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**HUMAN SERVICES
DEPARTMENT**

The Human Services Department, which will become the Health Care Authority (“HCA”), by virtue of the statutory authority and jurisdiction given to the HCA, hereby makes the following repeals of HSD rules that are outdated and obsolete under the New Mexico Medicaid Eligibility categories and will not be adopted as the Department transitions to become the HCA:

The Human Services Department, which will become the Health Care Authority, approved the repeal

of 8.171.400 NMAC - Recipient Policies (filed 8/31/2006) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.171.500 NMAC - Income And Resource Standards (filed 8/31/2006) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.171.600 NMAC - Benefit Description (filed 8/31/2006) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.172.400 NMAC - Recipient Policies (filed 12/28/2006) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.172.500 NMAC - Income And Resource Standards (filed 12/28/2006) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.172.600 NMAC - Benefit Description (filed 12/28/2006) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.202.400 NMAC - Recipient Requirements (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.202.500 NMAC - Income And Resource Standards (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.202.600 NMAC - Benefit Description (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.227.400 NMAC - Recipient Requirements (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.227.500 NMAC - Income And Resource Standards (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.227.600 NMAC - Benefit Description (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.228.400 NMAC Recipient Requirements (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.228.500 NMAC Income And Resource Standards (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.228.600 NMAC Benefit Description (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.230.400 NMAC Recipient Requirements (filed 12/2/2013)

adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.230.500 NMAC Income And Resource Standards (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.230.600 NMAC Benefit Description (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.232.400 NMAC Recipient Requirements (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.232.500 NMAC Income And Resource Standards (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.232.600 NMAC Benefit Description (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.233.400 NMAC - Recipient Policies (filed 6/13/2003) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 8.233.500 NMAC - Income And Resource Standards (filed 9/3/2013) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care

Authority, approved the repeal of 8.233.600 NMAC - Benefit Description (filed 9/3/2013) adopted on 6/10/2024 and effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.235.400 NMAC Recipient Requirements (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.235.500 NMAC - Income And Resource Standards (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

The Human Services Department, which will become the Health Care Authority approved the repeal of 8.235.600 NMAC - Benefit Description (filed 12/2/2013) adopted on 6/10/2024, effective 7/1/2024.

HUMAN SERVICES DEPARTMENT

The Human Services Department, which will become the Health Care Authority (HCA) on July 1, 2024, having been granted authority by the Department of Health and by virtue of the statutory authority and jurisdiction given to the HCA, hereby makes the following repeals of DOH rules within Title 7 of the New Mexico Administrative Code.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.30.8 NMAC – Requirements for Family Infant Toddler Early Intervention Services (filed 6/15/2012), adopted on 6/10/2024 and effective 7/1/2024.

HUMAN SERVICES DEPARTMENT

The Human Services Department, which will become the Health Care

Authority (HCA) on July 1, 2024, having been granted authority by the Department of Health and by virtue of the statutory authority and jurisdiction given to the HCA, hereby makes the following repeals of DOH rules within Title 7 of the New Mexico Administrative Code. The repealed Title 7 rules will be replaced with new rules in Title 8, and there are no changes to programs or services.

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.2 NMAC - Adjudicatory Hearings For Licensed Facilities (filed 12/2/2009) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.2 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.7 NMAC - Health Facility Licensure Fees And Procedures (filed 11/10/2010) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.3 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.8 NMAC - Health Facility Sanctions And Civil Monetary Penalties (filed 10/18/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.4 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.9 NMAC - Caregivers Criminal History Screening Requirements (filed 12/16/2005) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.5 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.10 NMAC - Access To Medical Records By Disability Applicants (filed 1/31/2001) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.6 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.11 NMAC - Health Facility Receivership Requirements (filed 1/2/2002) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.7 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.12 NMAC - Employee Abuse Registry (filed 11/30/2005) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.8 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.13 NMAC - Incident Reporting, Intake, Processing And Training Requirements (filed 6/12/2014) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.9 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.14 NMAC - Abuse, Neglect, Exploitation, And Death Reporting, Training And Related Requirements For Community Providers (filed 6/12/2014) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.10 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.1.32 NMAC - Long-Term Care Facility Dementia Training (filed 12/16/2001) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.11 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.7.2 NMAC - Requirements For Acute Care, Limited Services And Special Hospitals (filed 6/1/2004) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.12 NMAC.)

The Human Services Department,

which will become the Health Care Authority, approved the repeal of 7.7.3 NMAC - Requirements For Rural Emergency Hospitals (filed 6/1/2004) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.13 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.8.2 NMAC - Assisted Living Facilities For Adults (filed 1/4/2010) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.14 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.8.4 NMAC - General Requirements For Boarding Homes (filed 5/7/2020) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.15 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.9.2 NMAC - Requirements For Long Term Care Facilities (filed 5/28/2020) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.16 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.10.2 NMAC - Requirements For Freestanding Birth Centers (filed 2/15/2016) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.17 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.11.2 NMAC - Requirements For In Home And Inpatient Hospice Care (filed 2/15/2016) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.18 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.12.2 NMAC - Requirements For Facilities Providing Outpatient

Medical Services And Infirmaries (filed 10/18/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.19 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.13.2 NMAC - Requirements For Adult Day Care Facilities (filed 10/18/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.20 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.14.2 NMAC - Quality Management System and Review Requirements For Providers of Community Based Services (filed 1/10/2003) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.21 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.28.2 NMAC - Requirements For Home Health Agencies (filed 10/29/2020) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.22 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.36.2 NMAC - Requirements For End Stage Renal Disease Facilities (filed 10/18/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.24 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 16.12.20 NMAC - Hearing Requirements For Certified Nurse Aides (filed 9/28/2012) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.370.25 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.2 NMAC - Requirements For Intermediate Care Facilities for the Mentally Retarded (filed 10/18/1996) adopted on 6/10/2024 and effective

7/1/2024. (To be replaced by 8.371.2 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.3 NMAC - Rights of Individuals with Developmental Disabilities Living in the Community (filed 11/19/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.371.3 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.4 NMAC - Client Complaint Procedures (filed 11/19/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.371.4 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.5 NMAC - Service Plans for Individuals with Developmental Disabilities Community Programs (filed 6/16/2006) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.371.5 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.6 NMAC - Requirements For Developmental Disabilities Community Programs (filed 11/19/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.371.6 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.7 NMAC - (Appendix A) Individual Transition Planning Process (filed 11/19/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.371.7 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.8 NMAC - (Appendix B) Dispute Resolution Process (filed 11/19/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.371.8 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.26.9 NMAC - Admission, Discharge and Transfer of Eligible Recipients for Services in ICF/ MR Facilities (filed 1/19/1999) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.371.9 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.20.3 NMAC - Requirements For Community Mental Health Centers (filed 12/16/1999) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.321.6 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.20.4 NMAC - Behavioral Health Capital Fund Program (filed 5/8/2007) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.321.7 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.32.2 NMAC - Admission Criteria for Alcohol and Substance Services (filed 11/19/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.321.8 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.32.5 NMAC - Procurement of Professional Services for Alcohol and Substance Abuse Services (filed 11/19/1996) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.321.9 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of 7.32.8 NMAC - Opioid Treatment Programs (filed 11/16/2005) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.321.10 NMAC.)

The Human Services Department, which will become the Health Care Authority, approved the repeal of

7.30.13 NMAC - Crisis Triage Centers (filed 10/11/2018) adopted on 6/10/2024 and effective 7/1/2024. (To be replaced by 8.321.11 NMAC.)

HUMAN SERVICES DEPARTMENT

For all rules being repealed and replaced in Title 8 by the Human Services Department, the following explanatory statements apply to all rules:

Consistent with all other rules converted from the Human Services Department to the Health Care Authority, throughout this rule, if found: “department” is changed to “authority” or “HCA”; “HSD” is changed to “HCA” and that acronym is first introduced in the third section of the rule; “alien” is changed to “non-citizen”; “child support enforcement division” is changed to “child support services division”; “CSED” is changed to “CSSD”; and style and formatting have been updated to conform with current NM State Records Center guidelines.

Wherever found throughout all of the amended rules, “he/she” or any other gender specific reference is changed to a “they/them” or a gender-neutral reference; and any remnant style and formatting (as to citation, punctuation, etc....) will get updated to conform with current ALD style and language guidelines.

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 6 REQUIREMENTS FOR COMMUNITY MENTAL HEALTH CENTERS**

8.321.6.1 ISSUING AGENCY: New Mexico Health

Care Authority - Division of Health Improvement.
[8.321.6.1 NMAC - N, 7/1/2024]

8.321.6.2 SCOPE:

A. These regulations apply to the following:
(1) outpatient facilities which are certified by the behavioral health services division of the New Mexico health care authority (authority) to provide psychosocial rehabilitation services to adults with priority given to individuals with severe disabling mental illness (SDMI); and

(2) any facility providing services as outlined by these regulations which by federal regulation must be certified by the behavioral health services division of the authority to obtain or maintain full or partial, permanent or temporary federal funding.

B. These regulations do not apply to offices and treatment facilities of licensed private practitioners.
[8.321.6.2 NMAC - N, 7/1/2024]

8.321.6.3 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 as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.321.6.3 NMAC - N, 7/1/2024]

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

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

8.321.6.6 OBJECTIVE:

A. to establish minimum standards for licensing of community mental health centers;

B. to monitor community mental health centers through surveys to identify any areas which could be dangerous or harmful to the clients or staff; and

C. to ensure the provision of quality services which maintain or improve the health and quality of life to the clients.

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

8.321.6.7 DEFINITIONS:

A. “Applicant”

means the organization that applies for a license. The individual signing the application on behalf of the organization must have authority from the organization.

B. “Branch” means a part of the certified community mental health center, which is part of the corporation or campus that is certified by HCA, where client care takes place. Branches of facilities must meet the intent of these regulations. The parent facility is responsible for their branches’ compliance. A separate state license is required for separate geographic locations under each certified facility.

C. “Client” means any individual who is requesting or receiving mental health services from a community mental health center as defined in this regulation.

D. “Community-based crisis intervention” means, at a minimum, 24 hour telephone crisis services, initial face-to-face crisis intervention and follow-up crisis support services.

E. “Community mental health center” means a facility certified by the health care authority to provide and manage a comprehensive array of mental health services with priority given to serving adults with severe disabling mental illness (SDMI) in a community-based setting. At a minimum, the following core services must be available and accessible:

- (1) professional consultation;
- (2)

community-based crisis intervention;
(3) therapeutic interventions;

(4) medication services; and

(5) psychosocial interventions.

F. “Deficiency” means a violation of or failure to comply with a provision(s) of these regulations

G. “Facility” means a building or buildings, including all branches, in which outpatient mental health services are provided to the public and which is licensed pursuant to these regulations.

H. “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.

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 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.

K. “Licensing authority” means the agency within the New Mexico health care authority vested with the authority by HCA to regulate and enforce these regulations.

L. “Medication services” means assessing the need for psychoactive medications and management of pharmacological treatments.

M. “NMSA” means the New Mexico statutes annotated, 1978 compilation, and all the revisions and compilations thereof.

N. “Plan of correction” means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at the 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 buildings, grounds, and equipment of a facility.

Q. “Procedure” means the action(s) that must be taken in order to implement a policy.

R. “Professional consultation” means the initial assessment of the client’s needs and resources, the development of the patient’s treatment plan, its monitoring and review and the access of specialized expertise to provide tests.

S. “Psychosocial interventions” means an array of services designed to help an individual capitalize on their personal strengths, develop coping strategies, and to develop a supportive environment in which to function as independently as possible. This array must include, at a minimum:

- (1) basic living skills;
- (2) psychosocial skills training; and
- (3) therapeutic socialization.

T. “Psychosocial rehabilitation services” means a set of treatment strategies which help persons with mental disorders, including those with co-occurring substance abuse issues, achieve optimum functioning in the personal and social dimensions of their lives. The treatment strategies must be rehabilitative in nature and create, sustain, and encourage empowerment through a recovery process.

U. “Therapeutic interventions” means interactive therapies which, when used in conjunction with other treatment strategies, assist persons with severe disabling mental illness to achieve optimum functioning in the personal and social dimensions of their lives.

V. “U/L approved” means approved for safety by the national underwriters laboratory.

W. “Variance” means 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 issued at the sole discretion of the licensing authority.

X. “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.
[8.321.6.7 NMAC - N, 7/1/2024]

8.321.6.8 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 outpatient mental health services to the public in facilities governed by these regulations.
[8.321.6.8 NMAC - N, 7/1/2024]

8.321.6.9 PROHIBITION ON UNLICENSED OPERATION: These regulations apply to all community mental health centers operating within New Mexico as set out in 8.321.2 NMAC, above. No community mental health center, or branch thereof, may operate in New Mexico without being duly licensed according to these regulations.
[8.321.6.9 NMAC - N, 7/1/2024]

8.321.6.10 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. Application phase: These regulations apply to the 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 in writing of intention to open a facility pursuant to these regulations.

(2) submit a set of floor plans for the building which 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 inch to one foot. These plans must include:

(a) proposed use of each room e.g., waiting room, counseling/therapy room, office, et cetera;

(b) interior dimensions of all rooms;

(c) 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;

(d) door types, swing, and sizes of all doors, e.g. solid core, hollow core, three feet by six feet, eight inches, one and three-quarters inches thick;

(e) if the building is air-conditioned;

(f) all sinks;

(g) furnaces and hot water heaters, and if gas or electric;

(h) windows including size and type;

(i) any level changes within the building, e.g., steps or ramps;

(j) fire extinguishers, heat and smoke detectors and alarm systems;

(k) location of the building on a site/ plot plan to determine surrounding conditions, include all steps, ramps, parking areas, walks, and any permanent structures; and

(l) plans if the building is new construction, remodeled or alteration,

or an addition. If remodeled or an addition, indicate existing and new construction on the plans.

(3) Blueprints or floor plans must 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 forms:** appropriately completed and notarized.

(2) **Fees:** (a) Current fee schedules must 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) Prior to licensure, initial applicants must submit written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).

(4) **Fire authority approval:** Prior to licensure, initial applicants must submit written approval of the fire

authority having jurisdiction.

(5) **New**

Mexico environment department

approval: Prior to licensure, initial applicants are responsible for submission of the 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; and

(c)

kitchen, if meals are prepared on site.

(6) **Copy of**

appropriate drug permit issued

by the state board of pharmacy, if applicable.

D. Initial survey:

Upon receipt of a properly completed application with all supporting documentation as outlined above, an initial life safety code on-site survey and an on-site health 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.

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

8.321.6.11 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. [8.321.6.11 NMAC - N, 7/1/2024]

8.321.6.12 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 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. [8.321.6.12 NMAC - N, 7/1/2024]

8.321.6.13 POSTING OF LICENSE:

The facility's license must be posted on the licensed premises in an area visible to the public.

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

8.321.6.14 NON-TRANSFERABLE RESTRICTION OF 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; or
E. a facility wishing to continue operation as a licensed facility under circumstances in Subsections A - D of 8.321.14 NMAC, above must submit an application for initial licensure in accordance with 8.321.10 NMAC of these regulations at least 30 days prior to the anticipated change. [8.321.6.14 NMAC - N, 7/1/2024]

8.321.6.15 AUTOMATIC EXPIRATION OF LICENSE:

A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless 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; or
C. on the day a facility changes location. [8.321.6.15 NMAC - N, 7/1/2024]

8.321.6.16 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. [8.321.6.16 NMAC - N, 7/1/2024]

8.321.6.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE ACTIONS 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. allowing any person active in the operation of a facility licensed pursuant to these regulations to be under the influence of, or impaired by, alcohol or other behavior altering substances;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. repeated violations of these regulations; or
- F. failure to provide the required care and services as outlined by these regulations for the clients receiving care at the facility. [8.321.6.17 NMAC - N, 7/1/2024]

8.321.6.18 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 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 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. [8.321.6.18 NMAC - N, 7/1/2024]

8.321.6.19 LICENSED FACILITIES:

- A. Any community mental health center, currently licensed as a limited diagnostic and treatment center on the date these regulations are promulgated and which provides the services prescribed under these regulations, may continue to be licensed as such until that license expires and renewal

is required. At that time, the facility must seek licensure as a community mental health center.

- B. Any community mental health center, not currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, must seek licensure as a community mental health center.

(1)

Community mental health centers may seek variances for those building requirements the facility cannot meet under the criteria outlined in these regulations if not in conflict with existing building and fire codes.

(2)

Variances or waivers may be considered for circumstances where the facility demonstrates an extreme financial hardship to comply with requirements outlined in these regulations. [8.321.6.19 NMAC - N, 7/1/2024]

8.321.6.20 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 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 must meet all requirements of these regulations. [8.321.6.20 NMAC - N, 7/1/2024]

8.321.6.21 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 status 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 written 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 correction.

- 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.

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

8.321.6.22 REPORTING OF INCIDENTS:

All facilities licensed pursuant to these regulations must report incidents in accordance with the policies established by the division of health improvement of the authority.

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

8.321.6.23 QUALITY ASSURANCE:

All facilities licensed pursuant to these regulations must be in compliance with the quality assurance standards established by the division of health improvement of the authority.

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

8.321.6.24 CLIENT RECORDS:

Each facility licensed pursuant to these regulations must maintain a record for each client in accordance with the client record standards set forth by the division of health improvement of the authority.

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

8.321.6.25 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;

E. 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; facilities with satellite or branch locations that maintain personnel records in a central location may make arrangements with licensing authority inspectors for viewing such records.

F. valid drug permit as required by the state board of pharmacy; and

G. New Mexico environment department approval of private water system and private waste or sewage disposal, if applicable.
[8.321.6.25 NMAC - N, 7/1/2024]

8.321.6.26 CLIENT RIGHTS: All facilities licensed pursuant to these regulations shall support, protect and enhance the rights of clients in accordance with the standards set forth by the division of health improvement of the authority.
[8.321.6.26 NMAC - N, 7/1/2024]

8.321.6.27 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; and
- (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.
[8.321.6.27 NMAC - N, 7/1/2024]

8.321.6.28 POLICIES AND PROCEDURES: All community mental health centers licensed pursuant to these regulations must have written policies and procedures in accordance with the standards set forth by the division of health improvement of the authority.
[8.321.6.28 NMAC - N, 7/1/2024]

8.321.6.29 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 disabled: Community mental health centers licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and clients.

C. Extent of a facility: All buildings of the premises providing client 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 stipulate 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.
[8.321.6.29 NMAC - N, 7/1/2024]

8.321.6.30 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, 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 used for client care 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 facility must be maintained in a safe and sanitary condition at all times.
[8.321.6.30 NMAC - N, 7/1/2024]

8.321.6.31 HOUSEKEEPING:

A. The facility must be kept free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.

B. Counseling/therapy rooms, waiting areas and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the clients.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a slip resistant finish.

D. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

E. Storage areas must be kept free from accumulation of refuse, discarded equipment, furniture, paper, et cetera.

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

8.321.6.32 WATER:
A. A facility 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.
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. Back flow preventers (vacuum breakers) must be installed on hose bibbs, 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 F.
 [8.321.6.32 NMAC - N, 7/1/2024]

8.321.6.33 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. 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.
 [8.321.6.33 NMAC - N, 7/1/2024]

8.321.6.34 FIRE SAFETY COMPLIANCE: All current applicable requirement of state and local codes for fire prevention and safety must be met by the facility.
 [8.321.6.34 NMAC - N, 7/1/2024]

8.321.6.35 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.
 [8.321.35 NMAC - N, 7/1/2024]

8.321.6.36 STAFF FIRE AND SAFETY TRAINING:
A. All staff of the 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 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 frayed electrical cords, faulty equipment, blocked exits or exit pathways and any other condition which could cause burns, falls, or other personal injury to the clients or staff.
 [8.321.6.36 NMAC - N, 7/1/2024]

8.321.6.37 EVACUATION PLAN: Each facility must have a fire evacuation plan posted in each separate area of the building showing routes of evacuation in case of fire or other emergency.
 [8.321.6.37 NMAC - N, 7/1/2024]

8.321.6.38 PROVISIONS FOR EMERGENCY CALLS: An easily accessible telephone for summoning help, in case of emergency, must be available in the facility.
 [8.321.6.38 NMAC - N, 7/1/2024]

8.321.6.39 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.
 [8.321.6.39 NMAC - N, 7/1/2024]

8.321.6.40 ALARM SYSTEM: A manually operated, electrically supervised fire alarm system shall be installed in each facility only as required by national fire protection association (NFPA) 101 (Life Safety Code). Multiple story facilities do require manual alarm systems.
 [8.321.6.40 NMAC - N, 7/1/2024]

8.321.6.41 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.
 [8.321.6.41 NMAC - N, 7/1/2024]

8.321.6.42 JANITOR'S**CLOSET(S):**

- A.** Each facility shall have at least one janitor's closet.
- B.** Each janitor's closet shall contain:
- (1) a service sink; and
 - (2) storage for housekeeping supplies and equipment.
- C.** Each janitor's closet must be vented.
- D.** Janitor closets are hazardous areas and must be provided with one hour fire separation and one and three-quarters inches solid core doors which are rated at a 20 minute fire protection rating.
[8.321.6.42 NMAC - N, 7/1/2024]

8.321.6.43 EMERGENCY LIGHTING:

- A.** A facility must be provided with emergency lighting that 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.
[8.321.6.43 NMAC - N, 7/1/2024]

8.321.6.44 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 services; and
- (8) the use of jumpers or devices to bypass circuit breakers or fused switches is prohibited.
[8.321.6.44 NMAC - N, 7/1/2024]

8.321.6.45 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 clients in mind.
[8.321.6.45 NMAC - N, 7/1/2024]

8.321.6.46 ELECTRICAL CORDS AND 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 must have

access to a minimum of two duplex receptacles.

- (2) The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited.
[8.321.6.46 NMAC - N, 7/1/2024]

8.321.6.47 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 F. with controls provided for adjusting temperature as appropriate for client and staff comfort.
- C.** The use of non-vented 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 clients 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 three-quarters of an hour fire resistance.
[8.321.6.47 NMAC - N, 7/1/2024]

8.321.6.48 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 F.

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).
[8.321.6.48 NMAC - N, 7/1/2024]

8.321.6.49 TOILETS AND LAVATORIES:

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 must be kept supplied with disposable towels for hand drying or provided with mechanical blower

F. The number of and location of toilets and lavatories will be mandated by requirements for each type facility. Such factors as extent of services provided and size of facility will also dictate requirements.
[8.321.6.49 NMAC - N, 7/1/2024]

8.321.6.50 EXITS:

A. Each facility and each floor of a facility shall have exits as required 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-quarters of an inch wide.

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 to exit or exit access doors must be at least 36 inches wide.
[8.321.6.50 NMAC - N, 7/1/2024]

8.321.51 CORRIDORS:

A. Minimum corridor width shall be five feet except work corridors less than six feet in length may be four feet in width.

B. 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 A of 8.321.51 NMAC, above if not in conflict with building or fire codes and approved by the licensing authority prior to occupying the licensed part of the building.
[8.321.6.51 NMAC - N, 7/1/2024]

8.321.6.52 DOORS:

A. The minimum door width for client's use shall be 34 inches in width.

B. Rooms where client treatment takes place shall have a minimum door width of 36 inches.
[8.321.6.52 NMAC - N, 7/1/2024]

8.321.6.53 COMMON ELEMENTS FOR FACILITIES:

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;

(4) conveniently accessible public toilets; and

(5) drinking fountain(s) easily accessible to clients or other visitors.

C. Interview space(s) for private interviews related to mental health, medical information, etc., shall be provided.

D. General or

individual office(s) for business transactions, records, administrative, and professional staff shall be provided. These areas shall be separated from public areas for confidentiality.

E. Special storage for staff personal effects with locking drawers or cabinets shall be provided.

F. General storage facilities for supplies and equipment shall be provided.

G. Drug distribution stations shall be in accordance with standards set forth by the New Mexico board of pharmacy.
[8.321.6.53 NMAC - N, 7/1/2024]

8.321.6.54 FLOORS AND WALLS:

A. 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.

B. Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.
[8.321.6.54 NMAC - N, 7/1/2024]

8.321.6.55 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. The governing body must ensure 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 governing body is responsible for assuring that these services are provided in a safe and effective manner.
[8.321.6.55 NMAC - N, 7/1/2024]

8.321.6.56 ADMINISTRATOR/DIRECTOR/MANAGER: Each facility must have an administrator, director or manager hired or appointed by the governing body to whom authority has been delegated to manage the daily operation of the

facility and implement the policies and procedures adopted by the governing body.

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

8.321.6.57 STAFF

EVALUATION AND DEVELOPMENT:

A facility licensed pursuant to these regulations must be in compliance with staff evaluation and development standards set forth by the division of health improvement of the authority.

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

8.321.6.58 DIRECT

SERVICE STAFF: A facility licensed pursuant to these regulations must be in compliance with direct service staff standards set forth by the division of health improvement of the authority.

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

8.321.6.59 EMERGENCY

MEDICAL SERVICES: Each facility licensed pursuant to these regulations must maintain a list of emergency phone numbers co-located with telephones in the facility. This list must include fire and police departments, ambulance or EMS crew numbers, the New Mexico poison control center and the nearest hospital.

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

8.321.6.60 HOURS

OF OPERATION: Each facility licensed pursuant to these regulations must post its hours of operation where it can clearly be seen by clients and visitors.

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

8.321.6.61 PHARMACEUTICAL SERVICES:

A. Drugs 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 client and must be documented in the client's record.

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

8.321.6.62 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 client's record.

B. All laboratory procedures including specimen collection will be conducted in accordance with acceptable standards of practice. A CLIA certificate will be appropriately maintained if so required by federal CLIA standards.

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

8.321.6.63 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; and

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

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

HISTORY OF 8.321.6 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL

SERVICES

CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES PART 7 BEHAVIORAL HEALTH CAPITAL FUND PROGRAM

8.321.7.1 ISSUING

AGENCY: New Mexico Health Care Authority.

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

8.321.7.2 SCOPE: The behavioral health capital fund program rule shall apply to the use of funds by eligible entities available pursuant to the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978.

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

8.321.7.3 STATUTORY

AUTHORITY: This rule is promulgated pursuant to:

(1) Subsection E of Section 9-8-6 NMSA 1978; and

(2) the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978. 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.

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

8.321.7.4 DURATION:

Permanent.

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

8.321.7.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

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

8.321.7.6 OBJECTIVE:

The objective is to establish standards and procedures for regulating programs under the Behavioral Health Capital Funding Act.

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

8.321.7.7 DEFINITIONS:

A. "Act" means the Behavioral Health Capital Funding Act (Sections 6-26-1 to 6-26-8 NMSA 1978).

B. “Agreement”
means the document or documents signed by the board and the eligible entity receiving a loan that specifies the terms and conditions of obtaining the loan under the program.

C. “Applicant” means an eligible entity that has filed a request for a loan with the department and the authority.

D. “Application”
means a written document filed with the department and the authority by an applicant for the purpose of obtaining a loan. An application may include a form prescribed by the department and the authority, written responses to requests for information by the department and the authority, or other format as determined by the department and the authority.

E. “Application committee” means a six-member body, three members appointed by the chief executive officer of the authority from the authority staff and three members appointed by the department from the department staff.

F. “Authority” means the New Mexico finance authority.

G. “Authorized representative” means one or more individuals authorized by the governing body of an eligible entity to act on behalf of the eligible entity in connection with its application. An authorized representative may act on behalf of the eligible entity to the extent provided by law.

H. “Behavioral health care” means a comprehensive array of professional and ancillary services for the treatment of mental illnesses, substance abuse disorders or trauma spectrum disorders.

I. “Behavioral health service provider” means an individual or an agency licensed or certified by or receiving funds under contract with the New Mexico health care authority for the provision of behavioral health services.

J. “Behavioral health care facility” means a facility operated by a behavioral health service provider.

K. “Board” means the New Mexico finance authority board,

as created by and set forth in the bylaws of the authority.

L. “Department”
means the New Mexico health care authority.

M. “Eligible entity”
means a provider that meets the statutory definition of “eligible entity” provided for in the act.

N. “Loan” means a loan made by the authority to an applicant under the program for the funding of a project.

O. “Fund” means the behavioral health capital fund.

P. “Program” means the behavioral health capital fund program authorized by the act.

Q. “Project” means repair, renovation or construction of a behavioral health care facility, purchase of land, or the acquisition of capital equipment of a long-term nature. The following items shall be eligible or ineligible for purposes of funding through a loan:

- (1) eligible for funding:
 - (a) building, construction, renovation;
 - (b) land;
 - (c) project planning and design;
 - (d) purchase of capital equipment;
- (2) ineligible for funding:
 - (a) purchase of office supplies;
 - (b) general operating expenses.

R. “Sick and medically indigent” means both those individuals below the federal poverty level not covered by private third party health care insurance and those individuals between one hundred percent and two hundred percent of federal poverty levels who are not covered by any private third party health insurance. Medically indigent individuals are usually expected to pay for some portion of the cost of their health care based upon the level of their income. [8.321.7.7 NMAC - N, 7/1/2024]

8.321.7.8 LOAN APPLICATION PROCEDURES:

A. Contingent upon a sufficient balance in the fund, the authority may accept applications at any point during the state fiscal year.

B. The authority will provide forms and guidelines for a loan application and applications must be submitted on that form. The application shall be signed by the authorized representative and submitted to the department. Only applications that are complete will be considered for a loan. The application shall include the following.

(1) The amount of the loan requested and an itemization of the proposed use or uses of the loan.

(2) A detailed description of the circumstances that demonstrate the need for the project, including:

- (a) the eligibility of the applicant;
- (b) the programmatic appropriateness;
- (c) the facility’s need;
- (d) the needs of community.

(3) A detailed description of the project, including:

- (a) a description of the scope of work of the project;
- (b) the estimated cost of the project;
- (c) the target date for the initiation of the project and the estimated time to completion;

(d) the estimated useful life of the project and selected components (furnishings, equipment, etc.), as detailed on the application form;

(e) proof of applicable licenses and certifications; and

(f) other data as requested by the department or the authority.

(4) A copy of the applicant’s articles of incorporation and by-laws and a certificate of good standing from

the New Mexico public regulation commission.

(5) A copy of the applicant's internal revenue service tax exempt determination letter.

(6) A letter certifying that the project was duly authorized and approved by the applicant's governing body.

(7) The identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the project over its useful life.

(8) The applicant's audited financial reports for the most recent five years, or term of existence, along with its projected cash flows for five years.

(9) The requested loan payback period.

(10) Any existing title insurance policies, title abstracts or searches of the real property owned by the applicant.

(11) Information on the current and proposed services of the applicant to the sick and medically indigent.

(12) Additional information as requested by the department or the authority that is requested at any point in the application process.

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

8.321.7.9 EVALUATION OF APPLICANT AND PROJECT BY DEPARTMENT AND THE APPLICATION COMMITTEE:

A. The department will determine whether an application is complete. Once the application is complete, the department will evaluate the application for eligibility and will determine the programmatic priority of the project.

B. To be eligible for a loan, an eligible entity must:

(1) be a provider or facility that meets the statutory definition of "eligible entity" provided for in the act;

(2) have policies and procedures that assure that no person will be denied services

because of inability to pay; these policies and procedures must address the medically indigent persons below poverty not covered by third party payors and those between one hundred percent and two hundred percent of poverty without third party coverage; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

(3) have billing policies and procedures that maximize patient collections except where federal rules or contractual obligations prohibit the use of such measures; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;

(4) provide evidence satisfactory to the authority that it has proper title, easements, leases, and right of ways to the property upon which any facility proposed for funding is constructed or improved;

(5) comply with all applicable federal, state, and local laws and rules;

(6) meet other requirements as determined by the department.

C. The department shall determine the priority for loans from the fund. Priority shall be based on:

(1) community need and support, including but not limited to the identification of other financing;

(2) facility or equipment need;

(3) the appropriateness of the project;

(4) the ability of an applicant to maintain behavioral health care services;

(5) whether making the loan would help achieve the goal of a fair geographic distribution of loans; and,

(6) other factors, as determined by the department.

D. Upon completion

of its evaluation of eligibility and its determination of programmatic priority, the department will refer the applications to the application committee. The application committee will evaluate the project. The application committee may confer with outside parties as necessary to obtain more information on the feasibility of the project, the applicant's administrative capacity, and the applicant's readiness to proceed. The application committee will make a written recommendation to the authority. The recommendation will include approval or disapproval of specific projects and the estimated costs of the projects. The recommendation may include recommendations for loan covenants needed for programmatic reasons and adjustments to the department's programmatic prioritization of loans.

E. Although the department and the authority will analyze each project to determine whether the project is feasible, a loan by the authority does not constitute a warranty or other guarantee as to the feasibility of the project and the authority shall not have any responsibility or liability with respect to any project.

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

8.321.7.10 FINANCING APPROVAL BY THE AUTHORITY:

A. The authority will perform an independent financial analysis of each application. In evaluating an application, the authority will consider:

(1) The applicant's demonstration that the excess of public support and revenues over expenses for the most recent fiscal year or the projected amount for the fiscal year after the project's completion (after adding back annual depreciation and interest) will provide sufficient coverage of the previous year's annual debt service and sufficient coverage of projected maximum annual debt service after accounting for the loan.

(2) The ability of the applicant to secure financing

from other sources and the costs of the loan.

(3) The recommendations of the application committee.

B. The evaluation must include a finding that the useful life of the project will meet or exceed the final maturity of the loan and must meet standards for reasonable costs set by the board.

C. The evaluation must include a finding by the authority that there is adequate protection, including loan guarantees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions or other encumbrances and pledges for the state funds extended for the loan.

D. The applicant must agree, and such agreement may be included in the agreement at the request of the board:

(1) to maintain separate project accounts in accordance with generally accepted accounting principles and to conduct an annual audit of the project's financial records during the term of the loan; and

(2) to satisfy any other requirements as may be determined by the authority.

E. Once a recommendation has been made on the application by the authority staff, the board will act on the application and any associated loan documents or agreements no later than the next regular board meeting at which such item may be properly considered. The board may approve all or part of the application as recommended by the authority staff. Board approval may specify, at the board's discretion, terms and conditions of the loan as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

F. The authority will notify the applicant of the approval or disapproval of its application by telephone and will mail written notification by certified mail within seven working days of board action.

G. All communications regarding an eligible entity's original application shall be directed to the department.
[8.321.7.10 NMAC - N, 7/1/2024]

8.321.7.11 RECONSIDERATION:

A. Decision by department as to eligibility. An applicant may request reconsideration of a contrary decision by the department as to whether it is an eligible entity as defined by the act and under these rules. Notice must be given to the department in writing within 10 working days of receipt of the department's decision as to eligibility. A request for reconsideration not timely or properly made will be barred. The department's secretary will promptly review each timely request for reconsideration. The decision of the department secretary is final. If the decision of the department secretary differs from the decision of the department as to an applicant's eligibility, evaluation of the application shall be resumed by the department based on the decision of the department secretary.

B. Decision by board as to funding. An applicant may request reconsideration of a decision by the board denying funding to an eligible entity by notifying the authority in writing within forty-five days of the date on which the authority gives notice of an adverse decision to an applicant. Notice of an adverse decision is deemed to be given on the fifth business day following the date on which written notice of the adverse decision is mailed to the applicant by the authority by certified United States mail. A request for reconsideration is deemed to have been given on the fifth business day following the date on which the request is mailed to the authority. A request for reconsideration not timely or properly made will be barred. The authority's chief executive officer will promptly review each timely request for reconsideration and will recommend, at the next regular meeting of the

board, action to be taken by the board. The board will review and take action on the request for reconsideration and will notify the applicant of the board's decision, in writing, within five working days of the board's decision. The decision of the board is final.
[8.321.7.11 NMAC - N, 7/1/2024]

8.321.7.12 LOAN DOCUMENTS AND AGREEMENT:

A. The authority and the eligible entity will enter into an agreement and any other applicable documentation to establish the terms and conditions of the loan. The agreement will include the terms of repayment and remedies and sanctions available to the authority in the event of a default. The authority will monitor and enforce the terms and conditions of the agreement, including prompt notice and collection. In consultation with the department, the authority will take actions as necessary to ensure loan repayment and the integrity of the fund. The authority will not monitor the performance of an eligible entity under department credentialing or licensure requirements nor for programmatic requirements and will not make site visits. The department will monitor the performance of an eligible entity under department credentialing or licensure requirements and for programmatic requirements and will make the necessary site visits. The authority will not be responsible for any act or omission of the applicant upon which any claim, by or on behalf of any person, firm, corporation or other legal entity, may be made, arising from the loan or any establishment or modification of the project or otherwise.

B. The board will establish the interest rate for loans. The board will set the rate at the lowest legally permissible interest rate. The interest rate shall not change during the term of the loan unless refinanced.

C. The agreement will contain provisions that require that.

(1) The

applicant complies with all applicable federal, state and local laws and rules.

(2) Any contract or subcontract executed for the completion of any project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

(3) The applicant shall require any contractor of a project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions.

D. The authority shall ensure the state's interest in any project by filing a lien equal to the total of the authority's financial participation in the project.

E. If land is to be purchased with a loan from the fund, the applicant shall provide evidence satisfactory to the authority that the title is merchantable and free and clear from liens or encumbrances. The authority shall also require that a title insurance policy insuring the authority's interest as a first lien be obtained as a condition of making the loan. The eligible entity shall not encumber the land purchased by granting or creating any additional security interest in the land while any amount of the loan is unpaid. The eligible entity shall pay immediately any encumbrance or lien against the land that attaches while any amount of the loan is unpaid.

F. If any repayment of a loan is more than 30 days past due, or if the eligible entity is in default on any other conditions as defined under the loan agreement, the authority and the department will report to each other and to the application committee as to the borrower's then current status as it relates to the loan, including credentialing or licensure status and any reported or known violations of applicable laws or rules to which the facility is subject and any known change in financial status. The department may

develop workout plans in conjunction with the application committee for any borrower who maintains eligibility as defined in Subsection D of Section 6-26-3 NMSA 1978,, but is more than 60 days past due in loan repayment. The authority may develop workout plans in conjunction with the application committee for any borrower who ceases to maintain eligibility as defined in Subsection D of Section 6-26-3 NMSA 1978 and is more than 60 days past due in loan repayments. Any such workout plan and its implementation is in addition to and not instead of the courses of actions, remedies and sanctions available separately to the department or the authority under the act, these rules or the agreement or in any other manner available by law.

G. If an eligible entity that has received a loan for a project ceases to maintain its nonprofit status or ceases to deliver behavioral health services at the site of the project for twelve consecutive months, the authority may pursue the remedies provided in the loan agreement or as provided by law.

H. If an eligible entity has received a loan for a project, the loan may be renegotiated if the entity is still eligible but has had a change in financial status.

I. In the event of default by the borrower, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

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

**8.321.7.13
ADMINISTRATION OF THE
BEHAVIORAL HEALTH
CAPITAL FUND:**

A. The fund shall be administered by the authority as a separate account, but may consist of such sub accounts as the authority deems necessary to carry out the purposes of the fund.

B. Money from repayments of loans or payments on securities held by the authority for projects authorized specifically by law shall be deposited in the fund. The

fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing projects authorized specifically by law.

C. The authority shall adopt a uniform accounting system for the fund and related accounts and sub-accounts established by the authority, based on generally accepted accounting principles.

