC - N, 7/1/2024]

8.370.22.15 AUTOMATIC

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

A. on the day an agency discontinues operation;

B. on the day an agency is sold, leased, or otherwise changes ownership or licensee;

C. on the day an agency changes location of its office.

[8.370.22.15 NMAC - N, 7/1/2024]

8.370.22.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING:

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

[8.370.22.16 NMAC - N, 7/1/2024]

8.370.22.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

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

A. failure to comply with any provision of these regulations;

B. failure to allow survey by authorized representatives of the licensing authority;

C. any person active in the operation of an agency licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;

D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;

E. discovery of repeat violations of these regulations during surveys;

F. failure to provide the required care and services as outlined by these regulations for the patients/clients receiving care from the agency.

[8.370.22.17 NMAC - N, 7/1/2024]

8.370.22.18 HEARING PROCEDURES:

A. Hearing procedures for adverse action taken by the licensing authority against an agency's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations may be requested at any time by contacting the licensing authority.

[8.370.22.18 NMAC - N, 7/1/2024]

8.370.22.19 AGENCY SURVEYS:

A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a home health agency by authorized licensing authority representatives during pendency of the application, and if licensed, during the licensure period.

B. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility. The licensing authority may include patient/client home visits as part of any survey or investigation.

C. Upon receipt of the official deficiency statement from the licensing authority, the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the agency intends to correct each violation noted and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.

[8.370.22.19 NMAC - N, 7/1/2024]

8.370.22.20 ACCEPTANCE OF PATIENTS/CLIENTS:

Patients/clients must be accepted for treatment by the agency when there is a reasonable expectation that the patient/client's health care or supportive service needs can be met

adequately in the patient/client's place of residence.

[8.370.22.20 NMAC - N, 7/1/2024]

8.370.22.21 OFFICE REQUIREMENTS:

A. An agency licensed pursuant to these regulations shall establish and maintain an official office for the conduct of its business with posted hours of operation.

B. The office space must be able to maintain, store and safeguard agency records.

[8.370.22.21 NMAC - N, 7/1/2024]

8.370.22.22 HEALTH AND AGE REQUIREMENTS:

A. All staff or contracted personnel involved in the care of patients/clients shall be at least 18 years of age.

B. All staff, contracted personnel, or volunteers having patient/client contact must have a TB test in accordance with the requirements of the infectious disease bureau, of the public health division, health care authority.

[8.370.22.22 NMAC - N, 7/1/2024]

8.370.22.23 REQUIREMENTS FOR LICENSURE OF PROFESSIONALS:

Any health professional employed or contracted by the home health agency, such as, but not limited to, physicians, physician's assistants, nurse practitioners, physical or occupational therapists, speech language pathologists, registered professional nurses, licensed practical nurses, licensed or certified social workers, physical therapy assistants or certified occupational therapy assistants, must have a current license, registration or certification from the state of New Mexico. Proof of licensure must be maintained on file by the agency.

[8.370.22.23 NMAC - N, 7/1/2024]

8.370.22.24 GOVERNING BODY:

Each agency licensed pursuant to these regulations must have a governing body who adopts and reviews, at least annually, written by-laws or policies and procedures which govern the day to day operation of the agency.

A. The governing body may include the licensee of the agency.

B. The governing body must have full legal authority and responsibility for the operation of the agency.

C. The governing body must appoint a qualified administrator.

D. The governing body must oversee the management and fiscal affairs of the agency.

E. The governing body must meet at least annually. These meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[8.370.22.24 NMAC - N, 7/1/2024]

8.370.22.25 ADVISORY GROUP: Each agency licensed pursuant to these shall have an advisory group.

A. The advisory group shall consist of:

- (1) at least three individuals;
- (2) an individual representing at least one of the services offered by the agency;
- (3) at least one member of the group must be neither an owner or an employee of the agency;
- (4) governing body members may also be part of the advisory group.

B. The advisory group shall meet at least semi-annually to perform the following functions:

- (1) to review the agency's required policies and procedures and on-going quality improvement program and make recommendations to the governing body, at least annually;
- (2) to participate in the agency's program evaluation, at least annually;
- (3) to advise the agency on professional issues;
- (4) to assist the agency in maintaining liaison with other health care providers in the community and in its community information efforts.

C. The advisory group meetings shall be documented by

dated minutes and a copy of these minutes shall be kept on file in the agency.

[8.370.22.25 NMAC - N, 7/1/2024]

8.370.22.26 ADMINISTRATOR:

Each agency licensed pursuant to these regulations must have an administrator appointed by the governing body who:

- A.** is a licensed physician; or
- B.** is a registered nurse; or
- C.** has at a minimum, a high school diploma or general equivalency diploma, training and experience in health services administration, and at least one year of supervisory or administrative experience in home health care.

D. may also be the supervising physician or registered nurse.

E. is responsible for implementing the directions of the governing body and organizing and directing the on-going functions of the agency in compliance with these regulations.

F. A qualified person is authorized in writing to act in the absence of the administrator.

[8.370.22.26 NMAC - N, 7/1/2024]

8.370.22.27 RESPONSIBILITIES OF AGENCY PERSONNEL:

Home health agencies utilizing any of the following personnel for provision of home care services must assure the responsibilities listed below are met.

A. Primary service personnel: including, but not limited to, registered nurses, physical therapists, occupational therapists, speech therapists, social workers, shall:

- (1) provide necessary professional care and guidance within the scope of their licensure;
- (2) evaluate the home for its suitability for the patient/client's care;
- (3) teach the patient/client and caregivers how to provide care;
- (4) develop,

evaluate and coordinate the patient/client's plan of care on a continuing basis;

(5) inform the physician and other personnel of changes in the patient/client's condition and needs;

(6) perform an evaluation visit and follow-up visits as needed;

(7) prepare clinical notes.

B. Secondary service personnel: Other licensed personnel, including, but not limited to, respiratory therapists, licensed practical nurses, physical therapy assistants, certified occupational therapist assistants, shall:

(1) provide services in accordance with an established plan of care and agency policies;

(2) provide necessary professional care and guidance within the scope of their licensure;

(3) prepare clinical notes;

(4) evaluate the home for its suitability for the patient/client's care;

(5) teach the patient/client and caregiver how to provide care;

(6) inform the physician and other personnel of changes in the patient/client's condition and needs.

C. Non-licensed personnel: Individuals, including, but not limited to, home health aides, homemakers, personal care attendants, shall:

(1) provide personal care including assistance in the activities of daily living;

(2) assist to maintain a safe and clean environment;

(3) perform household services and other activities as assigned;

(4) communicate with appropriate supervisor about changes or variations in the patient/client or home situation;

(5) teach the

patient/client and caregivers how to provide care, within the level of their competency;

(6) prepare patient/client notes.
[8.370.22.27 NMAC - N, 7/1/2024]

8.370.22.28 SUPERVISING PERSONNEL:

A. The medically directed services provided by the agency must be supervised by a licensed professional or an appropriately qualified staff member.

B. The supervising staff member or their alternate who is similarly qualified must be available at all times during operating hours of the agency.

C. The supervising staff member or alternate who is similarly qualified must participate in all activities relevant to the services provided, including developing qualifications for assignments of personnel.

[8.370.22.28 NMAC - N, 7/1/2024]

8.370.22.29 SUPERVISION OF SECONDARY AND NON-LICENSED PERSONNEL:

A. Licensed practical nurses: Services and care provided by a licensed practical nurse will be furnished under the supervision of a registered nurse who has a minimum of one year home health experience or a minimum of two years nursing experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the licensed practical nurse.

(2) Conduct and document a supervisory visit to at least one patient/client residence at least every 60 days, or more often as indicated.

B. Physical therapy assistants: Services and care provided by a physical therapy assistant will be furnished under the supervision of a physical therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by

the physical therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence at least every thirty (30) days or as indicated.

(3) Be on-call and readily available and within a 100 mile radius, or have appointed another physical therapist in their absence.

(4) Supervise no more than two physical therapy assistants.

C. Certified occupational therapy assistants: Services and care provided by a certified occupational therapy assistant will be furnished under the supervision of an occupational therapist, with a minimum of one (1) year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the certified occupational therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence:

(a) at a minimum of every two weeks for intermediate-level certified occupational therapy assistants;

(b) at a minimum of every 30 days for advanced-level certified occupational therapy assistants.

D. Home health aides: Services and care provided by a home health aide will be furnished under the supervision of an appropriately licensed professional, such as, registered nurse, physical therapist, occupational therapist, or a speech language pathologist with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client instructions which identify appropriate tasks to be performed by the home health aide.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple home health

aides require only one supervisory visit. This home health aide need not be present in the patient/client's residence at the time of the supervisory visit.

E. Personal care attendants or equivalent: Services and care provided by a personal care attendant or equivalent will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the personal care attendant or equivalent.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple personal care attendants or equivalent require only one supervisory visit. The personal care attendant need not be present in the patient/client's residence at the time of the supervisory visit.

F. Homemakers: Services and care provided by a homemaker will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the homemaker.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every sixty-two (62) days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple homemakers require only one supervisory visit. The homemaker need not be present in the patient/client's residence at the time of the supervisory visit.

[8.370.22.29 NMAC - N, 7/1/2024]

8.370.22.30 HOME HEALTH AIDE TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a home health aide on a full-time, part-time, temporary, per diem, or other basis unless:

(1) that individual is competent to provide services as a home health aide;

(2) that individual has completed a training program or a competency evaluation program as outlined in these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct home health aide training and the training curriculum to the licensing authority. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of home health aides and document that each is determined competent.

(3) The licensing authority may deny a home health agency the right to conduct home health aide training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial non-compliance with these regulations.

C. Course requirements: Home health aides: The home health aide training program must address each of the subject areas listed below through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while

performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(1) The individual being trained must complete at least 16 hours of classroom training before beginning the supervised practical training;

(2) communications skills;

(3) observation, reporting and documentation of patient status and the care or service furnished;

(4) reading and recording of vital signs;

(5) basic infection control procedures;

(6) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(7) maintenance of a clean, safe and healthy environment;

(8) recognizing emergencies and knowledge of emergency procedures (including CPR and first aid);

(9) the physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, their privacy and their property;

(10) appropriate and safe techniques in personal hygiene and grooming that include, but are not limited to, bathing, shampooing, nail and skin care, oral hygiene and toileting;

(11) safe transfer techniques and ambulation;

(12) normal range of motion and positioning;

(13) nutrition and hydration;

(14) patient/client rights, including respect for cultural diversity;

(15) any other task that the home health agency may choose to have the home health aide perform.

D. Instructor personnel:

(1) The training of home health aides must be performed by, or under the supervision of, a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health services.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide home health aide training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. Competency evaluation includes both a written test and a skills demonstration. Skills demonstration must be observed and documented by a registered nurse or licensed practical nurse.

(2) Documentation must include at least the following information:

- (a) Training:
- (i) name of individual taking training;
 - (ii) title, purpose and objectives of class;
 - (iii) name of instructor and qualifications;
 - (iv) number of hours of instruction;
 - (v) date instruction was given.

- (b) Competency:
- (i) name of individual being evaluated for competency;
 - (ii) date and method used to determine competency.

F. Annual in-service training: Each home health aide must participate in at least 12 documented hours of in-service training during each 12 month period. This requirement may be fulfilled on a prorated basis during the home health aide's first year of employment at the home health agency.

G. Annual performance review: A performance review, including written evaluation and skills demonstration must be completed on each home health aide no less frequently than every 12 months. [8.370.22.30 NMAC - N, 7/1/2024]

8.370.22.31 HOMEMAKER/PERSONAL CARE ATTENDANT OR EQUIVALENT TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a homemaker/personal care attendant or equivalent on a full-time, part time, temporary, per diem or other basis unless:

(1) That individual is competent to provide assigned tasks as a homemaker/personal care attendant or equivalent.

(2) That individual has completed a training program or a competency evaluation program as outlined in these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct homemaker/personal care attendant or equivalent training and the source of training material. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of homemaker/personal care attendant or equivalent and document that each is determined to be competent.

(3) The licensing authority may deny a home health agency the right to conduct homemaker/personal care attendant or equivalent training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial noncompliance with these regulations.

C. Course requirements: The home health agency’s homemaker/personal care attendant or equivalent training program must consist of no less than 40 hours of training, to be completed by the homemaker/personal care attendant or equivalent in the first year of employment. Ten hours of training must be completed prior to placing the homemaker/personal care employee in a patient/client home. Two of the 10 hours may include agency orientation. Eight of the 10 hours training must be patient/client service specific. The training must address, at a minimum, the following areas:

(1) communication skills;
(2) patient/client rights, including respect for cultural diversity;

(3) recording of information for patient/client records;
(4) nutrition and meal preparation;

(5) housekeeping skills;
(6) care of the ill and disabled, including the special needs populations;

(7) emergency response (including CPR and first aid);
(8) basic infection control;

(9) home safety.

D. Instructor personnel:
(1) The training of homemaker/personal care attendant or equivalent must be performed by or under the direction of a licensed professional or an appropriately qualified person.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide homemaker/personal care attendant or equivalent training courses or competency

evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. The training or competency evaluation must be observed and documented by a licensed professional or an appropriately qualified person.

(2) Documentation must include at least the following information:

- (a) Training:
- (i) name of individual taking training;
 - (ii) title, purpose, and objectives of class;
 - (iii) name of instructor;
 - (iv) number of hours of instruction;
 - (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

(3) Annual in-service training: Each homemaker/personal care attendant or equivalent shall participate in at least 10 documented hours of in-service training during each 12-month period. [8.370.22.31 NMAC - N, 7/1/2024]

8.370.22.32 PATIENT/CLIENT RIGHTS: A home health agency licensed pursuant to these regulations must protect and promote the rights of each individual under its care, including each of the following rights:

- A. the right to be fully informed in advance about the care and treatment to be provided by the agency;
- B. the right to refuse or terminate treatment;
- C. the right to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual’s well-being;
- D. the right to

participate in planning care and treatment or changes in care or treatment, except for those individuals adjudged incompetent;

E. the right to be treated with dignity and respect and to be free from abuse, neglect, and exploitation. No home health agency to whom a patient/client’s money or valuables have been entrusted shall mingle the patient/client’s monies, valuables or property, with that of the licensee, staff or management;

F. the right to voice grievances, with respect to treatment or care that is or fails to be furnished, without discrimination or reprisal for voicing such grievances;

G. the right to confidentiality of medical care and patient/client records;

H. the right to have one’s property treated with respect;

I. the right to be fully informed, orally and in writing, of all charges for services to be performed by the agency and of any changes in these charges;

J. the right to be informed of the New Mexico home health agency hotline number (1-800-752-8649), hours of operation (8:00 am-5:00 pm, Monday-Friday), and purpose of the hotline, which is to receive complaints, questions about local home health agencies, or to lodge complaints concerning the implementation of the advance directives requirements;

K. the right to be fully informed regarding advance directives, prior to care being given. This information must include agency policies on advance directives and a description of applicable state law;

L. the right to be fully informed, in writing, of the patient/client’s rights pursuant to these regulations.

[8.370.22.32 NMAC - N, 7/1/2024]

8.370.22.33 PLAN OF CARE: Care of a patient/client by the agency must follow a written plan of care which is reviewed at least annually.