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

History of 8.321.7 NMAC:

[RESERVED]

**HUMAN SERVICES
DEPARTMENT**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 321 SPECIALIZED
BEHAVIORAL HEALTH
SERVICES
PART 8 ADMISSION
CRITERIA FOR ALCOHOL AND
SUBSTANCE SERVICES**

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

8.321.8.2 SCOPE: Agencies which receive state or federal funding from the division for the purpose of providing one or more of those substance abuse services authorized by the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8, et seq. NMSA 1978) or the Drug Abuse Act (Sections 26-2-1, et seq. NMSA 1978).
[8.321.8.2 NMAC - N, 7/1/2024]

**8.321.8.3 STATUTORY
AUTHORITY:** Subsection E of Section 9-7-6 NMSA 1978 and Section 43-2-5 NMSA 1978. 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 facility licensure and health care purchasing and

regulation.
[8.321.8.3 NMAC - N, 7/1/2024]

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

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

8.321.8.6 OBJECTIVE:
To establish minimum standards for admission criteria, policies and procedures for agencies providing substance abuse services. These standards are designed to ensure that each agency that receives funding from the division to provide substance abuse services has in place policies and procedures regarding admissions that ensure nondiscrimination, confidentiality, open accessibility to those policies, proper screening and assessment to match the client to the appropriate service(s), maintenance of a waiting list, a consistent intake procedure, provision of an orientation, development and maintenance of a treatment plan, and appropriate referrals. These standards also establish the basic procedure which must be followed once it has been determined that it is appropriate to admit a client under one of the following circumstances: admission to a substance abuse treatment facility of an adult found able to consent; admission to a substance abuse treatment facility of an adult found not able to consent; admission to a substance abuse treatment facility of a minor; and necessity for the provision of emergency services.
[8.321.8.6 NMAC - N, 7/1/2024]

8.321.8.7 DEFINITIONS:
A. "Admission" means the agency's acceptance of a client for the purpose of providing services on a scheduled basis in accordance with a client treatment plan.
B. "Adult" means an individual who has attained the age of eighteen years.
C. "Advocate" means

any individual, group or organization who pleads another's cause.

D. "Agency" means a provider of substance abuse treatment, screening or assessment services receiving funds under contract with the New Mexico health care authority.

E. "Assessment" means the initial and on-going process of appraising the client's strengths, deficits and areas of need for purposes of developing a comprehensive client treatment plan.

F. "Client" means an individual or family requesting or receiving services.

G. "Intake" means the gathering of administrative and clinical data which is used for the screening, admitting and initial treatment of a client.

H. "Medical detoxification" means medically supervised 24 hour care for patients who require hospitalization for treatment of acute intoxication or withdrawal, or a combination of substance abuse/addiction, and other medical conditions which together warrant treatment in this type of setting. Length of stay varies depending on the severity of the disease and withdrawal symptoms.

I. "Minor" means an individual under the age of 18 years.

J. "Outpatient services" means diagnostic and treatment services to clients who will be served ,in accordance with a client treatment plan, intermittently or on a scheduled basis in a non-residential setting. Intervention strategies are aimed at reducing the harm to individuals, families and communities due to the use of alcohol and other substances.

K. "Policy" means a statement of principles that guide and determine present and future decisions.

L. "Procedure" means a series of activities designed to implement program goals or policy.

M. "Residential long-term rehabilitation" means a 24 hour residential treatment program for the chronic alcohol or drug dependent client who lacks an adequate social

support system. This program provides multi disciplinary treatment designed to achieve a substance-free lifestyle, explore effective ways of functioning in a work setting within the family, and in the community in accordance with the treatment plan.

N. "Residential short-term rehabilitation" means a 24 hour intensive residential program for clients who require treatment services in a highly structured setting. An organized counseling and education curriculum ordinarily involving a residential stay of 30 day or less. This type of program is appropriate for clients who need concentrated, therapeutic services prior to community residence, and who do not require monitoring of physical withdrawal from alcohol or other drugs.

O. "Residential social detoxification" means a medically supported 24 hour, social rehabilitation residential program which provides physical care, education and counseling as appropriate for the client's health and safety during their process of physical withdrawal from alcohol dependency. Social detoxification provides access into care and treatment of alcoholism through monitored withdrawal, evaluation of present or potential alcohol dependency and other physical ailments, and intervention into the progression of the disease through timely utilization of resources. Length of stay in a social detoxification program varies from three to seven days depending on the severity of the disease and withdrawal symptoms.

P. "Screening" means the method by which the agency selects appropriate clients for admission or referral to other appropriate services.

Q. "Substance abuse" means the use of one or more drugs or other potentially harmful substances, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.

R. "Substance related disorder" means any disorder related to the taking of a drug of abuse

(including alcohol), to the side effects of a medication, or to toxin exposure. (American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition. Washington, DC, American Psychiatric Association, 1994, p.175).

S. "Treatment"

means the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to any client.

T. "Treatment plan"

means that written strategy which is derived from the client screening/intake/assessment and contains the written goals and objectives of the services to be provided and a schedule of service delivery.

U. "Treatment staff"

means any person employed by an agency which is directly involved in treatment and client care.

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

8.321.8.8

NONDISCRIMINATION POLICY: Each agency shall have and utilize a written policy on nondiscriminatory practices as described below:

A. No agency shall discriminate or permit discrimination against any person or group of persons in any treatment service on the basis of race, color, religious creed, age, marital status, national origin, sex, sexual preference or physical disability.

B. No person shall be denied admission into a treatment program solely or jointly because of:

- (1) the inability to pay all or part of the cost of services, directly or through third party reimbursement;
- (2) the number of prior admissions to treatment;
- (3) the length of time since the last treatment;
- (4) the location of last treatment; or
- (5) a refusal to undergo previous treatment.

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

8.321.8.9

CONFIDENTIALITY: Each agency shall have and utilize a written policy and procedure for ensuring the confidentiality and security of all clients' case records and identifying information which conform to the requirements of state and federal confidentiality laws and regulations. The procedure must include, but is not limited to:

A. a description of the process and requirements for disclosure of confidential information;

B. copies of forms for documenting the disclosure of confidential information and for obtaining the written consent of the client receiving services when such consent is required; and

C. staff training requirements on the content of state and federal laws related to confidentiality of client records. [8.321.8.9 NMAC - N, 7/1/2024]

8.321.8.10 APPLICATION FOR SERVICES:

A. Any individual who believes that they may have a substance related disorder may present themselves to any agency for the purpose of being screened, admitted or referred to an appropriate treatment program.

B. Any parent, guardian, spouse, or any interested individual may present an individual who may have a substance related disorder to an agency for the purpose of being screened, admitted or referred to the appropriate treatment program.

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

8.321.8.11 ADMISSION CRITERIA:

A. Each agency shall have and utilize written admission criteria which shall be available to clients, staff, the division and community.

B. Agency admission criteria shall delineate guidelines which permit the clear identification of who is and is not eligible for admission.

C. No person shall be admitted into a program unless they meet the agency's admission criteria, and any person who is ineligible because they do not meet the admission criteria shall be re-referred to the original agency or to another appropriate agency. All referrals will be processed in accordance with Section 18 of these regulations.

D. The written admission criteria shall include, but not be limited to, consideration of the following factors:

- (1) age;
- (2) sex;
- (3) physical health;
- (4) mental status;
- (5) previous treatment history;
- (6) history of substance abuse; and
- (7) current use of substance(s).

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

8.321.8.12 SCREENING:

A. The agency shall screen the individual to determine:

- (1) if the individual meets the programs criteria for admission;
- (2) that the individual's needs are matched with the appropriate agency and treatment services;
- (3) the least restrictive means of treatment is being provided; and
- (4) whether the individual should be referred to a more appropriate agency for alternate services.

B. The agency shall make a diligent effort to involve, in the screening procedure, any reasonable number of people requested by either the individual or their guardian.

C. When the agency has completed the screening, it shall present, whenever possible, its findings orally and in writing to the individual screened, their guardian, and such other person as the individual may request.

(1) If, at the conclusion of the screening process, it is determined that an individual does not meet the program's admission criteria for the provision of services, and the individual objects, that individual may contest the determination of the screening and request a review by the agency's supervisory staff.

(2) If the individual screened is found not to meet the programs admission criteria, but is in need of other types of services, the agency will refer the individual to an agency which provides the appropriate services needed. All referrals will be made in accordance with Section 18 of these regulations.

D. If the individual screened is found to meet the agency admission criteria, the following will be explained:

(1) the procedure for admission into the treatment facility and other services;

(2) the possibility of being put on a waiting list;

(3) the intake and assessment process; and

(4) the individuals right to have his preferences considered during the process from admission through discharge and referral.

E. If the individual screened is found to meet the agency's admission criteria, the agency shall retain all information obtained through the screening process and open a case record.

F. Information obtained from the screening process should include, but is not limited to the following:

- (1) name;
- (2) date of birth;
- (3) presenting problem(s);
- (4) history of substance abuse and related problems;
- (5) identification of the types of alcohol or other drugs being used;
- (6) frequency

- and duration of substance(s) used;
- (7) method of administration;
- (8) treatment history;
- (9) legal history;
- (10) referral source (if any);
- (11) general physical and mental conditions;
- (12) types of medication (if any);
- (13) next of kin in case of an emergency;
- (14) allergies;
- (15) handicap or other restrictions; and
- (16) other pertinent information.

G. The information gathered from the screening process shall be consolidated, forwarded and utilized with all other segments of the service delivery process. [8.321.8.12 NMAC - N, 7/1/2024]

8.321.8.13 WAITING LIST: The agency shall maintain an up-to-date and centrally located waiting list. This waiting list is comprised of individuals who, though the screening process, have met the agency's admission criteria and are waiting for placement into the identified treatment program. Individuals on the waiting list shall be rank ordered based on a prioritized need basis. [8.321.8.13 NMAC - N, 7/1/2024]

8.321.8.14 INTAKE:
A. The acceptance of a client for treatment shall be based on an intake procedure and assessment of the client.

B. The agency shall have written policies and procedures governing the intake process including the following:

- (1) the types of information to be obtained on all applicants prior to admission;
- (2) the procedures to be followed when accepting referrals from outside agencies;
- (3) the procedures to be followed for referrals

when an applicant is found ineligible for admission. The reason for non-admission shall be documented. [8.321.8.14 NMAC - N, 7/1/2024]

8.321.8.15 ASSESSMENT:
A. Assessment shall be done by members of the treatment staff and shall be clearly explained to the client, family, spouse, guardian or other interested person as appropriate.

B. During the assessment process, the designated staff member shall collect the following information for each person:

- (1) presenting problems;
- (2) history of substance abuse and problems;
- (3) identification of the alcohol or other drugs used;
- (4) frequency and duration of use;
- (5) method of administration;
- (6) personal and family history;
- (7) education and employment history;
- (8) physical and medical history;
- (9) legal history;
- (10) previous treatment history;
- (11) communicative and cognitive history;
- (12) social and emotional history; and
- (13) rehabilitative and vocational history.

C. The assessment shall be used as a guide to the formulation of the client's treatment plan. [8.321.8.15 NMAC - N, 7/1/2024]

8.321.8.16 ORIENTATION:
A. Each client to be admitted shall receive an orientation in accordance with a written orientation policy and procedure.

B. Unless an emergency situation is documented during the intake/assessment process, each client to be admitted shall

sign acknowledgment that they understands the following:

- (1) the agency's policies, goals and objectives;
- (2) the services offered by the agency and through referral to other service providers;
- (3) the agency's hours of operation;
- (4) the fee policy and fee schedule;
- (5) the client's rights;
- (6) the agency's expectations of the client;
- (7) the protection and restrictions which derive from state and federal confidentiality law and regulations;
- (8) the agency's rules and procedures and the consequences to the client of infractions of such rules, and the process for review and appeal; and
- (9) the agency's termination and discharge procedures.

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

8.321.8.17 TREATMENT

PLAN: Based on the screening/intake/assessment made of the client's needs, a written treatment plan shall be developed and recorded in the client's case record.

- A.** A preliminary treatment plan shall be developed as soon as possible.
- B.** The treatment may begin before completion of the plan.
- C.** The plan shall be development with the client, and the client's participation in the development of treatment goals shall be documented.
- D.** The treatment plan shall specify the services needed to meet the client's needs and attain the agreed-upon goals.
- E.** The treatment goals shall be developed with both short and long range expectations and written in measurable terms.
- F.** A designated treatment staff member shall have primary responsibility for treatment

plan development and review.

G. The client's progress and current status in meeting the goals set in the treatment plan shall be reviewed by the client's treatment staff at regularly scheduled case conferences and shall include:

- (1) the date and results of the review and any changes in the treatment plan shall be written into the client's case record;
- (2) the participants in the case conference shall be recorded in the clients case record; and
- (3) the designated treatment staff member shall discuss the review results with the client and document the client's acknowledgment of any changes in the plan.

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

8.321.8.18 REFERRAL:

There shall be written referral policies and procedures that facilitate client referral between the agency and other community service providers which include:

- A.** a description of the methods by which continuity of care is assured for the client;
- B.** a listing of resources that provide services to clients shall contain the following information:
 - (1) the name and location of the resource;
 - (2) the types of services the resource is able to provide;
 - (3) the individual to be contacted when making a referral to a resource;
 - (4) the resource's criteria for determining an individual's eligibility for its services; and
 - (5) the types of follow-up information that can be expected from the resource and how this information is to be communicated.
- C.** a procedure for referral and monitoring of person on a waiting list for admission to the referred agency;
- D.** current information

shall be maintained on self-help groups, as well as procedures for referral to those groups;

E. all relationships with outside resources shall be approved by the director of the agency;

F. an agreement between the agency and outside resources on the degree of shared responsibility, if any, for client care; and

G. documentation of annual review and approval of the referral policies and procedures by the director of the agency.

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

8.321.8.19 ADMISSION TO ALCOHOL/DRUG TREATMENT FACILITY OF ADULTS FOUND ABLE TO CONSENT:

A. If the individual meets the agency's admission criteria and the screening/intake/assessment shows that:

- (1) the person would benefit from services provided in a treatment facility (outpatient services, residential social detoxification, medical detoxification, residential long-term rehabilitation, residential short-term rehabilitation, etc.);

(2) the treatment facility is consistent with the least drastic means principle; and

(3) that the person was able to consent to admission to an agency, then the person shall have the option of accepting or rejecting the recommendation. The person's decision to accept treatment shall be recorded by signature and shall become part of the case record. If an agency agrees to provide treatment services to the person, the person, and only that person, shall determine whether he enters the treatment facility, unless the provisions of Subsection B of 8.321.8.19 NMAC of these regulations are invoked.

B. If a screening/assessment shows that the person would benefit from services offered, and results of the screening/assessment showed that the person

was able to consent to admission to a treatment facility, and the person objects to placement in such an agency, then the individual may enter a treatment facility, only upon involuntary commitment under Section 43-2-8 NMSA 1978. [8.321.8.19 NMAC - N, 7/1/2024]

8.321.8.20 ADMISSION TO ALCOHOL/DRUG TREATMENT FACILITY OF ADULTS FOUND NOT ABLE TO CONSENT: If a screening/intake/assessment shows that a person is found not able to consent to, admission to an agency, and the screening/intake/assessment shows that treatment services would be in the persons best interest and will be consistent with the least drastic means principle, then the agency may not admit the person without the consent of his guardian, except that the person may be admitted pursuant to 8.321.8.22 NMAC as an emergency admission while the person obtains a guardian or for a period not to exceed five days. [8.321.8.20 NMAC - N, 7/1/2024]

8.321.8.21 ADMISSIONS OF MINORS TO ALCOHOL/DRUG TREATMENT FACILITY:
A. If the screening/intake/assessment determines that a person who is also a minor needs services in an agency, and parents or guardian of the minor agree, then the minor may be admitted to an agency which agrees to serve the minor.
B. If a minor voluntarily seeks admission to a treatment facility, or if any interest person seeks to have a minor admitted, and no parent or guardian for the child can be located, then a guardian shall be appointed for the child under the provisions of the New Mexico Probate Code, and the admission procedure (except for emergency services) will not proceed until the guardian has been appointed. [8.321.8.21 NMAC - N, 7/1/2024]

8.321.8.22 EMERGENCY SERVICES:
A. Services in an agency may be provided on an

emergency basis to any individual believed to be diagnosed as having a substance related disorder when the agency determines that:

(1) there is imminent danger that the physical health or safety of the individual will be seriously impaired if the services are not provided, and that the normal admissions procedure, including screening, cannot be accomplished in time to avoid danger; or

(2) there is imminent danger that the physical health or safety of the individual will be seriously impaired if the services are not provided, and the person has been evaluated and found unable to consent to admission, but does not have a guardian.

B. When emergency services are provided, the agency shall document the nature of the emergency and the reason for failing to comply with any section or paragraph of these regulations, and copies of the document shall be placed in the individuals case record and shall be sent to the individual, his parents, spouse, guardian or advocate, if applicable.

C. When an individual is receiving emergency services, the agency shall determine if the individual has been evaluated, and if the individual has not, shall make diligent efforts to evaluate the individual as soon as possible. Once completed, the results of the evaluation shall determine if the individual will continue to receive services, unless a court or the New Mexico health care authority (authority) orders the agency to continue to provide services while an issue is resolved in a judicial hearing or within the authority. Emergency services shall not be provided of more than seven days before an evaluation is begun, or for more than 14 days in total, unless a court or the authority orders otherwise, or unless the individual would have been admitted under Section 19 had he had a guardian.

D. The provisions of the section apply to both minors and adults.

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

HISTORY OF 8.321.8 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
 CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
 PART 9 PROCUREMENT OF PROFESSIONAL SERVICES FOR ALCOHOL AND SUBSTANCE ABUSE SERVICES**

8.321.9.1 ISSUING AGENCY: New Mexico Health Care Authority. [8.321.9.1 NMAC - N, 7/01/2024]

8.321.9.2 SCOPE: Each entity (offeror/contractor) which submits a proposal(s) for or receives division funding for the purpose of establishing, expanding or continuing one or more of those substance abuse services authorized by the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8 et seq. NMSA 1978) or the Drug Abuse Act (Sections 26-2-1 et seq. NMSA 1978) except where the content of a regulation or any portion thereof is expressly applicable only to a specific group of offerors/contractors. [8.321.9.2 NMAC - N, 7/01/2024]

8.321.9.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 NMSA 1978, Subsection A of Section 43-3-11 NMSA 1978 of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8 et seq. NMSA 1978), or Subsection D of Section 26-2-4 of the Drug Abuse Act (Sections 26-2-1 et seq. 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.

[8.321.9.3 NMAC - N, 7/01/2024]

8.321.9.4 DURATION:

Permanent.

[8.321.9.4 NMAC - N, 7/01/2024]

8.321.9.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.321.9.5 NMAC - N, 7/01/2024]

8.321.9.6 OBJECTIVE:

To establish procedures for procurement of professional services by competitive sealed proposals for substance abuse treatment and/or prevention services; and to establish minimum standards of eligibility for division funding.

[8.321.9.6 NMAC - N, 7/01/2024]

8.321.9.7 DEFINITIONS:

A. "Client" means an individual or family requesting or receiving services.

B. "Contractor" means an entity under contract with the authority to provide substance abuse prevention, treatment, screening or assessment services.

C. "Director" means the director of the behavioral health services division/substance abuse of the New Mexico health care authority.

D. "Division" means the behavioral health services division of the New Mexico health care authority.

E. "Division funding" means funding from state and/or federal sources that is available through the behavioral health services division of the New Mexico health care authority for the provision of substance abuse services.

F. "Governing body" means the group of individuals vested with an organization's policy-making authority for the management of that organization.

G. "Offeror" means an entity who submits a response to a request for proposals solicited by the division.

H. "Secretary" means the secretary of the New Mexico health care authority.

I. "Standards"

means those policies and procedures stipulated in such regulations as may be amended or adopted by the authority.

J. "Substance abuse" means the use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.
[8.321.9.7 NMAC - N, 7/01/2024]

8.321.9.8 MINIMUM STANDARDS:

A. These regulations comprise the minimum standards of eligibility for division funding. Meeting the minimum standards of eligibility does not guarantee that a contractor/offeror will receive division funding, nor that funding will be awarded in subsequent fiscal years.

B. The division may impose additional requirements beyond those contained in these regulations on any contractor/offeror through terms in a contract between the contractor and the division. Additional requirements may be imposed when a contractor/offeror has limited financial management or service delivery experience, or has an inadequate performance record, or in order to correct specific weakness identified by the division.
[8.321.9.8 NMAC - N, 7/01/2024]

8.321.9.9 REQUIREMENTS OF OTHER AGENCIES:

A contractor/offeror who is required to be licensed by the licensing and certification bureau of the public health division of the department of health must obtain and retain such license.

[8.321.9.9 NMAC - N, 7/01/2024]

8.321.9.10 WAIVER:

A. At the request of a contractor/offeror and with the director's authorization, the division may issue a written waiver of any of the requirements of these regulations which are not otherwise required by law.

B. The request for waiver must be in writing and must be signed by the authorized signatory of the contractor/offeror. The waiver

may be granted only if accompanied by documentation which demonstrates that the waiver is in the best interest of the contractor's/offeror's clients.
[8.321.9.10 NMAC - N, 7/01/2024]

8.321.9.11 REVIEW AND EVALUATION:

A. A contractor's performance shall be evaluated by review of:

(1) its compliance with all applicable federal and state rules and regulations, including such regulations as may be amended or adopted by the authority, and the terms and conditions of its individual contract;

(2) the degree of achievement of its own self-described objectives as negotiated between the contractor and the division as described in the contractor's approved funding proposal;

(3) its financial and client status reports to the division and annual audit; and
(4) the fiscal solvency of the contractor.

B. During any site visit, division staff shall be given access to:

(1) any person employed at the site who is present at the site at the time of the visit, or any individual member of the contractors governing body whom the division staff wish to interview (interviews with members of the governing body shall be scheduled at the convenience of the members of the governing body);

(2) all physical facilities which are utilized for division funded activities; and

(3) clients to whom the contractor is providing substance abuse related services funded by the division and who agree to be interviewed (no client identifying information shall be removed from the program premises as a result of such interviews).
[8.321.9.11 NMAC - N, 7/01/2024]

8.321.9.12 REQUEST FOR PROPOSAL PROCESS:

A. A public notice of the request for proposals (RFP) shall be given by publishing a notice not less than ten (10) calendar days prior to the date set for receipt of the proposal. The notice shall be published at least once in a newspaper of a general circulation in New Mexico or the community where services are proposed. For all expenditures over \$20,000, copies of the notice shall also be sent to interested persons and business who have signified in writing an interest in submitting proposals for particular categories of services.

B. The division will initiate the process for procurement of services through a request for proposals. The RFP shall be issued soliciting competitive proposals, and shall include (but not be limited to) the following:

- (1) the type of service(s) to be procured (i.e., residential, outpatient, prevention, etc.) and the anticipated amount of funding available;
- (2) all contractual terms and conditions applicable to the procurement;
- (3) the location where proposals are to be received;
- (4) the date, time and place where proposals are to be received and reviewed;
- (5) a statement of relative weights to be given to the factors when evaluating proposals;
- (6) a statement that offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals (revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers);
- (7) a statement that the contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process; and
- (8) a statement which reads as follows: "The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties

for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks." [8.321.9.12 NMAC - N, 7/01/2024]

8.321.9.13 PROPOSAL PROCESS/PROCEDURE:

A. All offerors submitting proposals for division funding shall utilize the format and forms designated by the division and shall submit all information and copies consistent with instructions stipulated in the RFP packet.

B. The proposal by a non-profit corporation shall be signed by the signatory authorized by the organizations board of directors. The proposal of a municipality or other public body shall be signed by a signatory authorized by the municipality or the local public body.

C. The services for which an offeror seeks division funding must be consistent with the service needs for which the RFP is intended.

D. The division may, at its discretion, request proposals to meet service needs or establish research or demonstration projects. Offerors responding to such division requests for proposals shall submit their proposals in the form, time, and manner indicated in the division's request for such proposal. [8.321.9.13 NMAC - N, 7/01/2024]

8.321.9.14 RECEIPT OF PROPOSALS:

A. Completed proposals shall be submitted to the division or the organizational unit designated within the division as specified in the notice of the RFP.

B. The organizational unit of the division receiving the completed proposal(s) shall establish a log of all proposals received, which shall include the date and time each proposal was received, the name of the offeror, and a description of the proposal sufficient to identify the service(s) offered. [8.321.9.14 NMAC - N, 7/01/2024]

8.321.9.15 PROPOSAL

REVIEW/RECOMMENDATIONS:

A. Division staff shall, immediately upon receipt of proposals or soon after the deadline for submission, evaluate every responsive proposal submitted.

B. All responsive proposals will be evaluated and ranked in order, taking into consideration the evaluation factors and relative weights set forth in the request for proposals.

C. The list of proposals (in rank order) and the final recommendations from division staff will be provided to the director.

D. The director will recommend to the secretary of the authority those proposals selected for award of contracts for proposed services. [8.321.9.15 NMAC - N, 7/01/2024]

8.321.9.16 CONTRACT NEGOTIATION/AWARD/ NOTICE/ACCEPTANCE:

A. The secretary of the authority will award a contract(s) to the offeror(s) which is (are) most advantageous to the authority.

B. The division's award is contingent upon the offerors acceptance of any additional or special terms and conditions listed in the contract and any changes in the funding proposal. The offeror shall indicate acceptance of the award and any special or additional conditions it contains during the negotiation process and by signing and returning the contract to the division's offices. The contract shall become legally binding upon approval by the department of finance and administration of the written document.

C. The division will notify in writing each offeror of the outcome of the award process and will soon thereafter begin negotiations with the offeror(s) accepted.

D. All contracts for services with the authority shall be reviewed:

- (1) as to form and legal sufficiency by the office of general counsel of the authority;
- (2) for budget

sufficiency by the administrative services division of the authority; and

(3) by the department of finance and administration for form, legal sufficiency and budget requirements pursuant to Section 13-1-118 NMSA 1978.

E. The division will negotiate a contract for the services at a fair and reasonable price which will conform to those previously accepted price ranges for specific units of service as determined by the division.

F. The dollar amount and the length of the term of each contract offered lies within the sole discretion of the authority. All awards are subject to the availability of appropriated funds.

[8.321.9.16 NMAC - N, 7/01/2024]

8.321.9.17 PROTEST

PROCEDURES: All protests filed with the authority will be governed by 7.1.6 NMAC, "Protest Procedure Under the Procurement Code", or such regulations as may be amended or adopted by the authority.

[8.321.9.17 NMAC - N, 7/01/2024]

HISTORY OF 8.321.9 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES PART 10 OPIOID TREATMENT PROGRAMS

8.321.10.1 ISSUING

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

8.321.10.2 SCOPE: This rule is applicable to opioid treatment programs. These regulations are not intended to preempt county or municipal ordinances that supplement and do not conflict with these regulations. County and municipal

ordinances are preempted when they conflict with these regulations.

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

8.321.10.3 STATUTORY

AUTHORITY: 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 facility licensure and health care purchasing and regulation.

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

8.321.10.4 DURATION:

Permanent.

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

8.321.10.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section.

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

8.321.10.6 OBJECTIVE:

This rule establishes standards for opioid treatment programs to be consistent with the SAMHSA/CSAT regulations and the OTP accreditation requirements of nationally recognized accreditation bodies approved by SAMHSA/CSAT, such as CARF and JCAHO. The intent is to:

A. be consistent with, and complimentary to, the substance abuse and mental health services administration/center for substance abuse treatment (SAMHSA/CSAT) regulations, and the OTP accreditation requirements of nationally recognized accreditation bodies approved by SAMHSA/CSAT, such as commission on accreditation of rehabilitation facilities (CARF) and the joint commission on accreditation of healthcare organizations (JCAHO);

B. reduce the stigma sometimes associated with opioid dependency treatment and ensure access to it comparable to treatment availability for other chronic medical conditions;

C. consider the possible adverse impact on communities in which OTP providers are located in making application approval decisions, and to provide measures to promote mutually satisfactory relationships between

OTP providers and their communities.
[8.321.10.6 NMAC - N, 7/1/2024]

8.321.10.7 DEFINITIONS:

A. "Accrediting bodies" means nationally recognized organizations, such as the joint commission on accreditation of healthcare organizations (JCAHO) and the commission on accreditation of rehabilitation facilities (CARF), which promulgate standards for OTPs that are approved by the substance abuse and mental health services administration/center for substance abuse treatment (SAMHSA/CSAT), and offer accreditation to programs that meet these standards.

B. "Administrative withdrawal" means the procedure for withdrawal of a patient's opioid treatment medication coinciding with the patient's involuntary discharge from opioid treatment, typically resulting from non-payment of fees, violent or disruptive behavior or incarceration or other confinement.

C. "Application form" means the form created by the health care authority, which must be completed by a program sponsor who wishes to obtain approval to operate an opioid treatment program.

D. "Approval" and "approval to operate" means the written permission given by the health care authority to a program sponsor to operate an opioid treatment program.

E. "Behavioral health services division" (BHSD) is the division of the New Mexico health care authority that is the single state authority for mental health and substance use treatment and prevention programs and methadone authority.

F. "Comprehensive initial assessment" means the collection and analysis of a patient's social, medical, psychological and treatment history.

G. "Comprehensive maintenance treatment" means a program designed with the intention of lasting longer than six months, for the purpose of maintaining the patient such that they will be free of opioid withdrawal and cravings; such programs are typified by:

(1) dispensing or administering an opioid treatment medication at stable dosage levels for a period in excess of 21 days to an individual for opioid addiction; and

(2) providing medical, therapeutic and supportive services to the individual with opioid dependence.

H. “Dispense” has the same meaning as in Subsection I of Section 61-11-2 NMSA 1978 as amended or renumbered.

I. “Diversion” means the unauthorized transfer of an opioid agonist treatment medication, such as a street sale.

J. “Dosage” means the amount, frequency and number of doses of medication for an individual.

K. “Dose” means a single unit of opioid treatment medication.

L. “Illicit opioid drug” means an illegally obtained opioid drug, such as heroin, that causes dependence and reduces or destroys an individual’s physical, social, occupational, or educational functioning, or misuse of legally prescribed medication.

M. “Intake screening” means determining whether an individual meets the initial criteria for receiving opioid treatment.

N. “Long-term opioid treatment withdrawal procedure” means a treatment program designed to dispense opioid treatment medication to a patient in decreasing doses, after first possibly achieving a stable dose, for a period of more than 30 days but less than 180 days as a method of bringing the individual to a drug-free state.

O. “Medical practitioner” means an individual who:

(1) has been accredited through appropriate national procedures as a health professional;

(2) fulfills the national requirements on training and experience for prescribing procedures;

(3) is a registrant or a licensee, or a worker who has been designated by a

registered or licensed employer for the purpose of prescribing procedures;

(4) may be a physician, physician’s assistant, registered nurse, nurse practitioner, or licensed practical nurse.

P. “Opioid treatment” means:

(1) opioid treatment withdrawal procedure/ treatment; and

(2) comprehensive maintenance treatment.

Q. “Opioid treatment medication” means a prescription medication that is approved by the U.S. food and drug administration under 21 U.S.C. section 355 and by the code of federal regulations title 42, part 8.12 for use in the treatment of opiate addiction.

R. “Opioid treatment program” (OTP) means a single location at which opioid dependence treatment medication, such as methadone and rehabilitative services, are provided to patients as a substantial part of the activity conducted on the premises.

S. “Opioid treatment withdrawal procedure” is dispensing or administering an opioid dependence treatment medication in decreasing medication levels to an individual to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

T. “Physiologically dependent” means physically addicted to an opioid drug, as manifested by the symptoms of withdrawal in the absence of the opioid drug.

U. “Program clinician” means a behavioral health clinician practicing at an opioid treatment program who is licensed to practice substance abuse treatment in New Mexico

V. “Program medical director” means a physician licensed to practice medicine in New Mexico, who assumes responsibility for administering all medical services,

either by performing them directly or by delegating specific responsibility to authorized program medical practitioners functioning under the medical director’s direct supervision.

W. “Program sponsor” means the person named in the application as responsible for the operation of the opioid treatment program and who assumes responsibility directly, by personal oversight, or through policy and procedure, or a combination of both, for the acts and omissions of staff members or employees of the opioid treatment program.

X. “Short-term opioid treatment withdrawal procedure” means a treatment program designed to dispense opioid treatment medication to a patient in decreasing doses, over a continuous period of 30 days or less, as a method of bringing the individual to a drug-free state.

Y. “State methadone authority,” (SMA) means the single state agency for substance abuse designated by the governor or another appropriate official designated by the governor to exercise authority within the state for governing treatment of opiate addiction with an opioid drug. In New Mexico it is the health care authority, behavioral health services division.

Z. “Take-home medication” means one or more doses of an opioid treatment medication dispensed to a patient for use off the premises.

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

8.321.10.8 APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM

REQUIRED: Providers who receive written approval by the health care authority, shall be permitted to provide opioid dependency treatment services.

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

8.321.10.9 ELIGIBILITY FOR APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM:

Only applicants who possess all of the following shall be eligible to receive approval to operate

from the New Mexico health care authority (HCA):

A. drug enforcement agency (DEA) approval to operate an OTP;

B. SAMHSA/CSAT approval to operate an OTP;

C. accreditation by a SAMHSA/CSAT-approved nationally recognized accreditation body, such as JCAHO or CARF, to operate an OTP:

(1) if the applicant is a start-up program unable to obtain such accreditation prior to beginning operation because the accreditation body requires a period of program operation, typically six months, before it will grant accreditation:

(a) the HCA shall grant provisional approval to operate pending accreditation, provided that all other requirements of these regulations are met; and

(b) the program demonstrates in its application to the HCA that it is taking the steps necessary to become accredited as quickly as possible, and provides a timeline for the anticipated accreditation;

(2) during this interim period, the provisional approval to operate is contingent on the ongoing progress of the program, as determined by the HCA, to obtain accreditation within the timeline contained in the application; the program shall immediately inform the HCA of anything that will delay or prevent accreditation according to that timeline;

(3) the HCA shall withdraw its provisional approval if it concludes that accreditation will not be forthcoming; in any event, the program shall obtain accreditation within 12 months of beginning operation, or the provisional approval shall be withdrawn, unless the HCA elects to extend the provisional approval period after consultation with the appropriate federal and accrediting entities.

D. a license from the New Mexico state board of pharmacy to operate an OTP;

E. other permits and licenses such as a business license from the applicant's local governmental entity, as required by local ordinances;

F. evidence of appropriate liability insurance coverage for the program and its employees.

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

8.321.10.10 APPLICATION FOR APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM:

A. Each OTP sponsor applicant shall submit to the HCA an application for approval to operate an opioid treatment program application using the form provided by the HCA. This application shall be in addition to the application to drug enforcement agency, SAMHSA/CSAT, the NM board of pharmacy, local government, etc.

B. The HCA shall approve or deny the application within 45 working days of submission, unless the HCA and applicant mutually agree to extend the application review period.

C. The HCA may require the applicant to provide additional written or verbal information in order to reach its decision to grant or deny approval. Such further information shall be considered an integral part of the application.

D. Approval shall be for a duration of three years, except as otherwise provided below for initial grandfathered approvals.

E. The HCA shall not grant approval to operate an OTP to any program sponsor who has been convicted of any crime related to controlled substances laws or any felony within the last five years. No person who has been convicted of any felony in the last five years shall be employed by the OTP in any capacity that gives that person access to controlled medications.

F. The HCA shall not grant approval to any entity that poses a risk to the health and safety of the public based on a history

of noncompliance with state and federal regulations as verified by the DEA, New Mexico state board of pharmacy, FDA, SAMSHA approved accreditation bodies, or the state licensure agency in any state in which the program sponsor currently operates.

G. The HCA may deny approval if there is a documented history of repeated and serious negative neighborhood impact with respect to other OTP programs currently operated by the program sponsor or by any corporation, LLC or partnership with whom the program sponsor has been associated in the past five years.

H. As a condition of approval to operate an OTP, the OTP must maintain or obtain accreditation with a SAMHSA/CSAT-approved nationally recognized accreditation body, (e.g. CARF or JCAHO.) In the event that such accreditation lapses, or approval of an application for accreditation becomes doubtful, or continued accreditation is subject to any formal or informal finding of need for improvement, the OTP program will notify the HCA within two business days of such event. The OTP program will furnish the HCA with all information related to its accreditation status, or the status of its application for accreditation, upon request.

I. The application for approval shall be accompanied by a needs assessment, specifying the proposed geographical area to be served, estimated number of patients anticipated, and such other information as may assist the HCA in review of the application. The HCA shall take into consideration in making its decision the need for an OTP in a given geographic area and the impact on the community.

J. The HCA shall perform on-site inspection of the proposed OTP facility as part of the review and approval process.

K. In the event of change of ownership of an approved opioid treatment program, the HCA approval is not transferable; the new ownership must institute an

application for approval as a new program, in accordance with these regulations.
[8.321.10.10 NMAC - N, 7/1/2024]

8.321.10.11 DENIAL OF HCA APPROVAL TO OPERATE; APPEAL OF DENIAL:

A. The HCA shall not deny approval to operate until the applicant has been notified in writing of the deficiency in the application resulting in the contemplated denial, and given opportunity to remedy the application deficiency within a specified time period.

B. The HCA shall provide a written explanation for any denied application. Denial may be appealed to the secretary of the HCA, whose decision shall be final.

C. An applicant who is denied approval may re-apply by submitting a new application 90 days or more after notification of denial.

D. Failure to complete the application form in its entirety, including requests for additional information as specified above, shall be grounds for denial of approval.
[8.321.10.11 NMAC - N, 7/1/2024]

8.321.10.12 RENEWAL OF HCA APPROVAL TO OPERATE:

A. OTP providers who wish to renew their approval shall submit an application form and requested documentation no less than 90 calendar days, and no more than 180 calendar days, before its expiration date.

B. The HCA shall consider the operating history of the OTP provider in making its determination to grant or deny an application to a previously approved provider.
[8.321.10.12 NMAC - N, 7/1/2024]

8.321.10.13 APPROVAL FOR OTPS IN EXISTENCE PRIOR TO THESE REGULATIONS:

Opioid treatment programs operating in New Mexico prior to the effective date of these regulations shall be granted approval on the effective date of these regulations (“grandfathered in”).

A. The term of these initial grandfathered approvals shall be not less than 24 months nor more than 36 months, and may have staggered expiration dates to avoid simultaneous expiration.

B. “Grandfathered” opioid treatment programs shall provide the HCA with all written policies, procedures and other documentation required of new opioid treatment programs under these regulations within 45 days of the effective date of these regulations.
[8.321.10.13 NMAC - N, 7/1/2024]

8.321.10.14 RENEWAL OF GRANDFATHERED OPERATING PERMITS:

Renewal of grandfathered approvals shall follow the ordinary renewal process. Such approvals shall have a term of 36 months.
[8.321.10.14 NMAC - N, 7/1/2024]

8.321.10.15 INSPECTION AUTHORITY: The HCA shall have the authority to conduct inspections of the records, policies, procedures, physical plant or any other aspect of an OTP for the purpose of determining its compliance with these regulations or the presence of any factor posing a danger to the health or welfare of its patients or the public. Failure of an OTP to cooperate with such inspection shall be grounds for immediate suspension of the approval.
[8.321.10.15 NMAC - N, 7/1/2024]

8.321.10.16 NONCOMPLIANCE WITH REGULATIONS:

A. If an inspection conducted by the HCA shows that an OTP is not in compliance with these regulations, the HCA shall deliver to the program a written notice of the deficiencies identified.

B. The program shall respond to the notification of deficiencies within 30 days of the notification. The program response shall include a corrective action plan together with timeline for implementation, or an explanation, satisfactory to the HCA, of the reason for any deviations from the requirements of these regulations.