A. Medically directed care: An agency must follow a written plan of care established and

periodically reviewed by a physician, and care continues under the supervision of a physician.

(1) The plan of care shall be developed in consultation with appropriate agency staff and cover all pertinent diagnoses, including but not limited to:

(a) mental status;

(b) types of services and equipment required;

(c) frequency and duration of visits;

(d) functional limitations;

(e) activities permitted;

(f) nutritional requirements;

(g) medications and treatments;

(h) safety measures to protect against injury;

(i) plans or goals for care;

(j) any other appropriate items.

(2) If a physician refers a patient/client under a plan of care which cannot be completed until after an evaluation visit, the physician must be consulted to approve additions or modifications to the original plan.

(3) The plan of care must be reviewed by the attending physician and home health agency personnel at least annually or as often as the condition of the patient/client requires.

(4) Agency professional staff must promptly alert the physician to any changes that suggest a need to alter the plan of care.

(5) Conformance with physician’s orders:

(a) Drugs and treatments shall be administered by agency staff only as ordered by the physician.

(b) Licensed professionals must immediately record and sign oral orders and obtain the physician’s

countersignature.

(c) For a patient/client receiving nursing services, all medications a patient/client may be taking must be checked to identify possible ineffective drug therapy, adverse reactions, significant side effects, drug allergies and contraindicated medications. Medication problems must be promptly reported to the physician.

B. Non-medically directed care: An agency must follow a written plan of care, which includes goals and objectives appropriate to the patient/client being served, and which is established and reviewed at least annually by agency staff.

[8.370.22.33 NMAC - N, 7/1/2024]

8.370.22.34 PATIENT/CLIENT RECORDS: Each agency licensed pursuant to these regulations must maintain the original record for each patient/client receiving services. Patient/client records shall be made available for review upon request of the licensing authority. Every record must be accurate, legible, promptly completed and consistently organized. A patient/client record must meet the following criteria:

A. Content of patient/client record:

(1) Medically directed patient/client record must include:

(a) past and current medical findings in accordance with accepted professional standard;

(b) plan of care;

(c) identifying information;

(d) name of physician;

(e) medications, diet, treatment/services, and activity orders;

(f) signed and dated notes on the day service(s) provided;

(g) copies of summary reports sent to the physician;

(h) evidence of patient/client being

informed of rights;

(i) evidence of coordination of care provided by all personnel providing patient/client services;

(j) discharge summary.

(2) Non-medically directed patient/client records must include:

(a) plan of care;

(b) identifying information;

(c) signed and dated notes on the day service(s) provided;

(d) evidence of patient/client being informed of rights;

(e) evidence of coordination of care of all personnel providing patient/client services;

(f) evidence of discharge.

B. If the patient/client is discharged or transferred to another provider of health care, upon receipt of a signed request from the patient/client, a copy of the original record or an abstract of the same must be made available to the receiving facility, within 24 hours.

C. Protection of patient/client records:

(1) The agency must insure that the original patient/client records and information is safeguarded against loss or unauthorized use.

(2) The agency must have written policies and procedures governing the use and removal of patient/client records and conditions for release of information.

(3) Patient/client's written consent is required for release of information not authorized by law.

D. Retention of patient/client records:

(1) Original patient/client records shall be retained for at least 10 years after the patient/client is discharged.

(2) Original patient/client records shall be

maintained for the requisite period even if the agency has discontinued operations.

(3) The licensing authority must be notified, in writing, prior to discontinuing operation of the storage location of patient/client records. [8.370.22.34 NMAC - N, 7/1/2024]

8.370.22.35 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE AGENCY:

A. a copy of the last survey conducted by the licensing authority;

B. licensing regulations: A copy of these regulations, 8.370.22 NMAC;

C. agreements or contracts to provide services or care;

D. patient/client records;

E. staff records;

F. training and in-service records as applicable;

G. minutes of advisory group and governing board meetings;

H. quality improvement program records;

I. grievances and resolutions;

J. state board of pharmacy certificates as applicable. [8.370.22.35 NMAC - N, 7/1/2024]

8.370.22.36 CONTRACTED SERVICES: Services that are provided under arrangement by an individual or entity and the home health agency, shall include a written contract between those individuals or entities and the agency, that specifies the following:

A. that patients are accepted for care only by the primary (admitting) home health agency;

B. the services to be furnished under the contract.

C. the necessity to conform to all applicable agency policies including personnel qualifications;

D. the responsibility for participating in developing plans of care;

E. the manner in which services will be controlled,

coordinated and evaluated by the primary agency;

F. the procedures for submitting clinical notes, scheduling of visits and conducting periodic patient evaluation;

G. the procedures for payment for services furnished under the contract. [8.370.22.36 NMAC - N, 7/1/2024]

8.370.22.37 STAFF RECORDS: Each agency licensed pursuant to these regulations must maintain a complete record on file for each staff member and for all volunteers with in-home contact or working more than half-time. Staff records shall be made available for review upon request of the licensing authority within four hours. Staff records must contain at least the following:

A. name;

B. address;

C. position for which employed;

D. date of employment;

E. health certificate for all staff having contact with patient/clients stating that the employee is free from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, health care authority;

F. a copy or proof of the current license, registration or certificate for each staff member for whom a license, registration, or certification is required by the State of New Mexico. [8.370.22.37 NMAC - N, 7/1/2024]

8.370.22.38 POLICIES AND PROCEDURES: Each agency licensed pursuant to these regulations must have written policies and procedures for at least the following:

A. scope of services offered;

B. providing of services through arrangement or contract with individuals or agencies;

C. admission and discharge;

D. written job descriptions for all categories of personnel;

E. personnel policies;

F. staff training;

G. emergency and after normal business hour care policies/procedures;

H. preparation, safeguarding, and release of information from patient/client records;

I. quality improvement program;

J. complaints and grievances, including timely resolution.
[8.370.22.38 NMAC - N, 7/1/2024]

8.370.22.39 QUALITY IMPROVEMENT: Each agency must establish an on-going quality improvement program to ensure an adequate and effective operation. To be considered on-going, the quality improvement program must document quarterly activity that addresses, but is not limited to:

A. Clinical care: Assessment of patient/client goals and outcome, such as, diagnosis(es), plan of care, services provided, and standards of patient/client care.

B. Operational activities: Assessment of the total operation of the agency, such as, policies and procedures, statistical data (i.e., admissions, discharges, total visits by discipline, etc.), summary of quality improvement activities, summary of patient/client complaints and resolutions, and staff utilization.

C. Quality improvement action plan: Written responses to address existing or potential problems which have been identified.

D. Documentation of activities: The results of the quality improvement activities shall be compiled annually in report format and formally reviewed and approved by the governing body and advisory group of the home health agency. No more than one year may lapse between evaluations of the same part.

E. The licensing authority may, at its sole discretion,

request quarterly activity summaries of an agency’s on-going quality improvement activities or may direct the agency to conduct specific quality improvement studies.
[8.370.22.39 NMAC - N, 7/1/2024]

8.370.22.40 COMPLAINTS: The home health agency must investigate complaints made by a patient/client, caregiver, or guardian regarding treatment or care, or regarding the lack of respect for the patient/client’s property and must document both the existence of the complaint and the resolution of the complaint. The agency’s investigation of a complaint(s) must be initiated within three working days.
[8.370.22.40 NMAC - N, 7/1/2024]

8.370.22.41 INCIDENTS:
A. Reporting: All home health agencies licensed pursuant to these regulations must report to the licensing authority any of the following which has, or could threaten the health, safety and welfare of the patient/clients or staff:

(1) any serious incident or unusual occurrence;

(2) injuries of unknown origin or known, suspected or alleged incidents of patient/client abuse, neglect, exploitation, or mistreatment by staff or person(s) contracted by the home health agency.

B. Documentation: The agency is responsible for documenting all incidents, within five days of the incident, and having on file the following:

(1) a narrative description of the incident;

(2) evidence contact was made to the licensing authority;

(3) results of the facility’s investigation;

(4) the facility action, if any.
[8.370.22.41 NMAC - N, 7/1/2024]

8.370.22.42 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to other regulations,

codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
[8.370.22.42 NMAC - N, 7/1/2024]

HISTORY OF 8.370.22 NMAC: RESERVED

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 24 REQUIREMENTS FOR END STAGE RENAL DISEASE FACILITIES**

8.370.24.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.24.1 NMAC - N, 7/1/2024]

8.370.24.2 SCOPE: These regulations apply to:
A. public, profit or nonprofit facilities or entities providing dialysis services as outlined by these regulations;

B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[8.370.24.2 NMAC - N, 7/1/2024]

8.370.24.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of

Section 9-7-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation. [8.370.24.3 NMAC - N, 7/1/2024]

8.370.24.4 DURATION:
Permanent.
[8.370.24.4 NMAC - N, 7/1/2024]

8.370.24.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.24.5 NMAC - N, 7/1/2024]

8.370.24.6 OBJECTIVE:

A. Establish minimum standards for end stage renal disease facilities in the state of New Mexico.

B. Monitor end stage renal disease facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the patients or staff.

C. Encourage the maintenance of end stage renal disease facilities that will provide quality services which maintain or improve the health and quality of life for the patients.
[8.370.24.6 NMAC - N, 7/1/2024]

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

A. "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

B. "Deficiency" means a violation of or failure to comply with a provision(s) of these regulations.

C. "License" means the document issued by the licensing

authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.

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

E. "Licensing authority" means the New Mexico health care authority.

F. "NMSA" means the New Mexico Statutes Annotated, 1978 compilation, and all the revisions and compilations thereof.

G. "Plan of correction" means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.

H. "Policy" means a statement of principal that guides and determines present and future decisions and actions.

I. "Procedure" means the action(s) that must be taken in order to implement a policy.

J. "Variance" means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a facility, and is at the sole discretion of the licensing authority.

K. "Waive/waiver" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety or welfare of the patients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
[8.370.24.7 NMAC - N, 7/1/2024]

8.370.24.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the

use of the words "shall" or "must" or "may." "Shall" or "must" means mandatory. "May" means permissive. The use of the words "adequate", "proper", and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide dialysis services as outlined in these regulations.
[5/7/1991; Recompiled 7/1/2024]

8.370.24.9 TYPES OF END STAGE RENAL DISEASE (ESRD) FACILITIES AND SCOPE OF SERVICES:

A. Renal transplantation center: A hospital unit which is approved to furnish directly, transplantation and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis furnished directly or under arrangement. A renal transplantation center may also be a renal dialysis center.

B. Renal dialysis center: A hospital unit which is approved and licensed to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of ESRD dialysis patients (including inpatient dialysis furnished directly or under arrangement). A hospital need not provide renal transplantation to qualify as a renal dialysis center.

C. Renal dialysis facility: A unit which is located in a building other than a hospital which is approved and licensed to furnish dialysis services directly to ESRD patients.

D. Self dialysis unit: A unit that is within a licensed renal transplantation center, renal dialysis center, or a renal dialysis facility, which provides self-dialysis service.

E. Special purpose renal dialysis facility: A renal dialysis facility which is approved and licensed pursuant to these regulations to provide dialysis at special locations on a short term basis (not to exceed eight months) to a group of dialysis patients otherwise unable to obtain treatment in the geographical area. The special locations must be either

special rehabilitative (including vacation) locations serving ESRD patients temporarily residing there, or locations in need of ESRD facilities under emergency circumstances.

F. End stage renal disease (ESRD) services: The types of care or services furnished to an ESRD patient are:

- (1) transplantation service which is a process by which:
 - (a) a kidney is excised from a live or cadaveric donor;
 - (b) that kidney is implanted in an ESRD patient;
 - (c) supportive care is furnished to the living donor and to the recipient following implantation;
 - (d) this service is only provided at an approved and licensed transplantation center.

(2) inpatient dialysis which because of medical necessity, is furnished to an ESRD patient on a temporary inpatient basis in a hospital. This service may only be provided by a transplantation center or renal dialysis center.

(3) outpatient dialysis is dialysis furnished on an outpatient basis at a licensed transplantation center, renal dialysis center, or renal dialysis facility and includes:

- (a) staff assisted dialysis which is dialysis performed by the staff of the center or facility;
- (b) self dialysis which is performed with little or no professional assistance, by an ESRD patient who has completed an appropriate course of training;
- (c) home dialysis performed by an appropriately trained patient at home.
- (4) self dialysis and home dialysis training in which the licensed ESRD transplantation center, renal dialysis center, or renal dialysis facility provides a program that trains ESRD patients to perform self-dialysis

or home dialysis with little or no professional assistance, and trains other individuals to assist patients in performing self-dialysis or home dialysis.

[8.370.24.9 NMAC - N, 7/1/2024]

8.370.24.10 INITIAL LICENSURE PROCEDURES: To obtain an initial license for an end stage renal disease facility pursuant to these regulations the following procedures must be followed by the applicant:

A. Initial phase: These regulations should be thoroughly understood by the applicant and used as a reference for design of a new building or renovation or addition to an existing building for licensure pursuant to these regulations. Prior to starting construction, renovations or additions to an existing building the applicant of the proposed ESRD facility shall advise the licensing authority of intention to open an ESRD facility pursuant to these regulations and submit the following:

(1) Plans: Submit a complete set of construction documents (blueprints) for the total building. Plans should indicate if new construction, remodeled or alteration, or an addition. If remodeled or an addition the plans must indicate existing and new construction.

(2) Functional program outline: The proposed end stage renal disease facility must also submit to the licensing authority a functional program outline that provides the following information:

- (a) scope of services to be provided by the proposed ESRD facility;
- (b) projected number of patients to be served daily;
- (c) number of staff and duties to be performed;
- (d) services that will be provided under agreement or arrangement with another facility;
- (e) number of dialysis stations, treatment

rooms and other rooms for diagnostic use such as X-ray, laboratory, etc.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building the applicant will submit to the licensing authority the following:

- (1) Application form:
 - (a) will be provided by the licensing authority;
 - (b) all information requested on the application must be provided;
 - (c) will be printed or typed;
 - (d) will be dated and signed;
 - (e) will be notarized.
- (2) Fees: All applications for licensure must be accompanied by the required fee.
 - (a) Current fee schedules will be provided by the licensing authority.
 - (b) Fees must be in the form of a certified check, money order, personal, or business check made payable to the state of New Mexico.
 - (c) Fees are non-refundable.
- (3) Zoning and building approval:
 - (a) All initial applications must be accompanied with written zoning approval from the appropriate authority (city, county or municipality).
 - (b) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).
 - (4) Fire authority approval: All initial

applications must be accompanied with written approval of the fire authority having jurisdiction.

(5) New Mexico environment department approval: All initial applications must be accompanied by written approval of the environmental department for the following:

(a) private water supply, if applicable;

(b) private waste or sewage disposal, if applicable;

(c) X-ray equipment, if applicable.

(6) Copy of appropriate drug permit issued by the state board of pharmacy, if applicable.