C. Failure of the OTP to respond within 30 days of receipt of the notification of deficiencies shall be grounds for immediate suspension of the approval.
[8.321.10.16 NMAC - N, 7/1/2024]

8.321.10.17 IMMEDIATE SUSPENSION OF OTP OPERATING APPROVAL:

A. The HCA, at its discretion, may immediately suspend the approval of any OTP found to be in a substantial violation of this regulation that results in danger to the health and welfare of any patient or of the public, until such time as the violation(s) are corrected to the satisfaction of the HCA.

B. In the event of such suspension, the OPT shall immediately:

- (1) cease accepting new patients; and
- (2) consult with the HCA regarding the orderly transfer of patients to other OTPs and implementation of the program closure action plan required under the “preparedness planning” section of these regulations in order to minimize adverse impact on its patients; notwithstanding the suspension of the approval, the HCA may allow the OTP to conduct limited operations of its program as the HCA finds necessary to minimize adverse impact on patients.
[8.321.10.17 NMAC - N, 7/1/2024]

8.321.10.18 ADMINISTRATION: The program sponsor shall ensure that:

A. a physician licensed to practice in New Mexico is designated to serve as medical director and to have authority over all medical aspects of opioid treatment;

B. the medical director is responsible for ensuring that the OTP is in compliance with all applicable federal, state and local laws and regulations;

C. the OTP shall be open for patients every day of the week except for federal and state holidays, and Sundays, and be closed only as allowed in advance in writing

by CSAT and the state methadone authority;

D. written policies and procedures are developed, implemented, complied with and maintained at the OTP and include:

(1) procedures to prevent a patient from receiving opioid dependency treatment from more than one agency or physician concurrently;

(2) procedures to meet the unique needs of diverse populations, such as pregnant women, children, individuals with communicable diseases, (e.g. hepatitis C, tuberculosis, HIV or AIDS), or individuals involved in the criminal justice system;

(3) procedures for conducting a physical examination, assessment and laboratory tests;

(4) procedures for establishing substance abuse counselor caseloads, based on the intensity and duration of counseling required by each patient;

(5) criteria for when the patient's blood serum levels should be tested and procedures for having the test performed;

(6) procedures for performing laboratory tests, such as urine drug screens or toxicological tests, including procedures for collecting specimens for testing;

(7) procedures for addressing and managing a patient's concurrent use of alcohol or other drugs;

(8) procedures for providing take home medication to patients;

(9) procedures for conducting opioid treatment withdrawal;

(10) procedures for conducting an administrative withdrawal;

(11) procedures for voluntary discharge, including a requirement that a patient discharged voluntarily be provided or offered follow-up services, such as counseling or a referral for medical treatment;

(12) procedures for making temporary or permanent

transfer of a patient from the OTP to another OTP;

(13) procedures for receiving the temporary or permanent transfer of a patient from another OTP to the OTP;

(14) procedures to minimize the following adverse events:

(a) a patient's loss of ability to function;

(b) a medication error;

(c) harm to a patient's family member or another individual resulting from ingesting a patient's medication;

(d) sales of illegal drugs on the premises;

(e) diversion of a patient's medication;

(f) harassment or abuse of a patient by a staff member or another patient; and

(g) violence on the premises;

(15) procedures to respond to an adverse event, including:

(a) a requirement that the program sponsor immediately investigate the adverse event and the surrounding circumstances;

(b) a requirement that the program sponsor develop and implement a plan of action to prevent a similar adverse event from occurring in the future; monitor the action taken; and take additional action, as necessary, to prevent a similar adverse event;

(c) a requirement that action taken under the plan of action be documented; and

(d) a requirement that the documentation be maintained at the agency for at least two years after the date of the adverse event;

(16) procedures for infection control;

(17) criteria for determining the amount and frequency of counseling that is provided to a patient; procedures to ensure that the facility's physical appearance is clean and orderly;

(18) a process for resolution of patient complaints, including a provision that complaints which cannot be resolved through the clinic's process may be referred by either party to the HCA:

(a) the complaint process shall be explained to the patient at admission;

(b) the patient complaint process shall be posted prominently in its waiting area or other location where it will be easily seen by patients, and include the HCA contact information for use in the event that the complaint cannot be resolved through the clinic's process.

E. a written quality assurance plan is developed and implemented;

F. all information and instructions for the patient are provided in the patient's primary language, and, when provided in writing, are clear and easily understandable by the patient.

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

8.321.10.19 ADMISSION:

A. The program sponsor shall ensure through policy and procedure that an individual is only admitted for opioid dependency treatment after the program medical director determines and documents that:

(1) the individual meets the definition of opioid dependence using generally accepted medical criteria such as those contained in the diagnostic and statistical manual for mental disorders (DSM-IV or subsequent editions);

(2) the individual has received a physical examination as required by Subsection D of 8.321.10.19 NMAC below; and

(3) if the individual is requesting maintenance treatment, the individual has been addicted for at least 12 months before the admission, unless the individual receives a waiver of this requirement from the program medical director because the individual:

(a) was released from a penal institution within the last six months;

(b) is pregnant, as confirmed by the agency physician;

(c) was treated for opioid dependence within the last 24 months; or

(d) is under the age of 18, has had two documented unsuccessful attempts at short term opioid treatment withdrawal procedures or drug-free treatment within a 12-month period, and has informed consent for treatment provided by a parent, guardian, custodian or responsible adult designated by the relevant state authority.

B. A program sponsor shall ensure that an individual requesting long-term or short-term opioid treatment withdrawal treatment who has had two or more unsuccessful opioid treatment withdrawal treatment episodes within a 12-month period is assessed by the program medical director for other forms of treatment.

C. The OTP shall ensure that each patient at the time of admission:

(1) provides written, voluntary, program-specific informed consent to treatment;

(2) is informed of all services that are available to the patient through the program and of all policies and procedures that impact the patient's treatment; and

(3) is informed of the following:

(a) the progression of opioid dependency and the patient's apparent stage of opioid dependence;

(b) the goal and benefits of opioid dependency treatment;

(c) the signs and symptoms of overdose and when to seek emergency assistance;

(d) the characteristics of opioid dependency treatment medication, such as its effects and common side

effects, the dangers of exceeding the prescribed dose, and potential interaction effects with other drugs, such as other non-opioid agonist treatment medications, prescription medications, and illicit drugs;

(e) the requirement for a staff member to report suspected or alleged abuse or neglect of a child or an incapacitated or vulnerable adult according to state law;

(f) the requirement for a staff member to comply with the confidentiality requirements of title 42 CFR part 2 of the code of federal regulations, incorporated by reference;

(g) drug screening and toxicological testing procedures;

(h) requirements to receive take-home medication;

(i) testing and treatment available for HIV and other communicable diseases, the availability of immunization for hepatitis A and B, and the availability of harm reduction services;

(j) availability of counseling on preventing exposure to and transmission of human immunodeficiency virus (HIV), sexually transmitted diseases, and blood-born pathogens;

(k) the patient's right to file a complaint with the program for any reason, including involuntary discharge, and to have the patient's complaint handled in a fair and timely manner.

D. A program sponsor shall ensure that the program medical director or medical practitioner designee conducts a complete, fully documented physical examination of an individual who requests admission to the program before the individual receives a dose of opioid dependency treatment medication, and that the physical examination includes:

(1) reviewing the individual's bodily systems;

(2) obtaining a medical and family history and

documentation of current information to determine chronic or acute medical conditions such as diabetes, renal diseases, hepatitis, HIV infection, tuberculosis, sexually transmitted disease, pregnancy or cardiovascular disease;

(3) obtaining a history of behavioral health issues and treatment, including any diagnoses and medications;

(4) initiating the following laboratory tests:

(a) a mantoux skin test;

(b) a test for syphilis;

(c) a laboratory drug detection test for at least opioids, methadone, amphetamines, cocaine, barbiturates, benzodiazepines and other substances as may be appropriate, based upon patient history and prevailing patterns of availability and use in the local area;

(5) recommending additional tests based upon the individual's history and physical condition, such as:

(a) complete blood count;

(b) EKG, chest X-ray, pap smear or screening for sickle cell disease;

(c) a test for hepatitis B and C; or

(d) HIV testing.

(6) the full medical examination including test results must be completed within 14 days of admission to the program;

(7) a patient re-admitted within three months after discharge does not require a repeat physical examination unless requested by the program medical director.

E. A program sponsor shall ensure that the results of a patient's physical examination are documented in the patient record.

F. A patient may not be enrolled in more than one OTP program except under exceptional circumstances, such as residence in one city and employment that requires extended absences from that city,

which must be documented in the patient chart by the medical directors of both programs:

(1) an OTP shall make and document good faith efforts to determine that a patient seeking admission is not receiving opioid dependency treatment medication from any other source, within the bounds of all applicable patient confidentiality laws and regulations;

(2) the OTP shall confirm that the patient is not receiving treatment from any other OTP, except as provided in Subsection F of 8.321.10.19 NMAC, within a 50 mile radius of its location, by contacting any such other program, or by using the central registry described in Subsection G of 8.321.10.19 NMAC, when established.

G. The HCA may establish an internet-based central registry of all persons in New Mexico who are current patients of a New Mexico OTP program, for the purpose of creating a system that prevents patients from surreptitiously receiving medication from more than one OTP. Each OTP as a condition of approval to operate shall participate in the central registry as directed by the HCA.

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

8.321.10.20 ASSESSMENT AND TREATMENT PLANS: The program sponsor shall ensure that:

A. each patient receives a comprehensive intake assessment upon admission, conducted by a qualified professional, to determine the most appropriate combination of services and treatment, which results in an intake treatment plan based on the patient's goals; the results of the comprehensive intake assessment and the intake treatment plan are documented in the patient record within 24 hours of admission;

B. an individualized treatment plan shall replace the intake treatment plan within 30 days of admission or the third face-to-face contact with the client, and be documented in the patient record;

C. all updates or revisions to any treatment plan or assessment shall be documented in the patient record within seven working days;

D. all assessments and treatment plans shall include, but not necessarily be limited to:

(1) a description of the patient's presenting issue, identification of the patient's behavioral health symptoms and the behavioral health issue or issues that require treatment;

(2) a list of the medical services, including medication, needed by the patient, as identified in the physical examination;

(3) recommendations for further assessment or examination of the patient's needs if indicated;

(4) recommendations for treatment needed by the patient, such as psychosocial counseling or mental health treatment, if indicated;

(5) recommendations for ancillary services or other services needed by the patient, if indicated;

(6) the signature, professional credential, printed name, and date signed of the staff member conducting and developing the assessment, treatment plan, update or revision;

(7) in the case of updated or revised treatment plans, a summary of the patient's progress or lack of progress toward each goal on the previous plan and the program's response; and any new goals;

(8) the signature and date signed, or documentation of the refusal to sign, of the patient or the patient's guardian or agent or, if the patient is a child, the patient's parent, guardian, or custodian;

E. treatment plans shall be reviewed at least every 90 days for the first two years of continuous treatment, and at least every 6 months thereafter, in accordance with the program's established policy and procedure, and the treatment plan modified accordingly, except initial

treatment plans must be replaced with individualized plans as provided for in Subsection B of 8.321.10.20 NMAC above;

F. adequate medical, psychosocial counseling, mental health, vocational, educational and other assessment and treatment services are fully and reasonably available to patients, either by the program directly, or through formal, documented referral agreements with other providers.

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

8.321.10.21 DOSAGE: The program sponsor shall ensure that:

A. a dose of opioid dependency treatment medication is administered only after an order from the program medical director;

B. a patient's dosage of opioid dependency treatment medication is individually determined;

C. a dose of opioid dependency treatment medication is sufficient to produce the desired response in a patient for the desired duration of time and with consideration for patient safety;

D. a dose of opioid dependency medication is prescribed to meet a patient's treatment needs by:

(1) preventing the onset of subjective or objective signs of withdrawal for 24 hours or more;

(2) reducing or eliminating the drug craving that is experienced by opioid dependent individuals who are not in opioid treatment;

(3) a patient receiving comprehensive maintenance treatment receives an initial dose of opioid dependency treatment medication based upon the program medical director or medical practitioner designee's physical examination and with consideration for local issues, such as the relative purity of available illicit opioid drugs;

(4) a patient receiving methadone in comprehensive maintenance treatment receives an initial dose of methadone that does not exceed 30 milligrams; and

(a) if the patient’s withdrawal symptoms are not suppressed after the initial dose of 30 milligrams, a patient receives an additional dose that does not exceed 10 milligrams only if a program clinician documents in the patient record that 30 milligrams did not suppress the patient’s withdrawal symptoms; and

(b) if the patient’s withdrawal symptoms are not suppressed by a total dose of 40 milligrams, a patient receives an additional dose only if the program medical director or medical practitioner designee documents in the patient record that 40 milligrams did not suppress the patient’s withdrawal symptoms;

(5) a patient receiving buprenorphine in opioid treatment withdrawal procedure or comprehensive maintenance treatment receive an initial dose according to the instructions on the opioid dependency treatment medication package insert, and any deviation from the instructions is documented by the program clinician in the patient record;

(6) a patient receives subsequent doses of opioid dependency treatment medication:

(a) based on the patient’s individual needs and the results of the physical examination and assessment;

(b) sufficient to achieve the desired response for at least 24 hours, with consideration for day-to-day fluctuations and elimination patterns;

(c) that are not used to reinforce positive behavior or punish negative behavior;

(d) as long as the patient benefits from and desires comprehensive maintenance treatment; and

(e) that are adjusted if a provider changes from one type of opioid dependency treatment medication to another. [8.321.10.21 NMAC - N, 7/1/2024]

8.321.10.22 DRUG SCREENING: The program sponsor

shall ensure that:

A. staff members have knowledge of the benefits and limitations of laboratory drug detection tests and other toxicological testing procedures;

B. a patient in comprehensive maintenance treatment receives at least eight random laboratory drug detection tests per year; short-term opioid treatment withdrawal procedure patients receive at least one initial drug abuse test; long-term opioid treatment withdrawal procedure patients receive an initial and monthly random tests; and other toxicological tests are performed according to written orders from the program medical director or medical practitioner designee;

C. laboratory drug detection tests and other toxicological testing specimens are collected in a manner that minimizes falsification;

D. laboratory drug detection tests for:

- (1) opioids;
- (2) methadone;
- (3) amphetamines;
- (4) cocaine;
- (5) barbiturates;
- (6) benzodiazepines; and
- (7) other substances as may be appropriate, based upon patient history and prevailing patterns of drug availability and use in the local area;

E. the results of a patient’s laboratory drug detection tests or other toxicological test and any action taken relating to the results are documented in the patient record. [8.321.10.22 NMAC - N, 7/1/2024]

8.321.10.23 TAKE-HOME MEDICATIONS:

A. The program sponsor shall ensure that policies and procedures are developed, implemented, and complied with for the use of take-home medication and include:

- (1) criteria for

determining when a patient is ready to receive take-home medication;

(2) criteria for when a patient’s take-home medication is increased or decreased;

(3) a requirement that take-home medication be dispensed according to federal and state law;

(4) a requirement that the program medical director review a patient’s take-home medication regimen at intervals of no less than 90 days and adjust the patient’s dosage, as needed;

(5) procedures for safe handling and secure storage of take-home medication in a patient’s home; and

(6) criteria and duration of allowing a physician to prescribe a split medication regimen.

B. Treatment program decisions on dispensing OTP medications to patients for unsupervised use, beyond that set forth in Subsection C of 8.321.10.23 NMAC below, shall be made by the program medical director, based on the following criteria:

- (1) absence of recent abuse of drugs, including alcohol;
- (2) regularity of program attendance;
- (3) length of time in comprehensive maintenance treatment;
- (4) absence of known criminal activity;
- (5) absence of serious behavioral problems at the program;

(6) special needs of the patient such as physical health needs;

(7) assurance that take-home medication can be safely stored in the patient’s home;

(8) stability of the patient’s home environment and social relationships;

(9) the patient’s work, school, or other daily activity schedule;

(10) hardship experienced by the patient in traveling to and from the program; and

(11) whether the benefit the patient would receive by decreasing the frequency of program attendance outweighs the potential risk of diversion.

C. A patient in comprehensive maintenance treatment may receive a single dose of take-home medication for each day that a provider is closed for business, including Sundays and state and federal holidays.

D. A program sponsor shall ensure that take-home medication is only issued to a patient in compliance with the following restrictions:

(1) during the first 90 days of comprehensive maintenance treatment, take-home medication is limited to a single dose each week, in addition to any doses received as described in Subsection C of 8.321.10.23 NMAC above;

(2) during the second 90 days of comprehensive maintenance treatment, a patient may receive a maximum of two doses of take-home medication each week in addition to any doses received as described in Subsection C of 8.321.10.23 NMAC above;

(3) during the third 90 days of comprehensive maintenance treatment, a patient may receive a maximum of three doses of take-home medication each week in addition to any doses received as described in Subsection C of 8.321.10.23 NMAC above;

(4) in the remaining months of the patient's first year, a patient may receive a maximum of six days of take-home medication each week;

(5) after one year of continuous treatment, a patient may receive a maximum two week supply of take-home medication;

(6) after two years of continuous treatment, a patient may receive a maximum of one month's supply of take-home medication but must make monthly visits;

(7) exceptions to the above take-home medication restrictions shall be made only as

provided for in center for substance abuse treatment (CSAT) regulations and as approved by the state methadone authority.

E. A program sponsor shall ensure that a patient receiving take-home medication receives:

(1) take-home medication in a child-proof container; and

(2) written and verbal information on the patient's responsibilities in protecting the security of take-home medication.

F. The program sponsor shall ensure that the program medical director's determination made under Subsection B of 8.321.10.23 NMAC and the reasons for the determination are documented in the patient record.

G. In accordance with DEA regulations, the program shall not use U. S. mail or express services such as fedex or united parcel service to transport, furnish or transfer opioid treatment medication to any patient, agency, facility or person.

H. The program shall establish policy and procedure to provide for the safe and secure transportation of opioid treatment medication from its facility to another agency where the program's patient temporarily resides, (e.g., from the university of New Mexico's addiction and substance abuse program (ASAP) to the turquoise lodge treatment program.).

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

8.321.10.24 WITHDRAWAL TREATMENT AND MEDICALLY SUPERVISED DOSE

REDUCTION: The program sponsor shall ensure that:

A. policies and procedures are developed, implemented, and complied with for withdrawal treatment and:

(1) are designed to promote successful withdrawal treatment;

(2) require that dose reduction occur at a rate deemed medically appropriate by the program medical director;

(3) require

that a variety of ancillary services, such as self-help groups, be available to the patient through the program or through referral;

(4) require that the amount of counseling available to the patient be increased before discharge; and

(5) require that a patient be re-admitted to the program or referred to another program if relapse occurs;

B. a patient's withdrawal treatment:

(1) for a patient involved in comprehensive maintenance treatment, is only initiated as administrative withdrawal, or when voluntarily requested by the patient and approved by a program medical director; and

(2) is planned and supervised by the program medical director;

C. before a patient begins withdrawal treatment, whether with or against the advice of the program medical director, the patient:

(1) is informed by the program medical director or a medical practitioner designee:

(a) that the patient has the right to leave opioid treatment at any time; and

(b) of the risks of withdrawal treatment; and

(2) upon request, receives a schedule for withdrawal treatment that is developed by the program medical director with input from the patient;

(3) receives a copy of the program policy regarding withdrawal of opioid medication against medical advice and a verbal explanation of that policy;

D. if a patient who is receiving withdrawal treatment, other than a patient experiencing administrative withdrawal, appears to a staff member to relapse, the patient is permitted to begin comprehensive maintenance treatment, if otherwise eligible;

E. if a patient who has completed withdrawal treatment within the past 30 days appears to a staff member to relapse, the patient

may be re-admitted without a physical examination or assessment with the consent of the program medical director;

F. a patient experiencing administrative withdrawal is referred or transferred to any program that is capable of or more suitable for meeting the patient’s needs, and the referral or transfer is documented in the patient record;

G. the following information is documented in the patient record:

(1) the reason that the patient sought withdrawal treatment or was placed on administrative withdrawal; and

(2) the information and assistance provided to the patient in medical withdrawal or administrative withdrawal.