(7) Initial survey: Upon receipt of a properly completed application with all supporting documentation as outlined above an initial survey of the proposed end stage renal disease facility will be scheduled by the licensing authority.

(8) Issuance of license: Upon completion of the initial survey and determination that the end stage renal disease facility is in compliance with these regulations the licensing authority will issue a license.

[8.370.24.10 NMAC - N, 7/1/2024]

8.370.24.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to an end stage renal disease facility which has met all requirements of these regulations.

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

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

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

licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.

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

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

(3) Application must be submitted within 10 working days of the change. [8.370.24.11 NMAC - N, 7/1/2024]

8.370.24.12 LICENSE RENEWAL:

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

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

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the ESRD facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license. [8.370.24.12 NMAC - N, 7/1/2024]

8.370.24.13 POSTING OF LICENSE: The ESRD facility's license must be posted in a conspicuous place in an area visible to the public. [8.370.24.13 NMAC - N, 7/1/2024]

8.370.24.14 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment

or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. the facility discontinues operation;

E. a facility wishing to continue operation as a licensed end stage renal disease facility under circumstances listed above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change. [8.370.24.14 NMAC - N, 7/1/2024]

8.370.24.15 AUTOMATIC EXPIRATION OF LICENSE:

A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended or revoked, or:

A. on the day a facility discontinues operation;

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

C. on the day a facility changes location.

[8.370.24.15 NMAC - N, 7/1/2024]

8.370.24.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING:

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

[8.370.24.16 NMAC - N, 7/1/2024]

8.370.24.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF

INTERMEDIATE SANCTIONS OR CIVIL MONETARY

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

- A.** Failure to comply with any provision of these regulations.
- B.** Failure to allow survey by authorized representatives of the licensing authority.
- C.** Any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony.
- D.** Misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority.
- E.** Discovery of repeat violations of these regulations during surveys.
- F.** Failure to provide the required care and services as outlined by these regulations for the patients receiving care at the facility. [8.370.24.17 NMAC - N, 7/1/2024]

8.370.24.18 HEARING PROCEDURES:

- A.** Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against an ESRD facility license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- B.** A copy of the adjudicatory hearing procedures will be furnished to an ESRD facility at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority. [8.370.24.18 NMAC - N, 7/1/2024]

8.370.24.19 CURRENTLY LICENSED FACILITIES: Any

ESRD facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements, may continue to be licensed if:

- A.** variance may be granted for those building requirements the ESRD facility cannot meet provided the variances granted will not create a hazard to the health, safety and welfare of the patients and staff, and are not in violation of current fire and building codes;
- B.** the building requirements for which variances are granted cannot be corrected without an unreasonable expense to the ESRD facility; and
- C.** variances granted will be recorded and made a permanent part of the end stage renal disease facility file. [8.370.24.19 NMAC - N, 7/1/2024]

8.370.24.20 NEW FACILITY:

- A new ESRD facility may be opened in an existing building or a newly constructed building.
- A.** If opened in an existing building a variance may be granted for those building requirements the ESRD facility cannot meet under the same criteria outlined in 8.370.24.19 NMAC, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.
 - B.** A new ESRD facility opened in a newly constructed building must meet all requirements of these regulations. [8.370.24.20 NMAC - N, 7/1/2024]

8.370.24.21 FACILITY SURVEYS:

- A.** Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a ESRD facility by authorized licensing authority representatives at reasonable times during the pendency of the application and, if licensed, during the licensure period.
- B.** The licensing authority shall perform, as it deems

necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility.

- C.** Upon receipt of a notice of deficiency from the licensing authority the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the facility intends to correct each violation noted and the expected date of completion.
- D.** The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee. [8.370.24.21 NMAC - N, 7/1/2024]

8.370.24.22 ADOPTION OF

FEDERAL STANDARDS: The licensing authority hereby adopts the federal standards for certification of end stage renal disease (ESRD) services, as set out in 42 C.F.R. Sections 405.2100 through 405.2171, as amended from time to time, as the standards for licensure of end stage renal disease services in the state of New Mexico. [8.370.24.22 NMAC - N, 7/1/2024]

8.370.24.23 RELATED REGULATIONS AND CODES:

End stage renal disease facilities subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:

- A.** Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
- B.** Health facility sanctions and civil monetary penalties, New Mexico health care authority 8.370.4 NMAC.
- C.** Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC. [8.370.24.23 NMAC - N, 7/1/2024]

HISTORY OF 8.370.24 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS PART 25 HEARING REQUIREMENTS FOR CERTIFIED NURSE AIDES

8.370.25.1 ISSUING

AGENCY: New Mexico Health Care Authority.
[8.370.25.1 NMAC - N, 7/1/2024]

8.370.25.2 SCOPE: These regulations apply to nurse aides on the nurse aide registry who may perform nurse aide duties at medicare or medicaid facilities.
[8.370.25.2 NMAC - N, 7/1/2024]

8.370.25.3 STATUTORY

AUTHORITY: The regulations set forth herein have been promulgated by authority of Subsection E of Sections 9-8-6, Subsection O of Section 24-1-3, and Subsection B of Section 24-2-5 NMSA 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.25.3 NMAC - N, 7/1/2024]

8.370.25.4 DURATION:

Permanent.
[8.370.25.4 NMAC - N, 7/1/2024]

8.370.25.5 EFFECTIVE

DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.25.5 NMAC - N, 7/1/2024]

8.370.25.6 OBJECTIVE: The purpose of these regulations is to:

A. provide for notification to the nurse aide of allegations of abuse, neglect, or exploitation;

B. provide the opportunity for a hearing to the nurse aide against whom an allegation of abuse, neglect, or exploitation has been made;

C. provide for notification to the nurse aide and the nurse aide registry if the allegations are substantiated and upheld following any appeal requested pursuant to these regulations.
[8.370.25.6 NMAC - N, 7/1/2024]

8.370.25.7 DEFINITIONS:

For purposes of these regulations the following shall apply.

A. "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

(1) physical contact that harms or is likely to harm a resident of a health facility;

(2) inappropriate use of a physical restraint, isolation, or medication that harms or is likely to harm a resident;

(3) inappropriate use of a physical or chemical restraint, medication, or isolation as punishment or in conflict with a physician's order;

(4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;

(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;

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

B. "Exploitation" of a resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

C. "Facility" means a skilled nursing facility or nursing facility, or a distinct part of a skilled nursing facility or nursing facility.

D. "Great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

E. "Licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

F. "Neglect" means subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

(1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident;

(3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident.

G. "Nurse aide" means any individual who provides nursing or nursing related services to residents in a facility and who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

H. "Registry" means a listing by the state survey agency of all individuals who have satisfactorily completed a nurse aide training or competency evaluation program approved by the health care authority and state survey agency, or who have qualified by reciprocity.

I. "Resident" means any person who resides in a health care facility or who receives treatment from a certified health care provider.

J. "Survey agency"

means the health facility licensing and certification bureau of the New Mexico health care authority. [8.370.25.7 NMAC - N, 7/1/2024]

8.370.25.8

INVESTIGATION: Following review by the survey agency, all allegations for which there is reason to believe, either through oral or written evidence, that the resident has been abused, neglected or exploited will be investigated. [8.370.25.8 NMAC - N, 7/1/2024]

8.370.25.9 SOURCE OF COMPLAINTS:

All complaints received by the survey agency for which there is reason to believe that the resident has been abused, neglected or exploited will be investigated regardless of their source. [8.370.25.9 NMAC - N, 7/1/2024]

8.370.25.10 NOTIFICATION:

If the survey agency determines, based on oral or written evidence, that resident abuse, neglect or exploitation occurred, it shall notify by mail the nurse aide implicated in the investigation and the administrator of the facility that employs the nurse aide of the:

- A. nature of the allegation(s);
- B. date of the occurrence;
- C. right to a hearing;
- D. survey agency’s intent to report the substantiated findings, once the nurse aide has had the opportunity for a hearing, to the nurse aide registry and other appropriate licensure authorities;
- E. fact that the nurse aide’s failure to request a hearing in writing within 30 days from the date of the notice will result in the survey agency reporting the substantiated findings to the administrator of the facility that employs the nurse aide to the nurse aide registry. [8.370.25.10 NMAC - N, 7/1/2024]

8.370.25.11 REQUEST FOR HEARING:

A nurse aide determined by the survey agency to have committed abuse, neglect,

or exploitation may request an administrative hearing. The request for a hearing shall be in writing and mailed or delivered to the New Mexico health care authority as directed in the notification sent pursuant to 8.370.25.10 NMAC. [8.370.25.11 NMAC - N, 7/1/2024]

8.370.25.12 IMPARTIAL HEARING OFFICER:

Upon receipt of a timely request for a hearing, the secretary of the health care authority or their designee shall appoint an impartial hearing officer to conduct the hearing and issue a report and recommended decision. The hearing officer need not be an attorney. The hearing officer must not have been involved in any way in the action which is challenged in the hearing. [8.370.25.12 NMAC - N, 7/1/2024]

8.370.25.13 PARTIES:

The parties to a hearing conducted under these regulations shall be the survey agency and the nurse aide. [8.370.25.13 NMAC - N, 7/1/2024]

8.370.25.14 PRE-HEARING DISCOVERY:

A. Upon written request, the nurse aide who has requested a hearing shall be entitled to review and copy documents in the survey agency’s file that are relevant to the challenged action. Documents protected by confidentiality or privilege, however, shall not be inspected or copied.

B. The parties shall disclose to each other verbally, or in writing, and to the hearing officer, the names of witnesses to be called and the general subject matter of their testimony no later than two days prior to the hearing. No formal depositions shall be allowed, although if the witnesses do not object, they may be informally interviewed prior to their testimony. [8.370.25.14 NMAC - N, 7/1/2024]

8.370.25.15 SCHEDULING THE HEARING:

A. The hearing shall take place within 30 days after the

survey agency’s receipt of the request for a hearing.

B. The survey agency or, if so delegated, the hearing officer shall schedule the hearing at a place and time reasonably convenient for the nurse aide and shall provide reasonable notice to the parties and to the administrator of the facility that employs the nurse aide of the place and time of the hearing. [8.370.25.15 NMAC - N, 7/1/2024]

8.370.25.16 CONDUCT OF HEARING:

A. The hearing officer shall conduct the hearing in public except when a closed hearing is requested in order to protect confidential information.

B. The survey agency has the burden of proving, by a preponderance of the evidence, the existence of the conduct relied upon to take the challenged action.

C. Testimony shall be under oath and witnesses are subject to cross examination.

D. The rules of evidence do not apply, however, evidence shall be admitted if it is the type that a reasonable person would rely on in the conduct of their affairs.

E. If a nurse aide demonstrates that resident neglect was caused by factors beyond their control, such showing shall constitute a defense to the charge of neglect.

F. A record made by audio recording device shall be maintained with the hearing officer’s file. [8.370.25.16 NMAC - N, 7/1/2024]

8.370.25.17 REPORT AND RECOMMENDATIONS OF HEARING OFFICER:

The hearing officer shall render and mail a written report and recommended decision within five working days of the conclusion of the hearing to the secretary of the health care authority or their designee. The report shall state the basis of such decision and recommend final action to the secretary or the designee. The decision need not contain formal findings of fact or conclusions of law.

[8.370.25.17 NMAC - N, 7/1/2024]

8.370.25.18 FINAL

DECISION: The secretary, or the designee, shall render a final determination within 10 days of the submission of the hearing officer's report. Parties may be notified personally, by telephone or by mail of the final order. A copy of the final decision shall be mailed to each party or attorney of record.

[8.370.25.18 NMAC - N, 7/1/2024]

8.370.25.19 REPORT OF

FINDINGS: If the secretary, or the designee, finds that the nurse aide has abused, neglected, or exploited a resident the survey agency shall report these findings to:

- A. the nurse aide;
- B. the administrator of the facility that employs the nurse aide; and
- C. the nurse aide registry.

[8.370.25.19 NMAC - N, 7/1/2024]

8.370.25.20 REPORT OF FINDINGS TO THE NURSE AIDE REGISTRY:

Within 10 working days of the secretary's, or their designee's, findings, the survey agency shall report the following information to the nurse aide registry:

- A. the finding made by the secretary, or the designee, as a result of the hearing;
- B. any statement by the nurse aide disputing the finding;
- C. that the nurse aide waived the right to a hearing, if applicable;
- D. any failure by the nurse aide to respond to the allegation.

[8.370.25.20 NMAC - N, 7/1/2024]

8.370.25.21 REQUIRED CONTENT OF REGISTRY RECORDS:

The survey agency shall retain in accordance with state of New Mexico recordkeeping requirements:

- A. records of occurrence;
- B. investigative reports;
- C. hearing findings;
- D. waiver of hearing

rights.

[8.370.25.21 NMAC - N, 7/1/2024]

8.370.25.22 APPEAL OF FINAL ACTION:

A party may appeal the secretary's, or their designee's, final action to the first judicial district court in Santa Fe pursuant to Rule 1-075, NMRA within 30 days from the date of the final action. An appeal does not stay the final action.

[8.370.25.22 NMAC - N, 7/1/2024]

8.370.25.23 RIGHT TO PETITION THE REMOVAL OF NAME FROM THE NURSE AIDE REGISTRY IN CASES OF NEGLIGENCE:

A nurse aide may petition the health care authority for the removal of their name from the nurse aide registry in cases where there was a finding of neglect. Petitions for removal will not be accepted when the finding was for abuse, physical or verbal. Such petitions shall be made in writing and mailed or hand delivered to the health care authority, division of health improvement, HFL&C bureau chief. The following procedures apply to nurse aides who petition for the removal of their name from the nurse aide registry.

- A. The nurse aide may petition the authority after one year from the date that they were placed on the nurse aide registry. In their petition the nurse aide must show that through their employment and personal history their performance as a nurse aide does not reflect a pattern of abusive behavior or neglect; and that neglect involved in the original finding was a singular occurrence.

- B. Within 30 days of receipt of a petition the authority shall set the date for a hearing. Failure to petition within 30 days from the conclusion of the one year period shall result in forfeiture of the person's right to a hearing. Such a request shall be made in writing and mailed, or hand delivered, and shall be accompanied by a payment of \$40.00 or a sworn statement of indigence on a form provided by the authority. The hearing shall be held

in Santa Fe, New Mexico at the health care authority.

C. In the event that the authority denies the petition, the authority will notify the nurse aide within 30 days of the reasons for denying the petition and the nurse aide will continue to be placed on the nurse aide registry.

D. If the secretary of the health care authority, or their designee, determines that the nurse aide does not show a pattern of abusive behavior or neglect, and the neglect involved was a singular occurrence, the nurse aide shall be placed in probationary status on the nurse aide registry. The period of probation will be determined by the secretary, or their designee, and shall not exceed one year. During the probationary period the nurse aide must complete necessary training involving resident's rights, or other training approved by the health facility licensing and certification bureau. Upon successful completion of the probationary period the nurse aide's certification will be reinstated, and they will be removed from the nurse aide registry.

[8.370.25.23 NMAC - N, 7/1/2024]

HISTORY OF 8.370.25 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 371 DEVELOPMENTAL DISABILITIES PART 2 REQUIREMENTS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

8.371.2.1 ISSUING

AGENCY: New Mexico Health Care Authority. [8.371.2.1 NMAC - N, 7/1/2024]

8.371.2.2 SCOPE: These regulations apply to any facility providing services as outlined by

these regulations and any facility which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial permanent or temporary federal funding as an intermediate care facility for the mentally retarded (ICF/MR). All facilities licensed after the effective date of these regulations shall be limited to a capacity of no greater than four clients, except as provided herein in Subsection C of 8.371.2.21 NMAC.
[8.371.2.2 NMAC - N, 7/1/2024]

8.371.2.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation..
[8.371.2.3 NMAC - N, 7/1/2024]

8.371.2.4 DURATION: Permanent.
[8.371.2.4 NMAC - N, 7/1/2024]

8.371.2.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.371.2.4 NMAC - N, 7/1/2024]

8.371.2.6 OBJECTIVE: The purpose of these regulations is to:

A. Establish professional minimum standards for ICF/MR facilities in the state of New Mexico which were formerly licensed under regulations governing long term care facilities.

B. Monitor ICF/MR facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the clients or staff.

C. Encourage the maintenance of ICF/MR facilities

that provide quality services which maintain or improve the health and quality of life to the clients.

D. Expand the availability of ICF/MR programs to assure timely placement for persons who need residential services.

E. Assure integrated active treatment programs, homelike living arrangements, and consumer protections for ICF/MR clients.

F. Promote access and availability statewide.

G. Recognize specialized ICF/MR programs to serve individuals with intense needs.
[8.371.2.6 NMAC - N, 7/1/2024]

8.371.2.7 GENERAL DEFINITIONS: For purposes of these regulations the following shall apply:

A. "Active treatment" means the consistent, aggressive, accountable, and continuous application of competent interactions between caregivers and persons with developmental disabilities whom they serve in structured and unstructured settings alike, directed toward each individual's developmental progress through the life cycle.

B. "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

C. "Client" means an individual living in and receiving services from an ICF/MR licensed pursuant to these regulations.

D. "Community supports" means community services such as recreational activities, social clubs, religious services, employment services, and transportation, as well as other supportive services that are available to the general population and not designated to serve only persons with disabilities.

E. "Dietitian" means a person eligible or required to be licensed under the New Mexico Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15

NMSA 1978, effective July 1, 1989.

F. "Facility" means a building or buildings in which clients live and ICF/MR services are provided and is licensed or required to be licensed pursuant to these regulations.

G. "Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a facility licensed pursuant to these regulations.

H. "ICF/MR" means an intermediate care facility that provides food, shelter, health or rehabilitative and active treatment for the mentally retarded or persons with related conditions.

I. "License" means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.

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

K. "Licensing authority" means the New Mexico health care authority.

L. "NMSA" means the New Mexico Statutes Annotated 1978 compilation and all the revisions and compilations thereof.

M. "Nurse" is an individual who is currently licensed/registered in the state of New Mexico.

N. "Occupational therapist" is an individual who is eligible for certification by the American occupational therapy association or another comparable body.

O. "Physical therapist" is an individual who is eligible for certification as a physical therapist by the American physical therapy association or another comparable body.

P. "Plan of correction" means the plan submitted by the licensee or representative of

the licensee addressing how and when deficiencies identified at time of a survey will be corrected.

Q. “Policy” means a statement of principle that guides and determines present and future decisions and actions.

R. “Premises” means all parts of buildings, grounds, and equipment of a facility.

S. “Procedure” means the action(s) that must be taken in order to implement a policy.

T. “Psychologist” is an individual who has at least a master’s degree in psychology from an accredited school.

U. “Social worker” means a person required to be licensed under the Social Work Practice Act Sections 61-31-1 through 61-31-25 NMSA 1978.

V. “Speech language pathologist or audiologist” is an individual who is eligible for a certificate of clinical competence in speech-language pathology or audiology granted by the American speech-language hearing association or another comparable body or who meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

W. “U/L approved” means approved for safety by the national underwriters laboratory.

X. “Training and habilitation services” means the training and services which are provided to a client intended to aid the intellectual, sensorimotor, and emotional development of that client.

Y. “Variance” means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of clients or staff of a facility, and is at the sole discretion of the licensing authority.

Z. “Waive/waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a

limited period of time provided the health, safety, or welfare of the clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.

[8.371.2.7 NMAC - N, 7/1/2024}

8.371.2.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide ICF/MR services to the public in facilities governed by these regulations.

[8.371.2.8 NMAC - N, 7/1/2024}

8.371.2.9 ICF/MR FACILITY AND SCOPE OF SERVICES PROVIDED: The ICF/MR provides active treatment in the least restrictive setting and includes all needed services for mentally retarded individuals or persons with related conditions whose mental or physical condition require services on a regular basis that are above the level of a residential or room and board setting and can only be provided in a facility which is equipped and staffed to provide the appropriate services.

[8.371.2.9 NMAC - N, 7/1/2024}

8.371.2.10 [RESERVED]

8.371.2.11 INITIAL LICENSURE PROCEDURES: The following procedures must be followed by the applicant for initial licensure of an ICF/MR facility.

A. Initial phase: These regulations should be thoroughly understood by the applicant and used as a reference for design of a new building or renovation or addition to an existing building for licensure as an ICF/MR facility pursuant to these regulations. Prior to starting construction, renovations, or additions to an existing building the applicant of the proposed facility shall:

(1) advise the

licensing authority of intention to open a ICF/MR facility pursuant to these regulations;

(2) submit a complete set of construction documents (blueprints) for the total building;

(3) blueprints will be reviewed by the licensing authority for compliance with current licensing regulations, building and fire codes;

(4) if blueprints or plans are approved the licensing authority will advise the applicant that construction may begin.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building, the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building the applicant will submit to the licensing authority the following:

(1) Application form: will be provided by the licensing authority;

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

(b) will be printed or typed;

(c) will be dated and signed;

(d) will be notarized.

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

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

(b) Fees are non-refundable.

(3) Zoning and building approval:

(a) All initial applications must be

accompanied with written zoning approval from the appropriate authority (city, county, or municipality).

(b)

All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).

(4) Fire

authority approval: All initial applications must be accompanied with written approval of the fire authority having jurisdiction.

(5) New

Mexico environment department approval: All initial applications must be accompanied by written approval of the environmental improvement division for the following:

(a)

private water supply, if applicable;

(b)

private waste or sewage disposal, if applicable;

(c)

kitchen approval.

(d)

Exception: Facilities utilizing the kitchen as a training site for clients to develop personal skills in meal planning and preparation may be exempt from this requirement if the New Mexico environment department waives the requirement and a letter of exemption is on file in the facility.

(6) Copy of

appropriate drug permit issued by the state board of pharmacy.

(7) Initial

survey: Upon receipt of a properly completed application with all supporting documentation as outlined above an initial survey of the proposed facility shall be scheduled by the licensing authority.

(8) Issuance

of license: Upon completion of the initial survey and determination that the facility is in compliance with these regulations the licensing authority shall issue a license.

[8.371.2.11 NMAC - N, 7/1/2024}

8.371.2.12 LICENSES:

A. Annual license: An annual license is issued for a one year

period to an ICF/MR facility which has met all requirements of these regulations.

B. Temporary license:

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

(1) A

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

(2) In

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

C. Amended license:

A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility

(1)

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

(2)

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

(3)

Application must be submitted within 10 working days of the change.

[8.371.2.12 NMAC - N, 7/1/2024}

8.371.2.13 LICENSE RENEWAL:

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

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

C. If a licensee fails to submit a renewal application with the required fee and the current license expires the facility shall cease

operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978 as amended, provides that no health facility shall be operated without a license. [8.371.2.13 NMAC - N, 7/1/2024}

8.371.2.14 POSTING OF

LICENSE: The facility's license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

[8.371.2.14 NMAC - N, 7/1/2024}

8.371.2.15 NON-TRANSFERABLE RESTRICTION

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

- A.** ownership of the facility changes;
- B.** the facility changes location;
- C.** licensee of the facility changes;
- D.** The facility discontinues operation.

E. A facility wishing to continue operation as a licensed ICF/MR facility under circumstances found in Subsections A through D above must submit an application for initial licensure in accordance with Section 11 of these regulations at least 30 days prior to the anticipated change.

[8.371.2.15 NMAC - N, 7/1/2024}

8.371.2.16 AUTOMATIC EXPIRATION OF LICENSE:

A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed suspended or revoked or:

- A.** on the day a facility discontinues operation;
- B.** on the day a facility is sold, leased, or otherwise changes ownership or licensee;
- C.** on the day a facility changes location.

[8.371.2.16 NMAC - N, 7/1/2024}

8.371.2.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING:

In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee. [8.371.2.17 NMAC - N, 7/1/2024}

8.371.2.18 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

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

- A. failure to comply with any material provision of these regulations;
- B. failure to allow survey by authorized representatives of the licensing authority;
- C. any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. discovery of repeat violations of these regulations during surveys;
- F. failure to provide the required care and services as outlined by these regulations for the clients receiving care at the facility. [8.371.2.18 NMAC - N, 7/1/2024}

8.371.2.19 HEARING PROCEDURES:

A. Hearing procedures for adverse action taken by the

licensing authority against a facility license as outlined in Section 17 and 18 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations may be requested at any time by contacting the licensing authority. [8.371.2.19 NMAC - N, 7/1/2024}

8.371.2.20 CURRENTLY LICENSED FACILITIES: Any facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements may continue to be licensed as an ICF/MR.

A. Variance may be granted for those building requirements the facility cannot meet provided the variances granted will not create a hazard to the health, safety and welfare of the clients and staff, and;

B. The building requirements for which variances are granted cannot be corrected without an unreasonable expense to the facility, and

C. Variances granted will be recorded and made a permanent part of the facility file.

D. Facilities currently licensed for more than four clients may not increase their capacity. [8.371.2.20 NMAC - N, 7/1/2024}

8.371.2.21 NEW FACILITY:

A new facility may be opened in an existing building or a newly constructed building.

A. If opened in an existing building a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in Subsections A, B and C of 8.371.2.20 NMAC, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

B. A new facility opened in a newly constructed building must meet all requirements

of these regulations.

C. A new facility may not be licensed for more than four clients. Exception: ICF/MR facilities may be licensed for a maximum capacity of six clients based upon a written plan that must be submitted to the licensing authority prior to the facility's licensure. Approval of the plan is in the discretion of the licensing authority. The plan must demonstrate the following:

(1) The anticipated facility service benefits to the client population.

(2) How the facility's services will promote, independence, active treatment and community supports.

(3) How the facility's services will address the needs and protections of the proposed clients.

[8.371.2.21 NMAC - N, 7/1/2024}

8.371.2.22 FACILITY SURVEYS:

A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a facility by authorized licensing authority representatives at reasonable times during the pendency of the application and, if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

C. Upon receipt of a notice of deficiency from the licensing authority the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

E. The licensing authority may impose intermediate supervisory and management requirements, including the administrative costs therefore, and

civil monetary penalties pursuant to Section 24-1-5.2 NMSA 1978. [8.371.2.22 NMAC - N, 7/1/2024}

8.371.2.23 REPORTING OF INCIDENTS:

All facilities licensed pursuant to these regulations must report to the licensing authority any serious incident or unusual occurrence which has, or could threaten the health, safety, and welfare of the clients or staff, such as but not limited to:

A. fire, flood, or other natural disaster which creates structural damages to the facility or poses health hazards;

B. any serious outbreak of contagious diseases dangerous to the public health;

C. any serious human errors by staff members of the facility which has resulted in the death, serious illness, or physical impairment of a client.

D. in accordance with the ‘Resident Abuse and Neglect Act’, NMSA 1978, any incident of abuse, neglect or exploitation of a client, patient, or resident of a health facility must be reported to the health care authority and adult protective services.

E. any incidents of abuse, neglect, exploitation, death or other reportable incidents must be reported in accordance with health care authority incident management policies. [8.371.2.23 NMAC - N, 7/1/2024}

8.371.2.24 QUALITY ASSURANCE:

All facilities licensed pursuant to these regulations must have an on-going, comprehensive self-assessment of the services provided by the facility. The assessment must include the total operation of the facility.

A. To be considered comprehensive the assessment for quality assurance must include, but is not limited to the following:

- (1) condition of clients and services rendered;
- (2) completeness of client records;

(3) organization of the facility;

(4) administration;

(5) staff utilization and training;

(6) policies and procedures.

B. Where problems (or potential problems) are identified the facility must act as soon as possible to avoid any risks to clients by taking corrective steps such as, but not limited to, the following:

(1) changes in policies and procedures;

(2) staffing and assignment changes;

(3) additional educational training for the staff;

(4) changes in equipment or physical plant;

(5) deletion or addition of services.

C. The governing body of the facility shall ensure that the effectiveness of the quality assurance program is evaluated by professional and administrative staff at least once a year. If the evaluation is not done all at once, no more than a year must lapse between evaluation of the same parts.

D. Documentation of the quality assurance program must be maintained by the facility. [8.371.2.25 NMAC - N, 7/1/2024}

8.371.2.25 CLIENT RECORDS:

The facility must develop and maintain a record keeping system that includes a separate record for each client which documents the client’s health care, active treatment, social information, and protection of the client’s rights. As a minimum the client’s record must contain:

- A.** Personal information:
- (1) full name;
 - (2) date of birth;
 - (3) social security number;
 - (4) height;
 - (5) weight;
 - (6) color of

hair; (7) color of eyes;

(8) identifying marks and recent photograph;

(9) full name of parents and their dates of birth;

(10) language(s) spoken and understood and language used in the natural home;

(11) information relevant to religious preference;

(12) legal documentation relevant to commitment or guardianship status;

(13) name, address, and telephone number of next-of-kin, other person or agency to contact in case of an emergency.

B. Medical information:

(1) reports of previous histories, evaluations or observations;

(2) age at onset of disability;

(3) name, address and telephone number of physician or health facility providing medical care;

(4) medication history, including present medication dosage and schedule;

(5) reports of all treatments, etc.

C. Individual habilitation plan: Each client must have an individual habilitation plan which specifies goals and objectives.

D. Admission agreement. [8.371.2.26 NMAC - N, 7/1/2024}

8.371.2.26 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE FACILITY:

Each facility licensed pursuant to these regulations must keep the following reports and records on file and make them available for review upon request of the licensing authority.