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

8.321.10.25 COUNSELING AND MEDICAL SERVICES: The program sponsor shall ensure that:

A. substance abuse counseling and behavioral health treatment planning is provided by a practitioner licensed in the state of New Mexico to provide behavioral health treatment services to each patient based upon the patient’s individual needs, treatment plan and stage of readiness to change behavior;

B. the program has substance abuse counselors in a number sufficient:

(1) to ensure that patients have access to counselors;

(2) to provide the treatment in patients’ treatment plans; and

(3) to provide unscheduled treatment or counseling to patients;

C. each patient seeking opioid treatment is screened for the presence of a co-occurring mental health disorder by means approved by the HCA, and if indicated, referred for assessment and possible treatment if the program is not able to provide mental health services; an OTP referring a patient to another provider for mental health assessment

shall make and document its good faith efforts to follow up with that provider on the results of the referral, and to co-ordinate its treatment with any subsequent treatment by other providers, within the limits of all applicable laws and regulations pertaining to release of patient information and confidentiality;

D. a program sponsor shall ensure that a patient is offered medical, psychiatric and psychological services, if needed, either at its program or through referral:

(1) if a patient receives medical, psychiatric or psychological services, from provider(s) not affiliated with the program, program staff members shall make a good faith effort to communicate and coordinate its treatment services with such provider, including monitoring and evaluating interactions between the patient’s opioid treatment medication and medications used to treat the patient’s mental disorder, if any;

(2) the OTP shall have a procedure to ensure that such good faith coordination efforts are made, in accordance with all state and federal laws and regulations for the release of patient records or information;

E. a program sponsor shall make good faith efforts to establish effective working relationships with the relevant behavioral health treatment providers in its patient catchment area in order to facilitate patient access to the services available through those providers;

F. a program sponsor shall ensure that a patient has access to a self-help group or support group, such as narcotics anonymous, either at the agency or through referral to a community group;

G. treatment services are provided by appropriately licensed staff.

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

8.321.10.26 DIVERSE POPULATIONS:

A. The program sponsor shall ensure that:

(1) opioid treatment is provided regardless of race, ethnicity, gender, age, or sexual orientation;

(2) the program facility is compliant with the Americans with Disabilities Act (ADA);

(3) opioid treatment is provided with consideration for a patient’s individual needs, cultural background, and values;

(4) provider staff members are culturally competent;

(5) unbiased language is used in the provider’s print materials, electronic media, and other training or educational materials;

(6) HIV testing and education are available to patients either at the provider or through referral;

(7) a patient who is HIV-positive and who requests treatment for HIV or AIDS:

(a) is offered treatment for HIV or AIDS either at the provider or through referral; and

(b) has access to an HIV- or AIDS-related peer group or support group and to social services either at the provider or through referral to a community group; and

(8) for patients with a communicable disease such as HIV, AIDS, or hepatitis C, the provider has a procedure for transferring a patient’s opioid treatment to a non-program medical practitioner treating the patient for the communicable disease when it becomes the patient’s primary health concern;

(9) an individual who requires administration of opioid treatment medication only for relief of chronic pain is:

(a) identified during the physical examination or assessment;

(b) not admitted for opioid medication treatment; and

(c) referred for medical services; and

(d) for a patient with a chronic pain disorder who is also physically dependent the OTP makes a good faith effort to coordinate treatment and services with the medical practitioner treating the patient for pain management.

B. A program sponsor shall ensure that a policy and procedure is developed, implemented, and complied with for the treatment of female patients, to include requirements that:

(1) pregnancy tests shall be administered and reviewed for all women of childbearing age prior to initiating a opioid treatment withdrawal procedure or medically supervised withdrawal;

(2) appropriate staff members be educated in the unique needs of female patients; and

(3) each female patient be informed about or referred to an appropriate support group, at the provider or in the community.

C. The program sponsor shall ensure that a policy and procedure is developed, implemented, and complied with for the treatment of pregnant patients, to include:

(1) a requirement that priority be given to pregnant individuals seeking opioid treatment;

(2) a requirement that the reasons for a pregnant individual's denial of admission to a provider be documented;

(3) a requirement that a pregnant patient be offered prenatal care to include fetal assessment either at the program or through referral to a non-program medical practitioner;

(4) a requirement that the program communicate with any non-program medical practitioners who are

providing prenatal care to a pregnant patient, to coordinate opioid treatment and prenatal care, in accordance with all state and federal laws and regulations for the release of patient records or information; and document all such communications in the patient records;

(5) a requirement that a staff member make a good faith effort to educate a pregnant patient who refuses prenatal care services on the importance of prenatal care;

(6) a requirement that a staff member obtain a written refusal of prenatal care services that are offered either directly by the program or by referral, from a pregnant patient who refuses such services or referral to such services;

(7) a requirement that a pregnant patient receiving comprehensive maintenance treatment before pregnancy be maintained at the pre-pregnancy dose of opioid medication, if effective;

(8) a requirement that a pregnant patient be monitored by the program medical director to determine if pregnancy-induced changes in the elimination or metabolization of opioid treatment medication may necessitate an increased or split dose;

(9) a requirement that withdrawal treatment:

(a) is strongly advised against before 14 weeks or after 32 weeks of gestation;

(b) the program medical director reviews the case before initiating withdrawal and monitor it until withdrawal is complete;

(10) a requirement that a pregnant patient discharged from the program be referred to a non-program medical practitioner and that a staff member document the name, address, and telephone number of the medical practitioner in the patient record.

D. A program sponsor who is officially notified by a correctional facility that a patient is

in their custody shall ensure that the program:

(1) makes efforts to obtain approval from the criminal justice system for the continued treatment of the patient by the program while the patient is incarcerated; and

(2) if approval is obtained the program continues to treat the patient while the patient is incarcerated, within the limits of the program's ability to provide such treatment to the incarcerated patient; and

(3) if approval is not obtained, the program's attempts to obtain approval are documented in the patient's record. [8.321.10.26 NMAC - N, 7/1/2024]

8.321.10.27 PREPAREDNESS PLANNING:

A. The program sponsor shall ensure that the program has:

(1) a written plan to ensure uninterrupted dispensing of medication in the event of dispensing staff turnover; and

(2) a written agreement with at least one other provider for the provision of opioid treatment medication to program patients in the event that the program is unable to provide services;

(3) 24-hour telephone answering service or other method to reach the program at all times; and

(4) a list of all patients and the patients' dosage requirements available and accessible to program on-call staff members.

B. A program sponsor shall ensure that a written plan is developed and implemented for continuity of patient services if the program is voluntarily or involuntarily closed. Such planning shall include a disaster plan that addresses unforeseeable circumstances such as natural disaster or involuntary closure from any cause, and:

(1) includes steps for the orderly transfer of patients to other programs, individuals, or entities that provide opioid treatment;

(2) includes procedures for securing, maintaining, and transferring patient records according to federal and state law; and

(3) the plan is reviewed and updated, as appropriate, at least once every 12 months. [8.321.10.27 NMAC - N, 7/1/2024]

8.321.10.28 PATIENT RECORDS:

A. The OTP program shall establish and maintain a recordkeeping system that is adequate to document and monitor patient care. The system shall comply with all federal and state requirements relevant to OTPs and to confidentiality of patient records.

B. Each patient record shall include:

(1) the results of the physical examination;

(2) the results of all assessments;

(3) the treatment plan and all updates or revisions;

(4) the results of laboratory tests and a description of any action taken based upon the results;

(5) documentation of the patient's current dose and dosage history;

(6) documentation of counseling provided to the patient;

(7) dates and results of meetings or conferences regarding the patient's treatment;

(8) documentation of the process used and factors considered in making decisions that impact a patient's treatment, such as whether to allow take-home medication and the frequency of laboratory drug detection tests; and

(9) documentation of the agency's efforts to learn of multiple opioid treatment program enrollment;

(10) documentation that the patient has received and understood information regarding the harmful effects of

diversion of opioid treatment medication. [8.321.10.28 NMAC - N, 7/1/2024]

8.321.10.29 COMMUNITY RELATIONS:

A. A program sponsor shall ensure that policies and procedures are developed, implemented, and complied with to educate and promote understanding in the community about opioid treatment and include:

(1) a mechanism for eliciting input from the community about the provider's impact on the community;

(2) a requirement that the program sponsor or designee interface with community leaders to foster positive relations;

(3) a requirement that the program sponsor or designee establish a liaison with community representatives to share information about the program;

(4) a requirement that the agency have information on substance abuse and related health and social issues available to the public;

(5) a mechanism for addressing and resolving community concerns about opioid treatment or the program's presence in the community; and

(6) a mechanism that addresses getting approval for continued treatment in treatment or care facilities and correctional facilities.

B. A program sponsor shall ensure that community relations efforts are documented and are evaluated at least once every six months.

C. A program sponsor shall comply with all valid county and municipal ordinances regarding community relations, and the HCA may consult with local governmental entities when enforcing this section. [8.321.10.29 NMAC - N, 7/1/2024]

8.321.10.30 DIVERSION CONTROL:

The program sponsor shall ensure that a written plan is developed, implemented, and

complied with to prevent diversion of opioid treatment medication from its intended purpose to illicit purposes. This plan shall assign specific responsibility to licensed and administrative staff for carrying out the diversion control measures and functions described in the plan. The program shall develop and implement a policy and procedure providing for the reporting of theft or diversion of medication to the relevant regulatory agencies, and law enforcement authorities. [8.321.10.30 NMAC - N, 7/1/2024]

HISTORY OF 8.321.10 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES

CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES

PART 11 CRISIS TRIAGE CENTERS

8.321.11.1 ISSUING

AGENCY: New Mexico Health Care Authority. [8.321.11.1 NMAC - N, 7/1/2024]

8.321.11.2 SCOPE: These regulations apply to public, profit and not for profit crisis triage centers providing the services specified in these regulations. Any crisis triage center providing services specified in these regulations must be licensed under these regulations. [8.321.11.2 NMAC - N, 7/1/2024]

8.321.11.3 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 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.
[8.321.11.3 NMAC - N, 7/1/2024]

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

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

8.321.11.6 OBJECTIVE:

A. To establish minimum standards for licensing crisis triage centers that provide quality crisis stabilization services outside of a hospital setting.

B. To ensure the provision of quality services which maintain or improve the health and quality of life to the clients.

C. To monitor compliance under these regulations through surveys and to identify any facility areas which could be dangerous or harmful.
[8.321.11.6 NMAC - N, 7/1/2024]

8.321.11.7 DEFINITIONS:

A. Definitions beginning with "A":

(1)
"Administrator" means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the crisis triage center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the CTC and all of the services provided at the CTC including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.

(2)
"Advanced practice registered nurse" means a registered nurse that includes a certified nurse practitioner, or a clinical nurse specialist as defined and licensed under the Nursing Practice Act, as amended, and related regulations, and is currently in good standing.

(3)
"Applicant" means the individual or legal entity that applies for a CTC license to provide services in a particular facility. If the applicant is a legal entity, 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 entity providing services, but not necessarily the facility.

B. Definitions beginning with "B": "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.

C. Definitions beginning with "C":

1)
"Caregivers criminal history screen" means pursuant to the criminal history screening for Caregivers Act, Section 29-17-1 through Section 29-17-5 NMSA 1978, the process for health facilities and medicaid home and community-based waiver providers to complete a caregiver criminal history screening for all caregivers no later than 20 calendar days after the employment hire date. The screening or background check includes the submission of fingerprints required for obtaining state and federal criminal history used to conduct the fitness determination. The caregiver's criminal history screening program receives and processes background check applications for criminal history screenings from care providers in the state of New Mexico. Caregivers may be prohibited from employment if the caregiver has a disqualifying condition.

(2)
"Chemical restraint" means a drug or medication when it is used as a restriction to manage a client's

behavior or restrict a client's freedom of movement and is not a standard treatment or dosage for a client's condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

(3)
"CLIA" means clinical laboratory improvement amendments of 1988 as amended.

(4) "Client"
means any person who receives care at a crisis triage center.

(5)
"Compliance" means the CTC's adherence to these regulations, as well as all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the CTC license.

(6) "Crisis stabilization services" means behavioral health services that are provided to help the client return his baseline level of functioning before the crisis.

(7) "Crisis triage center" means a health facility that:

(a) is licensed by the health care authority; and

(b) provides stabilization of behavioral health crises and may include residential and nonresidential stabilization.

(8) "CYFD"
means the New Mexico children youth and families department.

(9) "CYFD criminal records and background checks" means pursuant to the Criminal Offender Employment Act, Section 28-2-1 to Section 28-2-6 NMSA 1978, the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to Section 32A-15-4 NMSA 1978, amended, and 8.8.3 NMAC, the process of conducting a nationwide criminal

history records check, background check and employment history verification on all operators, staff and employees and prospective operators, staff and employees of treatment facilities and programs with the objective of protecting children/youth and promoting the children's/youth's safety and welfare while receiving service from the facilities and programs. The process shall include submission of electronic fingerprints for those individuals to the department of public safety and the federal bureau of investigation for the purpose of conducting a criminal history and background check; identification of information in applicants' background bearing on whether they are eligible to provide services; a screening of CYFD's information databases in New Mexico and in each state where the applicant resided during the preceding five years; and any other reasonably reliable information about an applicant in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply.

D. Definitions beginning with "D":

(1) **"Deficiency"** means a violation of or failure to comply with any provision(s) of these regulations.

E. Definitions beginning with "E": "Employee" means any person who works at the CTC and is a direct hire of the owner entity or management company, if applicable.

F. Definitions beginning with "F": "Facility" means the physical premises, building(s) and equipment where the crisis triage center services are provided, whether owned or leased and which is licensed pursuant to these regulations.

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

H. Definitions beginning with "H":

(1) **"HCA"** means the New Mexico health care authority.

(2) **"High risk behavior"** means behaviors that place clients, staff or visitors' physical and mental health and safety at risk.

I. Definitions beginning with "I":

(1) **"Incident"** means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(2) **"Incident management system"** means the written policies and procedures adopted or developed by the CTC for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(3) **"Incident report form"** means the reporting format issued by the authority for the reporting of incidents or complaints.

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

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

L. Definitions beginning with "L":

(1) **"Level III.7-D: Medically monitored inpatient detoxification"** means the types of detoxification services described by American Society of Addiction Medicine (ASAM) in its *Patient Placement Criteria, Second Edition, Revised (PPC-2R)* Level III &-D includes 24-hour medically supervised detoxification services requiring 24-hour nursing care and physician visits as necessary, unlikely to complete detox, without medical, nursing monitoring and more intensive detoxification services.

(2) **"Licensee"** means the person(s) or legal entity that operates the CTC and in whose name the CTC license has been issued and who is legally responsible for compliance with these regulations.

(3) **"Licensing authority"** means the New Mexico health care authority.

(4) **"Licensed mental health professional"** means a psychologist, social worker, physician, psychiatrist, physician assistant, registered nurse, practical

nurse, advanced practice registered nurse, each shall have behavioral health training and shall be licensed in the state of New Mexico.

M. Definitions beginning with "M": "Management company" means the legal entity that manages the CTC program, if different from the legal owner of the facility.

N. Definitions beginning with "N":

(1) **"NFPA"** means the national fire protection association which sets codes and standards for fire and life safety. NFPA 11 and related standards, current edition as required by the authority.

(2) **"NMSA"** means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.

O. Definitions beginning with "O":

(1) **"Onsite medical professional"** means in this regulation a registered nurse, emergency medical service provider, emergency medical technician, licensed practical nurse, medical assistant, mental health technician, and certified nurse assistant.

(2) **"Outpatient services"** means immediate crisis stabilization services provided to clients who are not admitted to the residential setting. Outpatient crisis stabilization services are not ongoing behavioral health treatment services.

P. Definitions beginning with "P":

(1) **"Physical restraint"** means the use of physical force, consistent with state and federal laws and regulations, without the use of any device or material that restricts the free movement of all or a portion of a body, but does not include: briefly holding a client in order to calm or comfort the client; holding a client's hand or arm to escort the client safely from one area to another; or intervening in a physical fight.

(2) **"Physician"** means a licensed

individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Section 61-6-1 to Section 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Section 61-10-1 to Section 61-10-22 NMSA 1978, as amended, and related regulations.

(3)

“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, Section 61-6-7 to Section 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, Section 61-10A-1 to Section 61-10-7 NMSA 1978 as amended, and related regulations.

(4) **“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 CTC license, including to prove licensee compliance violations or failures.

(5) **“Policy”**

means a written statement that guides and determines present and future CTC decisions and actions.

(6)

“Premises” means all of the CTC including buildings, grounds and equipment.

(7) **“Primary**

source verification” means the act of obtaining credentials directly from the original or primary source(s).

(8)

“Procedure” means the action(s) that must be taken in order to implement a

written policy.

Q. Definitions**beginning with “Q”:**(1) **“Quality**

assurance” means the CTC’s ongoing comprehensive self-assessment of compliance with these regulations and other applicable statutes and regulations.

(2) **“Quality**

committee” means a committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, and psychiatrist. Other committee members may be specified by rules governing payor requirements. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients.

(3) **“Quality**

improvement system” means systematic and continuous actions that lead to measurable improvement in services and focus on reduction and stabilization of crises for clients.

R. Definitions**beginning with “R”:**

(1)

“Registered nurse” means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Section 61-3-1 to Section 61-3-30 NMSA 1978, as amended, and related regulations.

(2)

“Residential services” means any crisis stabilization services provided to a client admitted to the residential setting.

(3) **“Restraint**

clinician” means a New Mexico licensed medical doctor, doctor of osteopathy, advanced practice registered nurse, clinical nurse specialist, physician assistant or doctoral level psychologist (Psy.D., Ph.D., or E.D.), who is trained in the use of emergency safety interventions.

S. Definitions**beginning with “S”:**(1) **“Sanitize**

clothes” means the use of water at a temperature of 212 degrees or use of a disinfectant agent to wash clothes.

(2) **“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.

(3)

“Seclusion” means the involuntary confinement of a client alone in a room where the client is physically prevented from leaving.

(4) **“Short-**

term residential stay” means the limit of a client’s stay is eight days for the residential setting.

(5) **“Staff”**

means any person who works at the CTC, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the CTC.

T. Definitions**beginning with “T”: [RESERVED]****U. Definitions**

beginning with “U”: **“U/L approved”** means approved for safety by the national underwriter’s laboratory.

V. Definitions**beginning with “V”:**

(1)

“Variance” means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a period that expires upon remodel of the CTC or change of ownership, providing the variance does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A variance can be renewed upon approval of the licensing authority. A variance may be revoked at the discretion of the licensing authority due to changes in state or federal regulations and statutes, or change of circumstances that may jeopardize the health, safety or welfare of clients.

(2)

“Violation” means all actions or

procedures by the CTC or licensee that are not in compliance with these regulations and all other applicable state and federal statutes and regulations.

W. Definitions beginning with “W”:

(1) “Waiver” means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a limited and specified time period not to exceed the duration of the license, providing the waiver does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A waiver can be renewed on an annual basis upon approval of the licensing authority. A waiver 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 clients.

(2) “Withdrawal management” means the immediate psychological stabilization, diagnosis and treatment of a client who is intoxicated, incapacitated, or experiencing withdrawal of alcohol or drugs.

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

Y. Definitions beginning with “Y”:

(1) “Youth” means residents 14 years of age and older up to age 18.

(2) “Youth staff” means a person who has contact with youth in a licensed facility and includes the owner, operator or director of a program, volunteers, full-time, part-time, and contract employees.