A. a copy of the latest fire inspection report by the fire authority having jurisdiction;

B. a copy of the last

survey conducted by the licensing authority and variances granted;

C. record of fire and emergency evacuation drills conducted by the facility;

D. licensing regulations: a copy of these regulations: Requirements for intermediate care facilities for the mentally retarded, New Mexico health care authority, 8.371.2 NMAC;

E. health certificates of staff;

F. a copy of the current license, registration or certificate, of each staff member for which a license, registration, or certification is required by the state of New Mexico;

G. valid drug permit as required by the state board of pharmacy;

H. latest inspection by the state board of pharmacy;

I. New Mexico environment department approval of private water system, if applicable;

J. New Mexico environment department approval of private waste or sewage disposal, if applicable;

K. New Mexico environment department approval of the kitchen. NOTE: An approval of kitchen is not required if preparing meals is part of the training program of the clients of the facility and the facility has a letter of exemption on file from the New Mexico environment department;

L. documentation of fire equipment and fire systems inspections;

M. reports of client abuse and incidents involving clients. [8.371.2.26 NMAC - N, 7/1/2024}

8.371.2.27 CLIENT

RIGHTS: Any facility licensed pursuant to these regulations must support, protect, and enhance the rights of clients as listed below:

A. Information: Each client or legal guardian must be fully informed before or at time of admission, of their rights and responsibilities and of all rules governing clients conduct.

(1) If a facility amends its policies on client rights and responsibilities and its rules governing conduct the clients must be immediately informed.

(2) Each client and or legal guardian must acknowledge, in writing, that they have been informed of these rights.

(3) Each client and or legal guardian must be fully informed, in writing, of all services available in the facility and of the charges for these services. If charges change the client must be immediately informed.

B. Medical condition and treatment: Each client must be fully informed by a physician of their health and medical condition unless the physician decides that informing the client is medically contraindicated.

(1) Each client must be given the opportunity to participate in planning their total care and medical treatment.

(2) Each client must be given the opportunity to refuse treatment.

(3) Each client must give informed, written consent before participating in experimental research.

C. Transfer and discharge: Each client must be transferred or discharged only for:

- (1)** medical reasons;
- (2)** their welfare or that of the other residents;
- (3)** non-payment for services rendered;
- (4)** the client requests to be discharged;
- (5)** the client no longer requires an active treatment program.

D. Exercising rights: Each client must be encouraged and assisted to exercise their rights as a client of the facility and as a citizen and allowed to submit complaints or recommendations concerning the policies and services of the facility.

E. Financial affairs: Each client must be allowed to

possess and use money in normal ways or be learning to do so.

F. Freedom from abuse and restraints: Each client must be free from mental and physical abuse and free from chemical and physical restraints unless necessary as part of their treatment plan.

G. Privacy: Each client must be treated with consideration, respect, and full recognition of their dignity and individuality.

(1) Each client must be given privacy during treatment and care of personal needs.

(2) Each client's record, including information in an automatic data bank (computer), must be treated confidentially.

(3) Each client must give written consent before the facility may release information from their record to someone not otherwise authorized by law to receive it.

(4) A married client must be given privacy during visits by their spouse. If husband and wife are both clients in the facility they must be permitted to share a room.

H. Work: No client shall be required to perform services for the facility for which they are not paid.

I. Freedom of association and correspondence: Each client must be allowed to:

(1) communicate, associate, and meet privately with individuals of their choice, unless this infringes on the rights of another client;

(2) send and receive personal mail unopened.

J. Activities: Each client must be allowed to participate in social, religious, and community group activities, unless the interdisciplinary team determines that these activities are contraindicated for a client. Any such determination must be documented in the client's records.

K. Personal possessions: Each client must be allowed to retain and use their personal possessions and clothing as space permits.

[8.371.2.27 NMAC - N, 7/1/2024}

8.371.2.28 PHILOSOPHY, OBJECTIVES AND GOALS:

Each facility licensed pursuant to these regulations must have a written outline of the philosophy, objectives, and goals it is striving to achieve that includes, at least:

A. the facility’s role in the state comprehensive program for the mentally retarded;

B. the facility’s goals for its clients to include but not limited to: an integrated active treatment program, homelike living environments and consumer protections;

C. the facility’s concept of its relationship to the parents or legal guardians of its residents;

D. the facility’s outline of the above must be available for distribution to staff, consumer representatives, and the interested public;

E. the facility’s promotion of informed decision making by the consumer;

F. the facilities policies on utilization of community supports and how clients will be involved in the community.

[8.371.2.28 NMAC - N, 7/1/2024}

8.371.2.29 POLICIES AND PROCEDURES:

Each facility licensed pursuant to these regulations must have written policies and procedures covering the following areas:

A. client’s civil rights;

B. delegation of client’s civil rights;

C. handling of client funds;

D. admission criteria and evaluations;

E. personnel policies;

F. prohibitions against mistreatment, neglect or abuse of clients by employees or other persons;

G. staff training and evaluations;

H. control and discipline of clients, including behavior management;

I. use of physical and chemical restraints;

J. quality assurance;

K. procurement, handling, storage, safeguarding and accountability of medications;

L. maintenance of buildings, grounds and equipment;

M. transfer of client to hospital or other facility;

N. release of client medical records;

O. fire and disaster.

[8.371.2.29 NMAC - N, 7/1/2024}

8.371.2.30 STAFF RECORDS:

There must be maintained on file in the facility or in a central office if there are multi-facilities run by the same organization in the same city or town, a record for each staff member which contains at least, but is not limited to, the following:

A. Personal information:

(1) name;

(2) address and telephone number;

(3) position for which employed;

(4) person to contact in case of emergency.

B. a clearance letter from the health care authority caregivers criminal history screening program stating criminal records check has been conducted with negative results;

C. documentation of training to include transportation and wheelchair safety training.

D. health certificate as outlined in Section 68 of these regulations.

[8.371.2.30 NMAC - N, 7/1/2024}

8.371.2.31 FACILITY RULES:

A. Each facility licensed pursuant to these regulations must have facility rules which must include, but is not limited to, the following:

(1) the use of tobacco or alcohol;

(2) visitors and visiting hours;

(3) use of the telephone;

(4) hours and volume for viewing and listening to television, radio, and phonographs;

(5) use and safekeeping of personal property.

B. Facility rules shall be posted in a conspicuous place in the facility.

[8.371.2.31 NMAC - N, 7/1/2024}

8.371.2.32 ADMISSION AGREEMENT:

Prior to admission to a facility, the licensee or authorized representative and the client or client’s parent/s or guardian shall sign a written admission agreement. The facility shall keep the original agreement in the client’s record and a copy must be provided to the client or client/s parent/s or guardian. A standard form may be developed and used. The admission agreement must meet the criteria stated below:

A. The services that will be provided by the facility and the charges for such services must be explained in full.

B. The method of payment for the services must be clearly stated.

C. Terms for termination of the admission agreement either on part of the facility or the client or parent/s or guardian must be clearly outlined.

D. A new admission agreement must be made whenever any term of the agreement is changed by either the facility or the client or the parent/s or guardian of the client.

[8.371.2.32 NMAC - N, 7/1/2024}

8.371.2.33 AGREEMENTS WITH OUTSIDE RESOURCES:

If the ICF/MR does not employ a qualified professional to furnish a required service, it must have in effect a written agreement with a qualified professional outside the ICF/MR to furnish the required service. The agreement must:

A. contain the responsibilities, functions, objectives, and other items agreed to by the ICF/MR and the qualified professional;

B. be signed by the

administrator or their representative and by the qualified professional;

C. the facility must assure that outside providers meet all appropriate state and federal requirements, and the quality of services meet the needs of the individual.

[8.371.2.33 NMAC - N, 7/1/2024}

8.371.2.34 STAFF CLIENT COMMUNICATIONS:

The facility must provide for effective staff and resident participation and communication in the following manner:

A. The facility must establish appropriate standing committees such as human rights, and other committees as appropriate to the facility.

B. The committees must meet regularly and include direct-care staff whenever appropriate.

C. Reports of staff meetings and standing and ad hoc committee meetings must include recommendations and their implementation, and be filed in the facility.

[10/11/1990; Recompiled 10/31/2001]

8.371.2.35 COMMUNICATIONS WITH THE CLIENTS, PARENTS/ GUARDIANS:

The facility must have an active program of communication with the client's and their families, that includes:

A. keeping client's families or legal guardians informed of resident activities that may be of interest to them and of significant changes in the client's condition;

B. answering communications from client's relatives promptly and appropriately;

C. allowing close relatives and guardians to visit at any reasonable hour, without prior notice, unless the client's needs limit visits;

D. allowing parents to visit any part of the facility that provides services to clients;

E. encouraging frequent and informal visits home by the clients;

F. having rules that make it easy to arrange visits home;

G. the facility must insure that individuals allowed to visit the facility under Subsection C of 8.371.2.35 NMAC above do not infringe on the privacy and rights of other clients.

[8.371.2.35 NMAC - N, 7/1/2024}

8.371.2.36 RESEARCH STATEMENT: If the facility conducts research, it must establish protocols based on standards of conduct currently endorsed by professional and federal standards.

[8.371.2.36 NMAC - N, 7/1/2024}

8.371.2.37 BUILDING(S), GROUNDS, AND SAFETY REQUIREMENTS:

A. Those programs which are located in a building which is licensed as a long term care facility or hospital must meet all the building requirements for that type facility as outlined in the following regulations:

(1) Requirements for General and Special Hospitals, New Mexico health care authority, 8.370.12 NMAC.

(2) Requirements for Long Term Care Facilities, New Mexico health care authority, 8.370.16 NMAC.

(3) Copies of these regulations may be requested from the licensing authority.

B. Capacity of building(s): All building requirements contained in these regulations are based on a maximum capacity of 15 clients. All facilities requesting licensure for more than 15 clients will have additional requirements according to the applicable building and fire codes. Due to the complexities of the building and fire codes these additional requirements will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review and on site surveys during the licensing process. Maximum capacity for any facility licensed after the effective date of revisions to these regulations is four clients. Exception: ICF/MR facilities may be licensed for a maximum capacity of six clients

based upon a written plan that must be approved by the licensing authority prior to the facility's licensure. The plan must demonstrate the following:

(1) the anticipated facility service benefits to the client population;

(2) how the facility's services will promote, independence, active treatment and community supports;

(3) how the facility's services will address the needs and protections of the proposed clients.

C. Number of stories: All building requirements contained in these regulations are based on buildings of one story, which do not house clients above or below ground level. Buildings which are multi-storied or house clients below ground level shall have additional requirements which vary due to the complexities of the building and fire codes. These additional requirements will be outlined by the appropriate building and fire authorities and by the licensing authority through plan review and on-site surveys during the licensing process.

D. Additional requirements: A facility applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may require these additional requirements. Any additional requirement will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review, consultation and on-site surveys during the licensing process.

E. Access to the handicapped: All facilities licensed pursuant to these regulations must be accessible to and usable by handicapped employees, visitors and clients.

F. Prohibition on mobile homes: Trailers and mobile homes must not be used as any part of a facility in which services and care are given to clients.

G. Extent of a facility:

All buildings on the premises providing client care and services shall be considered part of the facility and must meet all requirements of these regulations.

H. Individual living units may not be located within 150 feet of each other.
[8.371.2.37 NMAC - N, 7/1/2024}

8.371.2.38 MAINTENANCE OF BUILDING(S), GROUNDS, AND EQUIPMENT: Facilities licensed pursuant to these regulations must keep the building(s), grounds, and equipment in good repair and presentable at all times such as, but not limited to the following:

A. All electrical, signaling, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition to include regular inspections of these systems.

B. All client care equipment must be maintained in a safe and operable condition at all times.

C. All furniture and furnishings must be kept clean and in good repair. Furnishings or decorations of an explosive or highly flammable character must not be used.

D. The grounds of the facility must be maintained in a safe, sanitary and presentable condition at all times.
[8.371.2.38 NMAC - N, 7/1/2024}

8.371.2.39 HOUSEKEEPING:

A. The facility must be kept free from offensive odors, accumulations of dirt, rubbish, dust and safety hazards.

B. Client rooms must be cleaned and tidied daily.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polish shall provide a slip-resistant finish.

D. Bathrooms and lavatories must be cleaned as often as necessary to maintain a clean and sanitary condition.

E. Deodorizers must not be used to mask odors caused by the unsanitary conditions or poor

housekeeping practices.

F. Storage areas must be kept free from accumulation of refuse, discarded furniture, old newspapers, and the like.

G. Combustibles such as cleaning rags and compounds must be kept in closed metal containers in areas providing adequate ventilation and away from client rooms.

H. Poisonous or flammable substances must not be stored in residential areas, food preparation areas, or food storage areas.
[8.371.2.39 NMAC - N, 7/1/2024}

8.371.2.40 HEATING, VENTILATION AND AIR CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes. All facilities must have documentation that fuel-fire heating systems have been checked, tested and maintained annually by qualified personnel.

B. The heating method used by the facility must provide a minimum temperature of 70 degrees fahrenheit in all rooms used by the clients.

C. An ample supply of outside air for proper combustion must be provided in all spaces where fueled fired boilers or heaters are located.

D. All gas fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

E. Each building where gas is used must have an outside gas shutoff valve. The facility must have a tool readily available which will operate the shut-off valve. All personnel employed by the facility must be instructed as to location of the shut-off valve and tool and must know how to shut off the gas supply in case of fire or gas leakage.

F. No open-face gas or electric heater nor unprotected single shell gas or electric heating device

shall be used for heating the facility. Portable heating units shall not be used for heating the facility.

G. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one-hour. Doors to these rooms shall be 1-3/4" solid core.

H. A facility must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors by either mechanical or natural means.

I. All gas burning heating and cooking equipment must be connected to an approved venting system to take the products of combustion directly to the outside air.

J. All openings to the outer air used for ventilation must be screened with screening material of not less than 16 meshes per lineal inch.

K. Screen doors must be equipped with self-closing devices.

L. A facility must be provided with a system for maintaining residents comfort during periods of hot weather.
[8.371.2.40 NMAC - N, 7/1/2024}

8.371.2.41 WATER HEATERS:

A. All fuel fired water heaters shall be separated from other parts of the facility by partitions having a fire resistive rating of one hour. Doors to enclosure must be one and three quarter inches solid core.

B. All water heaters must be equipped with a pressure relief valve (pop-off valve).

C. Water heaters must not be located in sleeping rooms or rooms opening into sleeping rooms.
[8.371.2.41 NMAC - N, 7/1/2024}

8.371.2.42 WATER:

A. A facility must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be

inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to insure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department.

C. Hot and cold running water under pressure must be distributed to all food preparation areas, lavatories, washrooms, and laundries. The hot water temperature in all rooms accessible to clients must be maintained at a maximum of 110 degrees fahrenheit. [8.371.2.42 NMAC - N, 7/1/2024}

8.371.2.43 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the system used must be inspected and approved by the environmental health authority.

C. Where municipal or community garbage collection and disposal service are not available the method of collection and disposal of garbage used by the facility must be inspected and approved by the New Mexico environment department.

D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof, and constructed of material which will not absorb liquids. Receptacles must be kept clean. [8.371.2.43 NMAC - N, 7/1/2024}

8.371.2.44 LIGHTING AND LIGHTING FIXTURES:

A. All areas of the facility including storerooms, stairways, hallways, and entrances must be lighted sufficiently to make all parts of the area clearly visible.

B. Exits, exit-access ways, and other areas used at night by clients and staff must be illuminated.

C. Lighting fixtures must be selected and located with

the comfort and convenience of the clients in minds.

D. Lamps and lighting fixtures must be shaded to prevent glare to the eyes of clients and staff, and shielded from accidental breakage or shattering.