Z. Definitions beginning with “Z”: [RESERVED] [8.321.11.7 NMAC - N, 7/1/2024]

8.321.11.8 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. [8.321.11.8 NMAC - N, 7/1/2024]

8.321.11.9 SCOPE OF SERVICES:

A. General scope of services: These regulations apply to crisis triage centers (CTC) which are health facilities offering youth and adult outpatient and residential care services. A CTC provides stabilization of behavioral health crises as outpatient stabilization or short-term residential stabilization in a residential rather than institutional setting, which may provide an alternative to hospitalization or incarceration. The CTC services may vary in array of services offered to meet the specific needs of different communities in New Mexico. A CTC may provide limited detoxification services but is differentiated from a detoxification center in that it does treat individuals who require treatment beyond Level III.7-D: Medically Monitored Inpatient Detoxification. The CTC provides emergency behavioral health triage and evaluation. The CTC may serve individuals 14 years of age or older who meet admission criteria. The CTC shall offer services to manage individuals at high risk of suicide or intentional self-harm. The CTC shall not refuse service to any individual who meets criteria for services.

B. Type of services: (1) a CTC structured for less than 24-hour stays providing only outpatient withdrawal management or other stabilization services;

(2) a CTC providing outpatient and residential crisis stabilization services; and

(3) a CTC providing residential crisis stabilization services.

C. Limitations on

scope of services:

(1) the CTC may accept voluntary admissions, individuals who are voluntarily seeking treatment, involuntary admissions and individuals who are not voluntarily seeking treatment;

(2) the CTC shall not provide detoxification services beyond Level III.7-D: Medically Monitored Inpatient Detoxification services;

(3) the CTC shall not provide medical care not related to crisis triage intervention services beyond basic medical care of first aid and CPR;

(4) the CTC shall not provide residential services in excess of 14 calendar days, unless an involuntary admission is accepted and the CTC shall comply with all hearing and treatment provisions of Section 43-1-1 et al. NMSA;

(5) the CTC shall not provide ongoing outpatient behavioral health treatment;

(6) the CTC shall not exceed the capacity for which the CTC is licensed;

(7) a CTC with both adult and youth occupants must locate youth rooms and restrooms in a unit or wing that is physically separated from the adult facilities;

(8) A CTC shall not administer emergency psychotropic medications as described in Subsection M of Section 43-1-15 NMSA 1978 if admitting only voluntary admissions. Any use of emergency psychotropic medications for involuntary admissions shall only be done in accordance with Subsection M of Section 43-1-15 NMSA 1978.

D. License required:

(1) a CTC shall not be operated without a license issued by the authority;

(2) any facility providing the services described in these regulations on the effective date of these regulations, shall apply for a CTC license within 180 days;

(3) a CTC licensed under these regulations shall

not assert, represent, offer, provide or imply that the CTC 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);

(4) if an unlicensed CTC 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 unlicensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

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

8.321.11.10 INITIAL

LICENSE PROCEDURES: These regulations should be thoroughly understood and used by the applicant, when applying for the initial CTC license. The applicant for an initial CTC 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 crisis triage 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 CTC and at a minimum, include the following:

- (1) the name of CTC;
- (2) the name of the legal owner and licensee and the type of legal entity under which the CTC shall be owned;
- (3) the name of the management company, if any;
- (4) the type of facility license requested;
- (5) the name and resume of the proposed administrator;
- (6) the anticipated number of residential and non-residential clients to be served;
- (7) the intended population and age range of the clients to be served;

(8) the number of residential beds in the proposed CTC;

(9) the physical address of CTC including building name or suite number;

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

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

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

(13) a list of all services to be provided at the CTC 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. 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 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. 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.

C. Building plans:

The CTC building plans must be of professional quality, prepared and stamped by an Architect licensed by the state of New Mexico pursuant to Subsection B of Section 61-15-9 NMSA 1978. One copy of the building plans must be submitted, printed on substantial paper measuring at least 24 inches by 36 inches and drawn to an accurate scale of at least one-eighth inch to 1 foot. The building plans for renovated 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 following plans are the minimum required for all facilities in new and / or renovated construction:

(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 clients, any permanent structures, including notes on construction materials used.

(2) **Life safety and code compliance 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, examination room, office, client (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)

Dimensioned floor plan: showing all exterior and interior dimensions of all rooms, spaces, and corridors, etc.

(5) **Exterior**

building elevations: noting all building heights, locations of exterior doors, and any operable and fixed windows (sill heights).

(6) **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.

(7) **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.

(8) **Special**

systems plan: location of fire extinguishers, heat and smoke detectors, nurse call systems, and operational elements of alarm system.

(9)

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.

(10) **Plumbing**

plan: noting all plumbing fixture locations, fixture types.

(11) **Electrical**

plan: noting power and lighting layouts, exit lighting, emergency lighting fixtures, emergency power systems (if any), electrical panel information.

(12) **Other**

plans: As necessary (ie; phasing plan) to describe compliance with the other requirements in applicable regulations.

D. 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 CTC's building plans and local building officials have issued a construction permit, construction may begin. This provision is an ongoing requirement and applies to, and includes all construction at the CTC, 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 CTC 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 building plan approval by the authority before construction begins.

E. Existing or

renovated construction: If the proposed CTC 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 and submitted to the authority for review and approval. Submit phasing plan if project construction will be phased. New facilities proposed for licensure in existing buildings must comply with all requirements building requirements as if it were completely new construction. If the CTC is located within another licensed facility such as a hospital, the life safety inspection will still be required for compliance with 8.321.11 NMAC requirements. For residential CTC programs, the bed count must be separate from the licensed bed count of the original licensed facility. If a CTC is a separate building associated with an existing license, requirements of this regulation apply to that building.

F. Completed

construction: All new or renovated construction completed shall comply with the plans and specifications 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. Applicant must receive initial life safety code approval and a temporary license from this authority prior to accepting or admitting any clients into the CTC.

G. Additional

documents required for license application: The authority reserves the right to require an applicant to provide all additional documents, as part of its license application, in order for the authority to determine whether the applicant and the CTC are in full compliance with these regulations, as well as all other applicable statutes and regulations. At minimum, additional documents 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 CTC to operate in the jurisdiction in which it is located, including but not limited to:

(a)

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

(b)

written fire marshal 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;

(d) x-ray equipment (if any).

(3) **Board of pharmacy approvals:** A copy of CTC’s drug permit issued by the state board of pharmacy must be provided.

(4) **Program description:** The applicant must submit with its license application a program outlines consistent with these regulations which includes at a minimum, the following information:

(a) a list and description of all services and the scope of those services to be provided by the proposed CTC;

(b) projected number of clients to be served monthly, both residential and non-residential;

(c) a list of staffing and personnel requirements and duties to be performed;

(d) proposed staffing plans for both residential and non-residential programs;

(e) photocopies of written operating agreements with the following: treatment facilities for behavioral health and physical health care needs that are beyond the scope of the CTC;

(f) admission and discharge criteria; and

(g) an organizational structure diagram or chart including the administrator, governing body, clinical director, director of nursing, direct care staff, and other staff.

(5) **Policies and procedures:** The applicant must submit with its license application a copy of the CTC’s policies and procedures with a crosswalk to these regulations to show compliance. [8.321.11.10 NMAC - N, 7/1/2024]

8.321.11.11 LICENSE TYPES, VARIANCES & WAIVERS:

A. Temporary license:

(1) 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.

(2) The licensing authority may, at its sole discretion, issue a temporary license before clients are admitted, provided that the CTC has:

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

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

(c) its program, policies, and procedures have been reviewed and approved for compliance with these regulations.

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

(a) a period, not to exceed 120 days, during which the CTC must correct all specified deficiencies;

(b) no more than two consecutive temporary licenses shall be issued in accordance with applicable statutes and regulations;

(c) a finding that the applicant is qualified and in full compliance with life safety code requirements;

(d) the CTC being allowed to accept clients and provide care services, subject to any requirements and restrictions attached to the temporary license;

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

B. Annual license:

An annual license is issued for a one-year period to a CTC 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 CTC, 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 CTC’s clients, patients 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 jeopardy the health, safety or welfare of clients.

(1) all variances shall be in writing, attached to the license and shall expire upon remodel of the CTC or change of ownership;

(2) all waivers shall be in writing, attached to the license 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.
[8.321.11.11 NMAC - N, 7/1/2024]

8.321.11.12 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 CTC 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, remodeling, or additions to the CTC since issuance of the last license, and the construction has not been previously approved by the authority, 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 all additional documents, including any necessary proof of current compliance, as part of its license renewal application for the authority to determine whether the applicant and the CTC 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 CTC 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 \$100 for each day, in accordance with Section 24-1-5 NMSA 1978, as amended, that the CTC continues to operate without a license providing that during such time the CTC remains in full compliance with these regulations. If

the CTC does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the CTC 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 crisis triage 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 CTC of the renewal date or the expiration date of the CTC's license.

E. After issuance of the initial license, if there has been no construction, remodeling or additions to the CTC and the CTC is in substantially the same condition as the plans on file with the authority, and the CTC is in substantial compliance with these regulations and provides an application and fee the CTC may be issued a license renewal. 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.

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

8.321.11.13 POSTING OF LICENSE:

The CTC's official license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

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

8.321.11.14 NON-TRANSFERABLE RESTRICTION ON LICENSE:

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:

- A.** any ownership interest in the CTC changes;
- B.** the CTC changes location;
- C.** the licensee of the CTC changes; or
- D.** the CTC discontinues operation.

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

8.321.11.15 CHANGE OF OWNERSHIP:

When a change of ownership occurs, an initial license application must be submitted by the new owner per the requirements in this section. The new owner must demonstrate compliance with these regulations the instant it takes responsibility of the CTC. The licensing authority may, at its sole discretion, approve a change of ownership. In addition to the requirements in Section 8.321.11.10 NMAC - application for licensure, the new owner must submit the following at least 60 days prior to completion of the change of ownership:

- A.** An explanation of terms of the change of ownership and the date the ownership will change.
- B.** Documents evidencing the change of ownership such as proof of sale or donation, lease of any portion of the CTC or other relevant documents.

C. Building plans of the current structure with any modifications known to the current or new owner.

D. A continuity of care transition plan that describes how the new owner will maintain the provision of services and continuity of care, keep residential clients safe and meet the requirements of these regulations at the instant it takes responsibility of the CTC. The plan must state the actions that will occur, the party responsible for taking each

action, and the expected date of completion for each action. The plan must include the following:

(1) list of all residential clients at the time of notice to the licensing authority;

(2) review and update of all residential client assessments. All assessments must be current and accurate;

(3) review and update of all crisis intervention plans for clients receiving service at the time of transition and for all residential clients. All plans must be current and accurate;

(4) staffing as required in Section 8.321.11.29 NMAC of these rules and the number and positions of current staff that will be hired by the new owner;

(5) staff training as required in Section 8.321.11.32 NMAC;

(6) identification of all waivers or variances held by the current owner, and submission of any necessary waivers or variances. All waivers or variances held by the current owner are void upon the change of ownership;

(7) signed transfer agreements as required in Section 8.321.11.22 NMAC of these rules.

(8) 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 CTC may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

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

8.321.11.16 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.

A. If a CTC 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.

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

8.321.11.17 ENFORCEMENT:

A. 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.

B. 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:

(1) failure to comply with any provision of these regulations;

(2) failure to allow access to the CTC and survey(s) by authorized representatives of the licensing authority;

(3) allowing any person to work at the CTC 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, staff or visitors;

(4) allowing any person, subject to all applicable statutes and regulations, to work

at the CTC 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 caregiver's criminal history screen act, as amended, and related regulations, as amended.

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

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

8.321.11.18 HEARING PROCEDURES:

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

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

8.321.11.19 FACILITY SURVEYS:

A. Application for licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a CTC 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.

C. Upon receipt of a report 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 CTC 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 CTC 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) plan of correction shall be signed and dated by the administrator or authorized representative.

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. [8.321.11.19 NMAC - N, 7/1/2024]

8.321.11.20 REPORTING OF INCIDENTS:

All CTC’s 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. 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 CTC 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, hospitalization, or physical impairment of a client or staff; and

D. abuse, neglect, exploitation, and injuries of unknown origin and other reportable incidents in accordance with 8.370.9 NMAC. [8.321.11.20 NMAC - N, 7/1/2024]

8.321.11.21 GOVERNING BODY:

All CTC’s licensed under these regulations must have a formally constituted governing body or operate under the governing body of the legal entity, which has ultimate authority over the CTC.

A. The governing body shall:

- (1) establish and adopt bylaws that govern its operation;
- (2) approve policies and procedures;
- (3) appoint an on-site administrator or chief executive officer/administrator for the CTC; and
- (4) review

the performance of the administrator/ chief executive officer at least annually.

B. The governing body may appoint committees consistent with the size and scope of the CTC. [8.321.11.21 NMAC - N, 7/1/2024]

8.321.11.22 POLICIES AND PROCEDURES:

The CTC shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the CTC’s operation. The administrator shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the CTC’s written policies and procedures shall include how the CTC intends to comply with all requirements of these regulations and address:

- A.** the establishment, composition, and responsibilities of

the governing body;

B. administration including the minimum qualifications of the administrator, the process to hire an administrator, and define the administrator’s authority, responsibility, and accountability including plans for the administrator’s absence;

C. quality assurance and improvement systems;

D. incident management system;

E. the maintenance of the CTC, 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; and proper disposal of waste liquids used for cleaning contaminated areas;

F. quality of care and services including appropriate and inappropriate admission and discharge criteria; and client risk assessment;

G. referral of clients for services; transfer of clients to a hospital or other CTC or program; ambulance transfer services; and emergency procedures and resuscitative techniques;

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

I. infection control and prevention;

J. staffing plan, personnel records, and personnel including written job descriptions for all staff with necessary qualifications consistent with these rules; minimum staffing; and staff development;

K. 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;

L. the retention, maintenance, security and destruction of client, personnel and CTC records;

M. research procedures for any research being conducted at the CTC in compliance with these regulations;

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

O. housekeeping services to keep the CTC safe, clean, and free of hazards and clutter;

P. laundry services for the CTC’s laundry and resident’s laundry including handling, process and storage of clean and dirty laundry;

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

R. laboratory services;

S. client’s personal belongings including locked storage and contraband;

T. client rights;

U. safety management plan including, but not limited to, risk assessment, control of potentially injurious items, crisis prevention and intervention, physical restraint, and mitigation of high risk behaviors including suicide and assault. The safety plan shall follow a least to most restrictive sequence;

V. authorized entry to or exit from the CTC including the residential and outpatient components;

W. withdrawal management services; and

X. primary source verification of licenses, credentials, experience and competence of staff. [8.321.11.22 NMAC - N, 7/1/2024]

8.321.11.23 QUALITY IMPROVEMENT SYSTEMS:

Each CTC shall establish and maintain quality improvement systems including policies and procedures for quality assurance and quality improvement and have a quality committee.

A. The CTC shall establish a quality committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, certified peer support worker, and psychiatrist.

Other committee members may be specified by rules governing payor requirements. Members may participate on the quality committee by teleconference. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients. The systems are approved by the governing body and updated annually.

(1) the quality improvement systems must include:

(a) chart reviews;

(b) annual review of policies and procedures;

(c) data collection, and other program monitoring processes;

(d) data analyses;

(e) identification of events, trends and patterns that may affect client health, safety or treatment efficacy;

(f) identification of areas for improvement;

(g) intervention plans, including action steps, responsible parties, and completion time; and,

(h) evaluation of the effectiveness of interventions.

(2) when areas of concern or potential problems are identified by the committee, the CTC shall act as soon as possible to avoid and prevent risks to clients.

(3) the quality committee shall take and maintain meeting minutes.

B. The quality committee shall review at a minimum, the following:

(1) high-risk situations and critical incidents (such as suicide, death, serious injury, violence and abuse, neglect and exploitation) within 24 hours;

(2) medical emergencies;

(3) medication variance;

(4) infection

control;

(5) emergency safety interventions including any instances physical restraints; and

(6) environmental safety and maintenance.

C. The quality committee is responsible for the implementation of quality improvement processes.

D. The quality committee shall submit a quarterly report to the governing body for review and approval.

E. The governing body shall evaluate the CTC’s effectiveness in improving performance.

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

8.321.11.24 RISK ASSESSMENT:

A. The CTC shall develop policies and procedures addressing risk assessment and mitigation including, but not limited to: assessments, crisis intervention plans, treatment, approaches to supporting, engaging, and problem solving, staffing, levels of observation and documentation. The policies and procedures must prohibit seclusion and address physical restraint, if used, and the CTC’s response to clients that present with imminent risk to self or others, assaultive and other high-risk behaviors.

B. Use of seclusion is prohibited unless the facility is joint commission accredited, and unless the facility has obtained a prior waiver from the authority authorizing the facility to use seclusion. The use of physical restraint or seclusion must be consistent with federal and state laws and regulation (e.g., Section 32A-6A-10 NMSA 1978, concerning physical restraint and seclusion of minors).

C. Physical restraint, as defined in these regulations, shall be used only as an emergency safety intervention of last resort to ensure the physical safety of the client and others, and shall be used only after less intrusive or restrictive interventions have been determined to be ineffective.

D. Physical restraint shall not be used as punishment or for the convenience of staff.

E. Physical restraint is implemented only by staff who have been trained and certified by a CYFD or HCA recognized program in the prevention and use of physical restraint. This training emphasizes de-escalation techniques and alternatives to physical contact with clients as a means of managing behavior and allows only the use of reasonable force necessary to protect the client or other person from imminent and serious physical harm. Clients and youth do not participate in the physical restraint of other clients and youth.

F. Crisis intervention plans must document the use of physical restraints and address: the client's medical condition(s); the role of the client's history of trauma in their behavioral patterns; specific suggestions from the client regarding prevention of future physical interventions.

G. All clients physically restrained shall be afforded full privacy away from other clients receiving services.

H. A chemical restraint shall not be utilized under any circumstance. A chemical restraint is a drug or medication when it is used as a restriction to manage the client's behavior or restrict the client's freedom of movement, and is not a standard treatment or dosage for the client's condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

I. Mechanical restraint shall not be utilized under any circumstances unless the facility is joint commission accredited, and unless the facility has obtained a prior waiver from the authority authorizing it to utilize mechanical restraint. Mechanical restraint is the use of a mechanical device(s) to physically restrict a client's freedom of movement, performance of physical activity or

normal access to their body and is distinct from physical restraint. The use of mechanical restraint must be consistent with federal and state laws and regulation (e.g., Section 32A-6A-10 NMSA 1978, concerning mechanical restraint of minors).

J. The staff implementing the physical restraint shall conduct a debriefing, with the client present if possible, immediately following the incident to include the identification of the precipitating event, unsafe behavior and preventive measures with the intent of reducing or eliminating the need for future physical restraint. The debriefing shall be documented in the client's record.

K. The client's crisis intervention plan shall be updated: within 24 hours of admission or prior to discharge, whichever comes first; and following physical restraint use to incorporate the debriefing and changes needed to lessen the chance of the situation reoccurring.

L. Each incident of physical restraint shall be documented in the client's record including:

- (1) the less intrusive interventions that were attempted or determined to be inappropriate prior to the incident;
- (2) the precipitating event immediately preceding the behavior that prompted the use of physical restraint;
- (3) the behavior that prompted the use of a physical restraint;
- (4) the names of the mental health professional who observed the behavior that prompted the use of the physical restraint;
- (5) the names of the staff members implementing and monitoring the use of physical restraint; and
- (6) a description of the of the physical restraint incident, including the type and length of the use of physical restraint, the client's behavior during and reaction to the physical restraint and the name of the supervisor informed of the use of physical restraint.

M. Physical restraints orders are issued by a restraint/clinician within one hour of initiation of physical restraint and include documented clinical justification for the use of physical restraint.