E. A facility must be provided with emergency lighting which will activate automatically upon disruption of electrical services. [8.371.2.44 NMAC - N, 7/1/2024}

8.371.2.45 ELEMENTS OF FACILITY ELECTRICAL SYSTEM:

A. Electrical installations and electrical equipment must comply with all current state and local codes.

B. All fuse and breaker boxes must be labeled to indicate the area of the facility to which each fuse or circuit breaker provides services.

C. The main electrical service line must have a readily available disconnect switch. All staff personnel of the facility must know the location of the electrical disconnect switch in each building to which such staff are regularly assigned.

D. The use of jumpers or devices to bypass circuit breakers or fuses is prohibited.

E. Electrical cords and appliances must be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Under no circumstances shall extension cords be used as a general wiring method.

(3) Extension cords must be plugged into an electrical outlet within the room where used and may not be connected in one room and extended to some other room.

(4) Extension cords must not be used in series.

F. The use of multiple sockets in electrical outlets is strictly prohibited.

[8.371.2.45 NMAC - N, 7/1/2024}

8.371.2.46 WINDOWS:

A. Each resident

sleeping room and activity room must have window area of at least one-tenth the floor area with a minimum of at least 10 square feet.

B. Each sleeping room must provide at least one window for egress or rescue with a minimum net clear opening of five point seven square feet. The minimum net clear opening for height dimension shall be 24 inches. The minimum net clear opening width dimension shall be 20 inches.

C. Egress and rescue windows shall have a finished sill height of not more than 44 inches above the floor. Exception: If a sleeping room has a door directly to the outside, egress/rescue window is not required.

[8.371.2.46 NMAC - N, 7/1/2024}

8.371.2.47 EXITS:

A. Each building must have at least two approved exits.

B. Each exit will be clearly marked with signs having letters at least six inches high whose principal strokes are at least three fourths of an inch wide. Exit signs shall be visible at all times.

C. Exits must be clear of obstructions at all times.

D. Exits, exit paths, or means of egress shall not pass through hazardous areas, storerooms, closets, bedrooms, or spaces subject to locking.

[8.371.2.47 NMAC - N, 7/1/2024}

8.371.2.48 CORRIDORS:

A. Corridors in a facility must have a minimum width of 36 inches. Corridors in newly constructed facilities shall have a minimum width of 44 inches.

B. Corridors shall have a clear ceiling height of not less than seven feet measured to the lowest projection from the ceiling.

C. Corridors shall be maintained clear and free of obstructions at all times.

[8.371.2.48 NMAC - N, 7/1/2024}

8.371.2.49 MINIMUM ROOM DIMENSIONS:

A. All habitable rooms

in a facility shall have a ceiling height of not less than seven feet six inches. Kitchens, halls, bathrooms and toilet compartments will have a ceiling height of not less than seven feet.

B. All habitable rooms other than a kitchen shall be not less than seven feet in any dimension.

C. Any room with sloped ceiling is subject to review and approval or disapproval by the licensing authority, based upon Uniform Building Code computation of minimum area.

[8.371.2.49 NMAC - N, 7/1/2024}

8.371.2.50 DOORS:

A. All client sleeping room doors must be at least one and three quarter inches bonded solid core with a minimum width of 30 inches.

B. All exit doors must have a minimum width of 36 inches.

C. All doors to toilet and bathing facilities must have a minimum width of 24 inches.

D. Locks on doors to toilets, if used, shall be of such type that the lock can be released from the outside.

E. Exit doors leading to the outside of the facility with a capacity of 10 or more clients must open outward. Exit doors may be provided with a night latch, dead bolt, or security chain, provided such devices are operable from the inside without the use of a key, tool, or any special knowledge and are mounted at a height not to exceed 48 inches above the finished floor.

F. If locks are not readily operable by all occupants within the building, then the locks must:

(1) unlock upon activation of the fire detection or sprinkler system;

(2) unlock upon loss of power in the facility. The facility must have written approval from the fire authorities having jurisdiction prior to installing such locking devices.

[8.371.2.50 NMAC - N, 7/1/2024}

8.371.2.51 CLIENT ROOMS:

A. Each client room

must be an outside room.

B. There must be no through traffic in client rooms.

C. Client rooms must communicate directly with other areas of the facility.

D. Client rooms must be private or semi-private.

E. Private rooms must have at least 100 square feet of floor area. Closet and locker area shall not be counted as part of the available floor space.

F. Semi-private rooms must have at least 80 square feet of floor area for each bed. Closet and locker area shall not be counted as part of the available floor space.

G. Client rooms will have beds spaced at least three feet apart.

[8.371.2.51 NMAC - N, 7/1/2024}

8.371.2.52 TOILET AND BATHING FACILITIES:

A. Toilets and sinks for residents in a facility must be provided in a ratio of at least one toilet and one sink for every eight clients.

B. If a facility has a capacity greater than five and provides service to both male and female clients, separate facilities must be provided for each sex in the same ratio as stated above.

C. Showers or tubs must be provided for the clients use in the same ratio as stated in Subsections A and B above. At least one tub and one shower must be provided to allow for residents bathing preference.

D. The combination type tub and shower is permitted.

E. Toilets, tubs, and showers must be provided with grab bars.

F. If a facility has live-in staff, a separate toilet, hand washing, and bathing facilities for staff must be provided.

G. Tubs and showers must have a slip resistant surface.

H. Toilet, hand washing, and bathing facilities must be readily available to the clients.

No passage through a client room by another client to reach a toilet, bath,

or hand washing facility is permitted.

I. All facilities must have at least one toilet and bathing facility which meets requirements for handicapped.

J. Toilet paper and soap must be provided in each toilet room.

K. The use of a common towel is prohibited.

[8.371.2.52 NMAC - N, 7/1/2024}

8.371.2.53 FIRE SAFETY COMPLIANCE:

All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility.

[8.371.2.53 NMAC - N, 7/1/2024}

8.371.2.54 FIRE CLEARANCE AND INSPECTIONS:

A. Written documentation from the state fire marshall's office or fire prevention authority having jurisdiction evidencing a facility's compliance with applicable fire prevention codes shall be submitted to the licensing authority prior to issuance of a initial license.

B. Each facility shall request, from the local fire prevention authorities, an annual fire inspection. If the policy of the local fire department does not provide for annual inspection of the facility, the facility will document the date the request was made and to whom. If the local fire prevention authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.

[8.371.2.54 NMAC - N, 7/1/2024}

8.371.2.55 FIRE ALARMS, SMOKE DETECTORS AND OTHER FIRE EQUIPMENT:

A. The facility shall be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction.

B. Approved smoke detectors powered by house electrical service shall be installed to provide, when activated, an alarm which

is audible in all sleeping areas. Smoke detectors must be installed in corridors at no more than 30 foot spacing. Areas of assembly, such as the dining and living room, must be provided with smoke detectors. All smoke detectors must be connected to the electrical system of the facility and have battery back-up.

C. Heat detectors shall be installed in all enclosed kitchens and also powered by the facility electrical service.

D. Fire extinguishers, as approved by the state fire marshal or fire prevention authority having jurisdiction, must be located in the facility. Facilities must, as a minimum, have two 2A10BC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the facility. All fire extinguishers shall be inspected yearly and recharged as needed. All fire extinguishers must be tagged noting the date of inspection.

E. Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting equipment must be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or fire authority having jurisdiction. Documentation of these inspections must be maintained on file in the facility. [8.371.2.55 NMAC - N, 7/1/2024}

8.371.2.56 STAFF AND CLIENT FIRE AND SAFETY TRAINING:

A. All staff personnel of the facility must know the location of and be instructed in proper use of fire fighting equipment and other procedures to be observed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instructions in the use of fire prevention and techniques of evacuation.

B. Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit

ways, and any other condition which could cause burns, falls, or other personal injury to the clients or staff.

C. Each new client must, upon being accepted into the facility, be given an orientation tour of the facility to include, but not be limited to, the location of the exits, fire extinguishers, and telephones, and shall be instructed in action to be taken in case of fire or other emergency.

D. Fire drills and evacuation drills: The facility must conduct at least one fire drill each month.

(1) Fire drills must be held at different times of the day.

(2) The fire alarm system or detector system in the facility shall be used in the conduct of fire drills.

(3) In the conduct of fire drills, emphasis must be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of fire drills held must be maintained on file in the facility. Such record must show date and time of the drill, number of personnel participating in the drill, any problem noted during the drill and the evacuation time in total minutes.

(5) The local fire department should be requested to supervise and participate in fire drills. [8.371.2.56 NMAC - N, 7/1/2024}

8.371.2.57 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible telephone for summoning help in case of emergency must be available in each facility. A pay telephone will not fulfill this requirement.

B. A list of emergency numbers, including, but not limited to, fire department, police department, ambulance services, and poison control center, shall be posted by each telephone in the facility. [8.371.2.57 NMAC - N, 7/1/2024}

8.371.2.58 SMOKING:

A. Smoking by

clients and staff must only be done in supervised areas designated by the facility and approved by the state fire marshal or local fire prevention authorities. Smoking must not be allowed in a kitchen or food preparation area.

B. All designated smoking areas must be provided with suitable ashtrays. [8.371.2.58 NMAC - N, 7/1/2024}

8.371.2.59 ACCESS REQUIREMENTS FOR THE HANDICAPPED IN NEW FACILITIES:

Accessibility to the handicapped must be provided in all facilities in accordance with ANSI standards and shall include the following:

A. main entry into the facility must be ground level or ramped to allow wheelchair access;

B. building must allow access to main living area and dining area;

C. access to at least one bedroom is provided which requires a door clearance of 34 inches;

D. access to at least one toilet and bathing facility is required which requires a minimum door clearance of 34 inches, 36 inches is recommended. Toilet and bathing area must also provide a 60 inch diameter clear space (turning radius for a wheelchair);

E. if ramps are provided to the building, slope must be at least 12 inches horizontal run for each one inch of vertical rise;

F. ramps leading to doorway must have a five foot by five foot level area at the doorway;

G. ramps exceeding a six inch rise shall be provided with handrails;

H. Requirements contained herein are minimum and additional handicap requirements may apply depending on size and complexity of the facility. [8.371.2.59 NMAC - N, 7/1/2024}

8.371.2.60 GOVERNING BODY:

A. Each facility licensed pursuant to these regulations must have a governing body that:

- (1) exercises general direction over the affairs of the facility.
- (2) establishes policies concerning the operation of the facility and the welfare of the individuals it serves.
- (3) establishes qualifications for the administrator in the following areas:
 - (a) education;
 - (b) experience;
 - (c) personal factors;
 - (d) skills;
- (4) appoints the administrator.

B. The governing body may consist of one individual or a group.
[8.371.2.60 NMAC - N, 7/1/2024}

8.371.2.61 ADMINISTRATOR: Each facility licensed pursuant to these regulations must have an administrator appointed by the governing body who acts for the governing body in the overall management of the facility.
[8.371.2.61 NMAC - N, 7/1/2024}

8.371.2.62 QUALIFIED MENTAL RETARDATION PROFESSIONAL: Each facility licensed pursuant to these regulations must have a qualified mental retardation professional. A qualified mental retardation professional is a person who has specialized training or one year of experience in treating or working with the mentally retarded and is one of the following:

- A.** a psychologist with a masters degree from an accredited program;
- B.** a licensed doctor of medicine or osteopathy;
- C.** an educator with a degree in education from an accredited program;
- D.** a social worker with a bachelors degree in:

- (1) social work from an accredited program; or
- (2) a field other than social work and at least three years of social work experience under the supervision of a qualified social worker.

E. a physical or occupational therapist who meets all criteria of the state or federal government as a physical or occupational therapist.

F. a speech pathologist or audiologist who meets all criteria of the state or federal government as a speech pathologist or audiologist.

G. a registered nurse licensed in the state of New Mexico.

H. a therapeutic recreation specialist who:

- (1) is a graduate of an accredited program; or
- (2) meets

all criteria of the state or federal government as a therapeutic recreation specialist;

I. a rehabilitation counselor who is certified by the committee on rehabilitation counselor certification.

J. a human services professional who has at least a bachelor's degree in a human services field (including but not limited to sociology, special education, rehabilitation counseling, or psychology).
[8.371.2.62 NMAC - N, 7/1/2024}

8.371.2.63 INTERDISCIPLINARY TEAM: Each facility licensed pursuant to these regulations must have an interdisciplinary team assigned to each client.

A. Each interdisciplinary team shall be composed of staff members including direct care staff and individuals including the client's family or guardian who are involved or interested in meeting the client's active treatment needs.

B. Interdisciplinary teams must:

- (1) evaluate each client's needs;
- (2) plan an individualized habilitation program to

meet each client's identified needs;

- (3) quarterly review each client's responses to their program and revise the program accordingly.
[8.371.2.63 NMAC - N, 7/1/2024}

8.371.2.64 SUPPORT STAFF: Each facility licensed pursuant to these regulations must have either adequate staff not involved in direct care to clients or contractual services to perform the following functions:

- A.** administration;
- B.** fiscal;
- C.** clerical;
- D.** housekeeping and maintenance.
[8.371.2.64 NMAC - N, 7/1/2024}

8.371.2.65 DIRECT CARE STAFF: Direct care staff must make care and development of the clients, their primary responsibility, this includes training of each client in the activities of daily living and in the development of self-help and social skills.

A. The facility management must insure that the direct care staff are not diverted from their primary responsibilities by housekeeping or clerical duties or other activities not related to client care.

B. Members of the direct care staff from all shifts must participate in appropriate activities relating to the care and development of the client including at least, referral, planning, initiation, coordination, implementation, follow-through, monitoring and evaluation.
[8.371.2.65 NMAC - N, 7/1/2024}

8.371.2.66 STAFF EVALUATION AND DEVELOPMENT: A facility licensed pursuant to these regulations must have a written plan for the orientation, on-going staff development, supervision, and evaluation of all staff members.

A. The facility must have a staff training program appropriate to the size and nature of the facility that includes:

(1) orientation for each new employee to acquaint them with the philosophy, organization, program, practices and goals of the facility;

(2) orientation for each new employee on the facility's emergency and safety procedures;

(3) orientation for each new employee on the policies and procedures of the facility.

B. The facility must have continuing in-service training for all employees to update and improve their skills.

C. The facility must have supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

D. Each facility must have someone designated to be responsible for staff development and training.

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

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

- (1) a state approved training program in passenger assistance, and
- (2) a state approved training program in the operation of a motor vehicle to transport clients of a regulated facility or agency.

G. Each facility and agency shall establish and enforce written policies (including training) and procedures for employees who provide assistance to clients with boarding or alighting from motor vehicles.

H. Each facility and agency shall establish and enforce written policies (including training) and procedures for employees who

operate motor vehicles to transport clients.
[8.371.2.66 NMAC - N, 7/1/2024}

8.371.2.67 ORGANIZATION

CHART: The facility must have an organization chart that shows the following:

A. the major operating programs of the facility;

B. the staff divisions of the facility;

C. the administrative personnel in charge of the programs and divisions;

D. the lines of authority, responsibility and communication for administrative personnel.
[8.371.2.67 NMAC - N, 7/1/2024}

8.371.2.68 HEALTH REQUIREMENTS FOR STAFF:

A. Prior to employment all staff must obtain a health certificate stating that they are free from tuberculosis.

B. Health certificate means a completed New Mexico health care authority, public health division form 015, "health certificate" signed by a physician licensed in New Mexico or a public health nurse in one of the public health division health offices who is acting for the state tuberculosis control officer.
[8.371.2.68 NMAC - N, 7/1/2024}

8.371.2.69 STAFF/CLIENT RATIOS:

For each facility regardless of organization or design must have, as a minimum, overall staff/client ratios (allowing for a five day work week plus holiday, vacation and sick time) as shown below:

A. Those facilities serving children under the age of six years, severely and profoundly retarded, severely physically handicapped, or client's who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one staff member to three point two (3.2) clients.

B. Those facilities serving moderately retarded clients

requiring habit training, the overall ratio is one staff member to four clients.

C. Those facilities serving clients in vocational training programs and adults who work in sheltered employment situation, the overall ratio is one staff member to six point four (6.4) clients.
[8.371.2.69 NMAC - N, 7/1/2024}

8.371.2.70 CRIMINAL RECORDS CHECK AS CONDITION OF EMPLOYMENT:

A. All staff of a facility providing services must apply for a nationwide criminal records check and employment history in compliance with New Mexico regulations governing criminal records check.

B. Copies of the above cited regulations will be provided by the health care authority, caregivers criminal history screening program.

C. Fingerprint cards, instructions, and employment history forms will be provided by the health care authority, caregivers criminal history screening program.
[8.371.2.70 NMAC - N, 7/1/2024}

8.371.2.71 ACTIVE TREATMENT SERVICES:

Each client must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services as described in these regulations, that is directed toward:

A. the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible;

B. the prevention of deceleration of regression or loss of current optimal functional status;

C. clients who are admitted by the facility must be in need of receiving active treatment services;

D. active treatment does not include services to maintain generally independent clients who are able to function with little supervision

or in the absence of a continuous active treatment plan.
[8.371.2.71 NMAC - N, 7/1/2024}

8.371.2.72 CLIENT

ACTIVITIES: Every facility licensed pursuant to these regulations must develop an activity schedule for each client that:

A. The amount of daily active treatment a person receives should be based on the individual needs of that person and planned and provided for by the facility in both formal and informal settings directed at achieving needed and possible independence. To the extent possible, the active treatment schedule should allow for the flexible participation of the individual in a broad range of options, rather than a fixed routine.

B. Allows free time for individual or group activities using appropriate materials.

C. Includes planned outdoor periods all year round.

D. Each client’s activity schedule must be available to direct care staff and be carried out daily.

E. The facility must insure that a multiple-handicapped or non-ambulatory client:

(1) spends a major portion of the waking day out of bed;

(2) spends a portion of the waking day out of their bedroom area;

(3) has planned daily activity and exercise periods;

(4) moves around by various methods and devices whenever possible.

[8.371.2.72 NMAC - N, 7/1/2024}

8.371.2.73 PERSONAL

POSSESSIONS: The facility must allow the clients to have personal possessions such as toys, books, pictures, games, radios, arts and crafts materials, religious articles, toiletries, jewelry, and letters.

[8.371.2.73 NMAC - N, 7/1/2024}

8.371.2.74 CONTROL AND DISCIPLINE OF CLIENTS: The

facility must have written policies and procedures for the control and discipline of clients that are available in each living unit and to parents and guardians.

A. If appropriate, clients must participate in formulating these policies and procedures.

B. The facility must not allow:

(1) corporal punishment of a client;

(2) a client to discipline another client unless it is done as part of an organized self-government program conducted in accordance with written policy;

(3) a client to be placed alone in a locked room.

[8.371.2.74 NMAC - N, 7/1/2024}

8.371.2.75 PHYSICAL RESTRAINT OF CLIENTS:

Except as provided for behavior modification programs, the facility may allow the use of physical restraint on a client only if absolutely necessary to protect the client from injuring himself or others.

A. The facility may not use physical restraint:

(1) as punishment;

(2) for the convenience of the staff;

(3) as a substitute for activities or treatment.

B. The facility must have written policies that specify:

(1) how and when physical restraints may be used;

(2) the staff members who must authorize its use;

(3) the method for monitoring and controlling its use.

C. An order for physical restraint may not be in effect longer than 12 hours.

D. Appropriately trained staff must check a client placed in a physical restraint at least every 30 minutes and keep a record of these checks.

E. A client who is in a physical restraint must be given an opportunity for motion and exercise for a period of not less than 10 minutes during each two hours of

restraint.
[8.371.2.75 NMAC - N, 7/1/2024}

8.371.2.76 MECHANICAL DEVICES USED FOR PHYSICAL RESTRAINT:

Mechanical devices used for physical restraint must be designed and used in a way that causes the client no physical injury and the least possible physical discomfort.

A. A totally enclosed crib or a barred enclosure is a physical restraint.

B. Mechanical supports used to achieve proper body position and balance are not physical restraints. However, mechanical supports must be designed and applied:

(1) under the supervision of a qualified professional;

(2) in accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

[8.371.2.76 NMAC - N, 7/1/2024}

8.371.2.77 CHEMICAL RESTRAINT OF CLIENTS:

The facility shall not use chemical restraints in the following manner:

A. excessively;

B. as punishment;

C. for the convenience of the staff;

D. as a substitute for activities or treatment;

E. in quantities that interfere with a client habilitation program.

[8.371.2.77 NMAC - N, 7/1/2024}

8.371.2.78 BEHAVIOR MODIFICATION PROGRAMS:

A. “Aversive stimuli”: things or events that a client finds unpleasant or painful that are used to immediately discourage undesired behavior may be used by the facility as a means of behavior modification.

B. “Time out”: a procedure designed to improve a client’s behavior by removing positive reinforcement when their behavior is undesirable may be used

by the facility as a means of behavior modification.

C. Behavior

modification programs involving the use of aversive stimuli or time out must be:

(1) reviewed and approved by the facility's human rights committee and the qualified mental retardation professional;

(2) conducted only with the consent of the affected client's parents or legal guardian;

(3) described in written plans that are kept on file in the facility;

(4) a physical restraint used as a time-out device shall be applied only during behavior modification exercises and only in the presence of the trainer.

(5) time-out devices and aversive stimuli may not be used for longer than one hour for time-out purposes involving removal from a situation, and then only during the behavior modification program and only under the supervision of the trainer.
[8.371.2.78 NMAC - N, 7/1/2024}

8.371.2.79 GROUPING AND ORGANIZATION OF LIVING UNITS:

A. A facility licensed pursuant to these regulations may not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

B. The facility may not segregate clients on the basis of their physical handicaps. It must integrate residents who are mobile, non-ambulatory, deaf, blind, epileptic, and so forth with others of comparable social and intellectual development.

C. Individual living units may not be located within 150 feet of each other.
[8.371.2.79 NMAC - N, 7/1/2024}

8.371.2.80 RECREATION

SERVICES: The facility must coordinate recreational services with

other services and programs provided to each client in order to:

A. make the fullest possible use of the facility's resources;

B. maximize benefits to the clients;

C. design and construct or modify recreation areas and facilities so that all residents, regardless of their disabilities have access to them;

D. provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs.
[8.371.2.80 NMAC - N, 7/1/2024}

8.371.2.81 RESIDENT

CLOTHING: The facility must insure that each client:

A. has enough neat, clean, suitable and seasonable clothing;

B. has their own clothing marked with their name when necessary;

C. is dressed daily in their own clothing unless this is contraindicated in written medical orders;

D. is trained and encouraged as appropriate to:

(1) select their daily clothing;

(2) dress themselves;

(3) change their clothes to suit their activities;

(4) has storage space for their clothing that is accessible to them even if they are in a wheelchair.
[8.371.2.81 NMAC - N, 7/1/2024}

8.371.2.82 CLIENT ROOMS:

The facility must provide each client with:

A. a separate bed of proper size and height for the convenience of the client;

B. bedding appropriate to the weather and climate;

C. a clean comfortable mattress;

D. appropriate furniture, such as a chest of drawers,

a table or desk, and an individual closet with clothes racks and shelves accessible to the client.

[8.371.2.82 NMAC - N, 7/1/2024}

8.371.2.83 STORAGE

SPACE IN LIVING UNITS: Each facility licensed pursuant to these regulations must provide:

A. space for equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to life;

B. suitable storage space, accessible to the client for personal possessions, such as toys and prosthetic equipment;

C. adequate clean linen and dirty linen storage areas.
[8.371.2.83 NMAC - N, 7/1/2024}

8.371.2.84 HEALTH, HYGIENE, GROOMING AND TOILET TRAINING:

A. Each client must be trained to be as independent as possible in health, hygiene and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving and caring for toenails and fingernails.

B. Each client who does not eliminate appropriately and independently must be in a regular, systematic toilet training program and a record must be kept of their progress in the program.

C. A client who is incontinent must be bathed or cleaned immediately upon voiding or soiling, unless specifically contraindicated by the training program and all soiled items must be changed.

D. The facility must establish procedures for:

(1) weighing each client monthly, unless the special needs of the client require more frequent weighing;

(2) measuring the height of each client every three months until the client reaches the age of maximum growth;

(3) maintaining weight and height records

for each client;

(4) insuring that each client maintains a normal weight.

E. At least every three days a physician must review orders prescribing bed rest or prohibiting a client from being outdoors.

F. The facility must furnish, maintain in good repair, and encourage the use of dentures, eyeglasses, hearing aids, braces, and other aids prescribed for a client by an appropriate specialist. [8.371.2.84 NMAC - N, 7/1/2024}

8.371.2.85 DENTAL SERVICES:

A. Diagnostic services: (1) The facility must provide each client with comprehensive diagnostic dental services that include a complete extraoral and intraoral examination using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after a client's admission to the facility unless they received the examination within six months before admission.

(2) The facility must review the results of the examination and enter them in the client's record.

B. Treatment: The facility must provide each client with comprehensive dental treatment that includes:

(1) provision for emergency dental treatment on a 24 hour a day basis by a qualified dentist;

(2) a system that assures that each client is re-examined as needed but at least once a year.

C. Education and training: The facility must provide education and training in the maintenance of oral health that includes:

(1) a dental hygiene program that informs clients and all staff on nutrition and diet control measures, and clients and living unit staff on proper oral hygiene methods;

(2) instruction of parents or guardians in the maintenance of proper oral hygiene in appropriate instances, for example when the client leaves the facility. [8.371.2.85 NMAC - N, 7/1/2024}

8.371.2.86 PREVENTIVE HEALTH SERVICES: The facility must have preventive health services for clients that include:

A. means for the prompt detection and referral of health problems through adequate medical surveillance, periodic inspection and regular medical examinations;

B. annual physical examinations that include:

(1) examination of vision and hearing;

(2) routine screening laboratory examinations as determined necessary by the physician and special studies when needed.

C. immunizations using as a guide the recommendations of the public health service advisory committee on immunization practices and of the committee on the control of infectious diseases of the American academy of pediatrics;

D. Tuberculosis control in accordance with New Mexico state law;

E. Reporting of communicable diseases and infections in accordance with New Mexico state law. [8.371.2.86 NMAC - N, 7/1/2024}

8.371.2.87 MEDICAL SERVICES: The facility must:

A. provide medical services through direct contact between physicians and clients and through contact between physicians and individuals working with the clients;

B. provide health services including treatment, medications, diet, and any other health service prescribed or planned for the client 24 hours a day;

C. have available electroencephalographic services as needed;

D. have enough space, facilities and equipment to fulfill the medical needs of the clients;

E. provide evidence that hospital and laboratory services are used in accordance with professional standards.;

F. goals and evaluations: physicians must participate, when appropriate, in:

(1) the continuing interdisciplinary evaluation of individual clients for the purposes of beginning, monitoring, and following-up on individualized habilitation programs;

(2) the development for each client of a detailed written statement of:

(a) case management goals for physical and mental health, education and functional and social competence;

(b) a management plan detailing the various habilitation or rehabilitation services to achieve those goals with clear designation of responsibility for implementation.

(3) the facility must review and update the statement of treatment goals and management plans as needed but at least annually to insure:

(a) continuing appropriateness of the goals;

(b) consistency of management methods with the goals;

(c) the achievement of progress toward the goals. [8.371.2.87 NMAC - N, 7/1/2024}

8.371.2.88 PSYCHOLOGICAL SERVICES: The facility must:

A. provide psychological services through personal contact between psychologists and clients and through contact between psychologists and individuals involved with the clients;

B. have available enough qualified staff and support personnel to furnish the following psychological services based on need:

(1) administration and supervision of

psychological services;
 (2) staff training.
 C. a qualified psychologist must:
 (1) participate, when appropriate, in the continuing interdisciplinary evaluation of each individual client for the purpose of beginning, monitoring and following-up on the clients individualized habilitation program.
 (2) report and disseminate evaluation results in a manner that:
 (a) promptly provides information useful to staff working directly with the clients;
 (b) maintains accepted standards of confidentiality.
 (3) participate, when appropriate, in the development of written detailed, specific and individualized habilitation program that:
 (a) provide for periodic review, follow-up and updating;
 (b) are designated to maximize each client's development and acquisition of perceptual skills, sensorimotor skills, self-help skills, communication skills, social skills, self-direction, emotional stability, and effective use of time, including leisure time.
 [8.371.2.88 NMAC - N, 7/1/2024}

8.371.2.89 PHYSICAL AND OCCUPATIONAL THERAPY SERVICES: The facility must provide physical and occupational therapy services through direct contact between therapist and individuals involved with the clients.
 A. Physical and occupational therapy staff must provide treatment training programs that are designed to:
 (1) preserve and improve abilities for independent function, such as range of motion, strength, tolerance, coordination and activities of daily living;
 (2) prevent, insofar as possible, irreducible or

progressive disabilities through means such as the use of orthotic and prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations and sensory stimulation.
 B. The therapist must:
 (1) work closely with the client's primary physician and with other medical specialists;
 (2) record regularly and evaluate periodically the treatment training progress;
 (3) use the treatment training progress as the basis for continuation or change in the client's program.
 C. The facility must have evaluation results, treatment objectives, plans and procedures, and continuing observations of treatment progress, which must be:
 (1) recorded accurately, summarized, and communicated to all relevant parties;
 (2) used in evaluating progress;
 (3) included in the client's record kept in the living unit.
 [8.371.2.89 NMAC - N, 7/1/2024}

8.371.2.90 NURSING SERVICES: The facility must provide clients with nursing services, in accordance with their needs, that include, as appropriate, the following:
 A. Registered nurse participation:
 (1) The pre-admission evaluation study and plan.
 (2) The evaluation study, program design, and placement of the client at the time of admission.
 (3) The periodic re-evaluation of the type, extend and quality of services and programming.
 B. Training in habits of personal hygiene, family life and sex education that includes, but is not limited to, family planning and venereal disease counseling.
 C. Control of communicable diseases and infections

through:
 (1) Identification and assessment.
 (2) Reporting to medical authorities.
 (3) Implementation of appropriate protective and preventive measures.
 (4) Development of a written nursing services plan for each client as part of the total habilitation program.
 (5) Modification of the nursing plan in terms of the client's daily needs, at least annually for adults and more frequently for children in accordance with developmental changes.
 D. Management of the medication aide program in accordance with the board of nursing.
 [8.371.2.90 NMAC - N, 7/1/2024}

8.371.2.91 SOCIAL SERVICES: The facility must provide, as part of an interdisciplinary set of services, social services to each client directed toward:
 A. maximizing the social functioning of each client;
 B. enhancing the coping capacity of each client's family;
 C. asserting and safeguarding the human and civil rights of the retarded and their families;
 D. fostering the human dignity and personal worth of each client;
 E. the development of the discharge plan;
 F. the referral to appropriate community resources.
 [8.371.2.91 NMAC - N, 7/1/2024}

8.371.2.92 LAUNDRY SERVICES: The facility must manage its laundry services to that it meets daily clothing and linen needs without delays.
 A. Each client must have available a clean change of clothing whenever necessary.
 B. There must be separate handling and storage of clean and soiled linens.

C. Linens must be laundered and disinfected prior to re-use by another client.

D. New linens must be laundered before use.
[8.371.2.92 NMAC - N, 7/1/2024}

8.371.2.93 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES:

The facility must provide speech pathology and audiology services through direct contact between speech pathologists and audiologist and clients, and working with other personnel, including but not limited to, teachers and direct care staff. Speech pathology and audiology services must include:

A. screening and evaluation of clients with respect to speech and hearing functions;

B. comprehensive audiological assessment of clients, as indicated by screening results that include tests of puretone air and bone conduction, speech audiometry and other procedures as necessary, and the assessment of the use of visual cues;

C. assessment of the use of amplification;

D. provision for procurement, maintenance and replacement of hearing aids, as specified by a qualified audiologist;

E. comprehensive speech and language evaluation of clients, as indicated by screening results including appraisal of articulation, voice, rhythm, and language;

F. participation in the continuing interdisciplinary evaluation of individual clients for purposes of beginning, monitoring, and following-up on individualized habilitation programs;

G. treatment services as an extension of the evaluation process that include:

(1) direct counseling with clients;

(2) consultation with appropriate staff for speech improvement and speech education activities;

(3) work with appropriate staff to develop

specialized programs for developing each client’s communication skills, in comprehension, including speech, reading, auditory training, hearing aid utilization and skills in expression, including improvement in articulation, voice, rhythm, and language.

H. participation in in-service training programs for direct care and other staff.
[8.371.2.93 NMAC - N, 7/1/2024}

8.371.2.94 PHARMACY SERVICES:

Any facility licensed pursuant to these regulations that supervises the administration or self-administration of medications for clients must have a current custodial care facility license issued by the New Mexico board of pharmacy.

A. The facility must make formal arrangements for qualified pharmacy services, including provision for emergency service.

B. Have a current pharmacy manual that:

(1) includes policies and procedures and defines the functions and responsibilities relating to pharmacy services;

(2) is revised annually to keep abreast of current developments in services and management techniques;

(3) have a formulary system approved by a responsible physician and pharmacist and other appropriate staff. Copies of the facility’s formulary system and of the American Hospital Formulary Service must be located and available in the facility.

C. Pharmacist:

(1) Pharmacy services must be provided under the direction of a qualified pharmacist.

(2) The pharmacist must:

(a) when a client is admitted obtain, if possible, a history of prescription and non-prescription drugs used and enter this information in the client’s record;

(b) receive the original, or a direct copy, of the physician’s drug treatment order;

(c) maintain for each client an individual record of all prescription and non-prescription medication dispensed, including quantities and frequency of refills;

(d) participate, as appropriate, in the continuing interdisciplinary evaluation of individual clients for the purpose of beginning, monitoring and following up on individualized habilitation programs;

(e) establish quality specifications for drug purchases and insure that they are met.

(3) A pharmacist must regularly review the medication record of each client for potential adverse reactions, allergies, interactions, contraindications, rationality and laboratory test modifications and advise the physician of any recommended changes with reasons and with an alternate drug regimen.

(4) The responsible pharmacist, physician, nurse and other professional staff must write policies and procedures that govern the safe administration and handling of all drugs. The following policies and procedures must be included:

(a) self-administration of drugs, whether prescribed or not.

(b) the pharmacist or an individual under the pharmacist’s supervision must compound, package, label and dispense drugs including samples and investigational drugs. Proper controls and records must be kept of these processes.

(c) each drug must be identified up to the point of administration.

(d) whenever possible, the pharmacist must dispense drugs that require dosage measurements in a form ready to be administered to the client.

D. Drugs and medications:

(1) A medication must be used only by the

client for whom it is issued. Only appropriately trained staff may administer drugs.

(2) Any drug that is discontinued or outdated and any container with a worn, illegible or missing label must be returned to the pharmacy for proper disposition.

(3) The facility must have:

(a) an automatic stop order on all drugs;

(b) a drug recall procedure that can be readily used;

(c) a procedure for reporting adverse drug reactions to the Food and Drug Administration;

(d) an emergency kit available to each living unit and appropriate to the needs of its clients.

(4) Medication errors and drug reactions must be recorded and reported immediately to the practitioner who ordered the drug.

E. Drug storage:

(1) The facility must store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

(2) The facility must store drugs used externally and drugs taken internally on separate shelves or in separate cabinets.

(3) The facility must keep medication that is stored in a refrigerator containing other items in a separate compartment with proper security.

(4) If there is a drug storeroom separate from the pharmacy, an inventory of receipts and issues of all drugs from that storeroom must be kept.

(5) The facility must meet the drug security requirements of federal and state laws that apply to storerooms, pharmacies and living units.

[8.371.2.94 NMAC - N, 7/1/2024}

8.371.2.95 FOOD AND NUTRITION SERVICES:

A. Dietician: The facility must employ a qualified

dietitian either full-time, part-time, or on a consultant basis. If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service.

B. Food services: The facility's food services must include:

(1) menu planning;

(2) initiating food orders or requisitions;

(3) establishing specifications for food purchases and insuring that the specifications are met;

(4) storing and handling food;

(5) preparing and serving food;

(6) maintaining sanitary standards in compliance with the New Mexico environment department food service regulations;

(7) orienting, training and supervising food service personnel.

C. Diet requirements:

(1) The facility must provide each client with a nourishing well-balanced diet.

(2) Modified diets must be:

(a) prescribed by the client's interdisciplinary team with a record of the prescription kept on file;

(b) planned, prepared and served by individuals who have received adequate instruction;

(c) periodically reviewed and adjusted as needed.

(3) The facility must furnish a nourishing, well-balanced diet in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences, adjusted for age, sex, activity and disability, unless otherwise required by medical needs.

(4) A client may not be denied a nutritionally adequate diet as a form of punishment.

D. Meal service:

(1) The facility must serve at least three meals daily at regular times comparable to normal mealtimes in the community with:

(a) not more than 14 hours between a substantial evening meal and breakfast of the following day;

(b) not less than 10 hours between breakfast and the evening meal of the same day.

(2) Food must be served:

(a) in appropriate quantity;

(b) at appropriate temperature;

(c) in a form consistent with the developmental level of the resident;

(d) with appropriate utensils;

(e) food served and uneaten must be discarded.

E. Menus:

(1) Must be written in advance.

(2) Provide a variety of foods at each meal.

(3) Be different for the same days of each week and adjusted for seasonal changes.

(4) Menus must be kept on file for at least 30 days as served.

F. Food storage:

(1) Dry or staple food items at least 12 inches above the floor, in a ventilated room not subject to sewage or waste water back flow or contamination by condensation, leakage, rodents or vermin.

(2) Perishable foods must be kept at proper temperatures to conserve nutritive values.

G. Work areas:

(1) The facility must have effective procedures for cleaning all equipment and work areas.

(2) The facility must be provided with hand

washing facilities to include hot and cold water, soap and paper towels adjacent to the work areas.

H. Dining areas and service:

(1) The facility must serve meals for all residents, including the mobile non-ambulatory, in dining rooms unless otherwise required for health reasons or by decision of the team responsible for the client’s program.

(2) The facility must provide table service for all clients who can and will eat at a table, including clients in wheelchairs.

(3) The facility will equip areas with table, chairs, eating utensils and dishes designed to meet the developmental needs of each client.

(4) The facility must supervise and staff dining rooms adequately to direct self-help dining procedures and to assure that each client receives enough food.

[8.371.2.95 NMAC - N, 7/1/2024}

8.371.2.96 RELATED REGULATIONS AND CODES: ICF/MR facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

D. Caregivers criminal history screening requirements, New Mexico health care authority, 8.370.5 NMAC.

[8.371.2.96 NMAC - N, 7/1/2024}

HISTORY OF 8.371.2 NMAC:
[RESERVED]

HUMAN SERVICES

DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 3 RIGHTS OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES LIVING IN THE COMMUNITY

8.371.3.1 ISSUING AGENCY: New Mexico Health Care Authority, Developmental Disabilities Division.
[8.371.3.1 NMAC - N, 7/1/2024]

8.371.3.2 SCOPE:
A. This regulation applies only to clients and service providers as defined below.
B. This regulation is not available to resolve disputes concerning the content of or the substantial failure to implement a community individual service plan. Any dispute concerning the content of a plan or any claim alleging substantial failure to implement a plan must be raised in the dispute resolution process, if available. This regulation is not available to review any action by a service provider or the authority to suspend, terminate or reduce medicaid covered services if a fair hearing procedure is available pursuant to federal law.

C. Nothing in this regulation alters or modifies the duty of any person having reason to believe that a person is being abused, neglected, or exploited to report that information as required by the Adult Protective Services Act, Section 27-7-30 NMSA 1978 (1992 Repl.) and the Abuse and Neglect Act, Section 32A-4-3 NMSA 1978 (1993 Repl.).
[8.371.3.2 NMAC - N, 7/1/2024]

8.371.3.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 NMSA 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise

functions relating to health care purchasing and regulation..
[8.371.3.3 NMAC - N, 7/1/2024]

8.371.3.4 DURATION: Permanent.
[8.371.3.4 NMAC - N, 7/1/2024]

8.371.3.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.371.3.5 NMAC - N, 7/1/2024]

8.371.3.6 OBJECTIVE:
A. These regulations set out rights that the authority expects all providers of services to individuals with developmental disabilities to respect. These regulations are intended to complement the authority’s client complaint procedures 8.371.4 NMAC.

B. These regulations are promulgated, in part, to satisfy requirements arising from the implementation of the decision in the Jackson v. Fort Stanton, N.M. Dist. Ct. No. Civ. 87-839, including agreements reached by the parties. These regulations are promulgated to further the goals of the Developmental Disabilities Act, Sections 28-16A-1 through 28-16A-18 NMSA 1978.

C. The purpose of this regulation is to promote the health, safety and welfare of individuals who are receiving supports and services for persons with developmental disabilities from service providers certified by, or funded in whole or in part with state funds administered by the authority through contracts or agreements. This regulation defines rights of persons with developmental disabilities so that these rights can be readily identified, exercised and protected and provides that the authority will enforce remedies for substantiated complaints of violation of the client’s right as provided in the client complaint procedure.
[8.371.3.6 NMAC - N, 7/1/2024]

8.371.3.7 DEFINITIONS:
A. “**Aversive procedures**” means those prohibited procedures, including, but not limited

to, taste and odor aversives, excessive deprivation or stimulation of basic sensory experiences, any device or intervention intended to cause pain or unpleasant sensations, electric shock, isolation, mechanical restraint, forced exercise, withholding of food, water or sleep, inappropriate clothing, humiliation and water mist, as defined in the division's behavioral support policy.

B. "Client" means a person with developmental disabilities who is receiving supports and services for individuals with developmental disabilities by a service provider certified by, or funded in whole or in part with state funds administered by the authority through contracts or agreements.

C. "Complainant" means a client or their legal guardian who files a complaint pursuant to this regulation.

D. "Chemical restraint" means the use of medication, including psychoactive medication, as punishment, as a substitute for a habilitation or in quantities that interfere with services or habilitation, for the convenience of staff, or for unreasonable restricting a client's freedom of movement, other than in an emergency where there is a substantial and imminent risk of serious physical harm to the client or others.

E. "Days" means calendar days.

F. "Developmental disabilities" means a severe chronic disability of a person that:

(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or a combination of mental and physical impairments;

(2) is manifest before the person reaches the age twenty-two years;

(3) is expected to continue indefinitely;

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

(a)

self-care;

(b)

receptive and expressive language;

(c)

learning;

(d)

mobility;

(e)

self-direction;

(f)

capacity for independent living; and

(g)

economic self-sufficiency; and

(5) reflects the

person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of life-long or extended duration and are individually planned and coordinated.

G. "Director" means the director, developmental disabilities division or the director's designate.

H. "Division" means the developmental disabilities division of the authority.

I. "Emergency" means a circumstance in which the health or safety of the client or another person is in imminent risk of harm and immediate action is necessary to prevent the harm.

J. "Emotional or psychological abuse" means use of verbal or other communication to threaten a client with physical harm or to ridicule, curse, humiliate, degrade or antagonize a client, or any similar action

K. "Exploitation of a client's personal property" means intentionally, knowingly or recklessly using a client's person or property for another person's profit, advantage, or benefit without legal right or authority. Exploitation includes failure to compensate a client for services or work for which he or she is entitled to compensation.

L. "Facilities" means institutions operated by the authority.

M. "Guardian" means the parent of an individual with developmental disabilities if the client is a minor or a legal guardian appointed or recognized pursuant to the Uniform Probate Code, Section

45-5-11, et seq. NMSA 1978 (1993 Repl.).

N. "Mechanical restraint" means any apparatus that restricts a client's movement excluding mechanical supports designed by a physical therapist and approved by a physician or designed by an occupational therapist that is used to achieve proper body position and excluding protective devices.

O. "Medical restraint" means any apparatus prescribed by a physician, dentist or medical practitioner acting within the scope of their license, as health-related protection that restricts a client's movement during the conduct of a specific medical or surgical procedure.

P. "Neglect" means, subject to the client's right to refuse treatment and subject to medical personnel's right to exercise sound medical discretion:

(1) the failure to provide any treatment, services, care, medication or item that is necessary to maintain the health and safety of a client;

(2) the failure to take reasonable precaution that is necessary to prevent damage to the health and safety of a client; or

(3) the failure to carry out a duty to supervise properly or control the provision of any treatment, care, goods, services, or medication necessary to maintain the health or safety of a client.

Q. "Office" means the office of quality assurance or a regional office within the developmental disabilities division.

R. "Plan" means the individual service plan for services, treatment or habilitation developed by the interdisciplinary team.

S. "Physical abuse" means any act, or failure to act, performed knowingly, intentionally or recklessly that causes or is likely to cause harm. Physical abuse includes, but is not limited to, physically striking or assaulting a client, hitting, slapping, pinching, kicking, pushing, dragging, shaking, squeezing, choking and shoving. Physical contact which