(1) if the client has a treatment team physician or advanced practice registered nurse and he or she is available, only he or she may order physical restraint;

(2) if physical restraint is ordered by a restraint clinician, not the client's treatment team physician or advanced practice registered nurse, the restraint clinician will contact the client's treatment team physician or advanced practice registered nurse as soon as possible to inform him or her of the situation requiring the physical restraint, and document in the client's record the date and time the treatment team physician or advanced practice registered nurse was consulted and the information imparted;

(3) if the order for physical restraint is verbal, the verbal order must be received by a restraint/clinician or a New Mexico licensed registered nurse (RN) or practical nurse (LPN). The restraint/clinician must verify the verbal order in a signed, written form placed in the client's record within 24 hours after the order is issued;

(4) each order for physical restraint must be documented in the client's record and must include:

- (a) the name of the restraint/clinician ordering the physical restraint;
- (b) the date and time the order was obtained;
- (c) the emergency safety intervention ordered, including the length of time;
- (d) the time the emergency safety intervention began and ended;
- (e) the time and results of one-hour assessment(s), if ordered;
- (f) the emergency safety situation that required the client to be physically restrained; and

(g) the name, title, and credentials of staff involved in the emergency safety intervention.

N. Suicide risk interventions must include the following:

(1) a registered nurse or other licensed mental health professional may initiate suicide precautions and must obtain physician or advanced practice registered nurse order within one hour of initiating the precautions;

(2) modifications or removal of suicide precautions shall require clinical justification determined by an assessment and shall be ordered by a physician or advanced practice registered nurse and documented in the clinical record;

(3) staff and client shall be debriefed immediately following an episode of a suicide attempt or gesture, identifying the circumstances leading up to the suicide attempt or gesture;

(4) an evaluation of the client by a medical, psychiatric or independently licensed mental health provider must be done immediately, or the client must be transferred to a higher level of care immediately.

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

8.321.11.25 CLIENT ACCEPTANCE, ADMISSION AND DISCHARGE CRITERIA:

A. The CTC shall develop admission and discharge criteria related to stabilization of behavioral health crises including out-patient and short-term residential stabilization.

B. The CTC shall post operating and admission hours in a location visible from the exterior of the facility.

C. If a client is not admitted to the CTC, the CTC shall maintain documentation of the rationale for the denial of services to the individual and any referrals made.

D. Admission criteria for adults and youth must be available in writing to all clients and visitors to the CTC.

E. Materials describing services offered, eligibility requirements and client rights and responsibilities must be provided in a form understandable to the client with consideration of the client's primary language, and the mode of communication best understood by persons with visual or hearing impairments, as applicable.

F. The CTC shall not refuse to admit a client solely on the basis of the individual living in the community on a court ordered conditional release.

G. The CTC shall conduct an assessment for each client presenting for admission. The admission assessment shall contain an assessment of past trauma or abuse, how the individual served would prefer to be approached should he become dangerous to himself or to others and the findings from this initial assessment shall guide the process for determining interventions.

H. All residential admissions of youth 14 years of age and older must comply with applicable state and federal laws.

I. Staff shall inspect clients, their clothing, and all personal effects for contraband and weapons before admission to the residential component to ensure the safety of the patient and staff.

J. Discharge planning shall begin upon admission.

K. Prior to a client returning to a less restrictive environment, staff, with the consent of the client, shall work with the client's support system, as appropriate, to prepare the client for discharge.

L. Discharge plan and summary information shall be provided to the client at the time of discharge that includes:

(1) significant findings relevant to the client's recovery;

(2) client crisis stabilization plan and progress;

(3) recommendations and documentation for continued care, including appointment times, locations and contact information for providers;

(4) recommendations for community services if indicated with contact information for the services;

(5) documentation of notification to the client's primary care practitioner, if applicable;

(6) evidence of involvement by the client as documented by his signature or refusal to sign; and

(7) signatures of all staff participating in the development of plan.

M. A copy of the discharge plan shall be provided to post discharge service provider(s). [8.321.11.25 NMAC - N, 7/1/2024]

8.321.11.26 PROGRAM SERVICES:

A licensed mental health professional must assess each individual with the assessment focusing on the stabilization needs of the client. It must be done in a timely manner congruent with the urgency of the presenting crisis, and consistent with the policies and procedures. The assessment must include: medical and mental health history and status, the onset of illness, the presenting circumstances, risk assessment, cognitive abilities, communication abilities, social history and history as a victim of physical abuse, sexual abuse, neglect, or other trauma as well as history as a perpetrator of physical or sexual abuse.

A. The CTC shall provide education and clinical programming designed to meet the stabilization needs of each client and implement crisis stabilization plans.

B. Crisis stabilization plan - A licensed mental health professional must document a crisis stabilization plan to address needs identified in the assessment.

(1) the crisis stabilization plan shall include at a minimum:

(a) diagnosis, a problem statement or statement of needs to be addressed;

(b) identification of behavioral health crisis leading to intake;

(c) goals that address the presenting crisis, and are consistent with the client’s needs, realistic, measurable, linked to symptom reduction, and attainable by the client during the client’s projected length of stay;

(d) specific treatment(s) provided, method(s) and frequency of treatment, and staff responsible for delivering treatment;

(e) criteria describing evidence of stabilization;

(f) discharge planning;

(g) evidence of involvement by the client and legal guardian as documented by his signature or refusal to sign; and

(h) signatures of all staff participating in the development of plan.

(2) A copy of the individual crisis stabilization plan shall be provided to the client, and guardian if applicable.

(3) When program services are offered in a group setting, groups for adults and groups for youth must be separate. [8.321.11.26 NMAC - N, 7/1/2024]

8.321.11.27 CLIENT RIGHTS:

A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a CTC, a client, parent, shall be given the applicable written description of the adult’s or youth’s legal rights, translated into client’s preferred language, if necessary, to meet the client’s understanding.

B. A written copy of the adult client’s legal rights shall be provided to the adult client, or agent, if applicable, or to the most significant responsible party in the following order:

(1) the client’s spouse;

(2) significant other;

(3) any of the client’s adult children;

(4) the client’s parents;

(5) the client’s advocate.

C. The client rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers to contact the authority to file a complaint.

D. To protect client rights, the CTC shall:

(1) treat all clients with courtesy, respect, dignity and compassion;

(2) not discriminate in admission or services based on gender, gender identity, sex, sexual orientation, client’s age, race, color, religion, physical or mental disability, or national origin;

(3) provide clients written information about all services provided by the CTC and their costs and give advance written notice of any changes;

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

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

(6) provide the right to privacy, including privacy during assessments, examinations, consultations and treatment;

(7) protect the confidentiality of the client’s clinical record;

(8) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; and reasonable privacy in the client’s own room;

(9) protect the client’s right to receive visitors during designated visiting hours except when restricted for good cause pursuant to a physician’s order;

(10) protect the client’s right to receive visits from his attorney, physician, psychologist, clergyman, or social worker in private irrespective of visiting hours;

(11) provide clients the ability to send and receive

private correspondence, as well as reasonable private access to telephone calls and, in cases of personal emergencies, reasonable use of long-distance calls;

(12) ensure that clients:

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

(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;

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

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

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

(g) have the right to participate in the development of their crisis stabilization plan;

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

(i) have the right to refuse treatment and to be free from unnecessary or excessive medication; and

(j) have the right to manage and control their personal finances. [8.321.11.27 NMAC - N, 7/1/2024]

8.321.11.28 CLIENT CLINICAL RECORD: The client clinical records maintained by a crisis triage center in a paper-based or electronic system shall document the degree and intensity of the treatment provided to clients who are furnished

services by the CTC. A client's clinical record shall contain at a minimum:

- A.** the client's name and address;
 - B.** name, address, and telephone number of agent, or representatives;
 - C.** the source of referral and relevant referral information;
 - D.** all reports from client assessment (see program services assessment);
 - E.** the signed and dated informed consent for treatment including all medications and transfers;
 - F.** all additional medical and clinical documentation;
 - G.** the original crisis stabilization plan and all revisions;
 - H.** documentation of all treatment;
 - I.** laboratory and radiology results, if applicable;
 - J.** documentation of physical restraint observations, if utilized;
 - K.** a record of all contacts with medical and other services;
 - L.** a record of medical treatment and administration of medication, if administered;
 - M.** an original or original copy of all physician medication and treatment orders signed by the physician;
 - N.** signed consent for the release of information, if information is released;
 - O.** discharge plan.
- [8.321.11.28 NMAC - N, 7/1/2024]

8.321.11.29 STAFFING REQUIREMENTS:

- A.** Minimum staffing requirements:
 - (1)** The CTC shall have an on-site administrator, which can be the same person as the clinical director.
 - (2)** The CTC shall have a full time clinical director appropriately licensed to provide clinical oversight.
 - (3)** The CTC

shall have an RN present on-site 24 hours a day, seven days a week or as long as clients are present in programs that do not offer residential services, to provide direct nursing services. This requirement does not apply to CTCs offering 23 hours or less non-residential services; instead these CTCs may have onsite medical professionals who have access to immediate support and supervision by an RN or a higher-level provider in accordance with Section 24-25-1 et al. NMSA 1978 New Mexico Telehealth Act.

(4) An on-call physician or advanced practice registered nurse shall be available 24 hours a day by phone, and available on-site as needed or through telehealth.

(5) Consultation by a psychiatrist or prescribing psychologist may be provided through telehealth.

(6) The CTC shall maintain sufficient staff including direct care and mental health professionals to provide for supervision and the care of residential and non-residential clients served by the CTC, based on the acuity of client needs.

(7) At least one staff trained in basic cardiac life support (BCLS) and first aid shall be on duty at all times. In addition, one staff trained in the use of the automated external defibrillator (AED) equipment shall also be on duty.

B. Other staff requirements:

(1) The CTC shall ensure that the type and number of professional staff are:

(a) licensed, certified or credentialed in the professional field as required, and practice within the scope of the license;

(b) present in numbers to provide services, supports, care, treatment and supervision to clients as required; and

(c) experienced and competent in the profession they are licensed or practice.

(2) The CTC shall comply with all applicable laws, rules and regulations governing caregivers' criminal history screen requirements and employee abuse registry requirements.

(3) The CTC shall ensure that, within the first 60 days of providing direct care to individuals, all staff, volunteers and contractors having direct contact with clients shall receive required training.

(4) The CTC shall be staffed to ensure the safety of clients when staff are accused of abuse, neglect or exploitation.

(5) In instances of involuntary admission as allowed under amendments to Section 43-1-1 NMSA, Mental Health and Developmental Disabilities Code, adequate staffing must be provided to ensure patient and staff safety, and the CTC must meet medical records requirements for licensure of psychiatric hospitals as set forth, in 8.370.12 NMAC.

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

8.321.11.30 MINIMUM STAFF QUALIFICATIONS:

- A.** Administrator:
 - (1)** Must be at least 21 years of age.
 - (2)** The administrator shall possess experience in acute mental health and hold at least a bachelor's degree in the human services field or be a registered nurse with experience or training in acute mental health treatment.
- B.** Clinical director:
 - (1)** Be at least 21 years of age.
 - (2)** Be a licensed independent mental health professional or certified nurse practitioner or certified nurse specialist with experience and training in acute mental health treatment and withdrawal management services, if withdrawal management services are provided.
- C.** Registered nurse:
 - (1)** Must be at least 18 years of age.
 - (2)** Must have a current NM Registered Nurse

license.
 (3) Must possess experience and training in acute mental health treatment, and withdrawal management services if withdrawal management services are provided.

D. Direct service staff must be at least 18 years of age. [8.321.11.30 NMAC - N, 7/1/2024]

8.321.11.31 PERSONNEL RECORDS:

A. The CTC 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 CTC and include:

- (1) employment application;
- (2) training records;
- (3) licenses and certifications;
- (4) caregiver criminal history screening documentation pursuant to Section 8.370.5 NMAC; and
- (5) employee abuse registry documentation pursuant to Section 8.370.8. NMAC. [8.321.11.31 NMAC - N, 7/1/2024]

8.321.11.32 STAFF TRAINING:

A. Training for each new employee and volunteer who provides direct care shall include a minimum of 16 hours of training and be completed prior to providing unsupervised care to clients.

B. At least 12 hours of on-going training shall be provided to staff that provides direct care at least annually; the training and proof of competency shall include at a minimum:

- (1) behavioral health interventions;
- (2) crisis interventions;
- (3) substance use disorders and co-occurring disorders;

(4) withdrawal management protocols and procedures, if withdrawal management is provided;

(5) clinical and psychosocial needs of the population served;

(6) psychotropic medications and possible side effects;

(7) ethnic and cultural considerations of the geographic area served;

(8) community resources and services including pertinent referral criteria;

(9) treatment and discharge planning with an emphasis on crisis stabilization;

(10) fire safety and evacuation training;

(11) safe food handling practices (for persons involved in food preparation), 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.

(12) confidentiality of records and client information;

(13) infection control;

(14) client rights;

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

(16) smoking policy for staff, clients and visitors;

(17) methods to provide quality client care;

(18) emergency procedures; and

(19) adverse medication reactions;

(20) the proper way to implement a crisis intervention plans.

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

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

8.321.11.33 MINIMUM SAFETY REQUIREMENTS:

A. The CTC shall have policies and procedures regarding authorized entry to or exit from the CTC including the residential component.

B. Control of potentially injurious items shall be clearly defined in policy to include:

(1) prohibition of flammables, toxins, ropes, wire clothes hangers, sharp pointed scissors, luggage straps, belts, knives, shoestrings, or other potentially injurious items;

(2) management of housekeeping supplies and chemicals, including procedures to avoid access by individuals during use or storage. Whenever practical, supplies and chemicals shall be non-toxic or non-caustic;

(3) safeguarding use and disposal of nursing and medical supplies including drugs, needles and other "sharps" and breakable items;

(4) the use of durable materials for furniture not capable of breakage into pieces that could be used as weapons or present a hanging risk.

C. To the fullest extent permitted by law, weapons shall be prohibited at the CTC.

D. All law enforcement officers or other individuals authorized by law to carry firearms shall be asked to leave their firearms locked in their vehicles or placed in a secure lockbox in an area in the CTC which is not accessible to clients.

E. The CTC shall develop and implement policies and procedures that describe interventions that prevent crises, minimize incidents when they occur, and are organized in a least to most restrictive sequence. The written policies and procedures shall:

(1) emphasize positive approaches to interventions;

(2) protect the health and safety of the individual served at all times; and

(3) specify the methods for documenting the use of the interventions.

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

8.321.11.34 NUTRITION:

The CTC shall provide planned and nutritionally balanced meals to its residential clients and any client treated at the CTC for eight hours or longer 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. Dietary services: The CTC will develop and implement written policies and procedures that are maintained on the premises. All CTC food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

A. at least three nutritious meals per day shall be served;

B. no more than 14 hours may elapse between the end of an evening meal and the beginning of a morning meal;

C. therapeutic diets shall be provided when ordered by the physician;

D. under no circumstances may food be withheld for disciplinary reasons;

E. each CTC shall have seating capacity to reflect the licensed capacity, although clients may eat or be served in shifts during daily operations;

F. nutritional snacks shall be available to each client; and

G. weekly menus shall be posted in the dining area.

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

8.321.11.35 PHARMACEUTICAL SERVICES:

A. Pharmacological services shall be provided only on order by a prescribing professional and in accordance with the terms and conditions of such professional’s license. These services may be administered or monitored, if self-administered, by nursing staff.

B. The CTC shall establish and implement policies, procedures and practices that guide the safe and effective use of medications and shall, at a minimum, address the following:

(1) Medications shall be administered upon direct order from a licensed prescriber, and the orders for medications and care shall be written and signed by the licensed prescriber;

(2) Medications shall be used solely for the purposes of providing effective treatment..

C. There shall be no standing orders for psychotropic medication.

(1) Every order given by telephone shall be received by an RN or LPN and shall be recorded immediately and read back to the ordering physician. The order shall include the ordering physician’s name and shall be signed by a physician within 24 hours. Such telephone orders shall include a note on the order that an order was made by telephone, and the content of, justification for, and the time and date of the order.

(2) Medication management policies and procedures shall follow federal and state laws, rules and regulations, and shall direct the management of medication ordering, procurement, prescribing, transcribing, dispensing, administration, documentation, wasting or disposal and security, to include the management of controlled substances, floor stock, and physician sample medications.

(3) The CTC shall develop a policy on informed consent on medication, including the right to refuse medication and the

CTC’s plan for transfer of patients who lack capacity to consent to medications.

(4) The CTC shall develop and implement policies and procedures that describe actions to follow when adverse drug reactions and other emergencies related to the use of medications occur, and emergency medical care that may be initiated by a registered nurse in order to mitigate a life-threatening situation.

D. Medication distribution stations shall be in accordance with standards set forth by the New Mexico board of pharmacy.

E. 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.

F. Outdated drugs and biologicals must be disposed of in accordance with methods outlined by the New Mexico state board of pharmacy.

G. One individual shall be designated responsible for pharmaceutical services to include accountability and safeguarding.

H. Keys to the drug room or pharmacy must be made available only to personnel authorized by the individual having responsibility for pharmaceutical services.

I. Adverse reactions to medications must be reported to the physician responsible for the patient and must be documented in the patient’s record.

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

8.321.11.36 LABORATORY SERVICES:

A. Laboratory work and other diagnostic procedures deemed necessary shall be performed as ordered by the physician.

B. The CTC shall comply with clinical laboratory improvement amendments of 1988 (CLIA) requirements.

C. All lab test results performed either at the CTC or by contract or arrangement with another entity must be entered into the patient’s record.

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

8.321.11.37 INFECTION CONTROL:

A. The CTC shall develop and implement policies and procedures for infection control and prevention. Policies shall include: educational course requirements; decontamination; disinfection and storage of sterile supplies; cleaning; and laundry requirements, and address the following:

- (1) universal precautions when handling blood, body substances, excretions, secretions;
- (2) proper disposal of biohazards;
- (3) proper hand washing techniques;
- (4) prevention and treatment of needle stick or sharp injuries; and
- (5) the management of common illness likely to be emergent in the CTC service setting and specific procedures to manage infectious diseases.

B. The CTC’s infection control risk assessment and plan is reviewed annually for effectiveness and revision, if necessary.

C. Staff shall be trained in and shall adhere to infection control practices, the release of confidential information and reporting requirements related to infectious diseases.

D. Where cleaning and decontamination of equipment and supplies are performed in the same room where clean or sterile supplies and equipment are stored, there shall be a physical separation of the clean or sterile supplies and equipment.

E. All special waste including blood, body fluids, sharps and biological indicators shall be disposed of in accordance with OSHA and the New Mexico environment department standards for biohazardous waste.

F. Each CTC shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.
[8.321.11.37 NMAC - N, 7/1/2024]

8.321.11.38 RESEARCH:

A. If a CTC is conducting research activities, the CTC must have written policies and procedures for conducting research, 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 CTC or by the employees or by affiliates of the CTC or when the CTC is used as a research site, such that the CTC’s clients and staff are involved in or the subjects of research; the research must be conducted:

- (1) by qualified researchers, having evidence in formal training and experience in the conduct of clinical, epidemiologic or sociologic research;
- (2) in accordance with the written, approved research policies and procedures;
- (3) by staff trained to conduct such research; and
- (4) in a manner that protects the client’s health, safety and right to privacy and the CTC and its clients from unsafe practices.
[8.321.11.38 NMAC - N, 7/1/2024]

8.321.11.39 CLIENT TRANSFERS:

A. The CTC shall have policies and procedures to stabilize and transfer clients in need of a higher level of care.

B. The CTC shall:

- (1) discuss recommendations for transfer with the client or client’s legal guardian or agent and upon transfer, notify the client’s legal guardian or agent;
- (2) make the determination as to the time and manner of transfer to ensure no further deterioration of the client during the transfer between facilities;
- (3) specify the benefits expected from the transfer in the client’s record;
- (4) coordinate care with receiving facility prior to transfer; and

(5) send a copy of the client’s record with the client upon transfer.
[8.321.11.39 NMAC - N, 7/1/2024]

8.321.11.40 BUSINESS HOURS: The CTC shall post hours of operation and admissions on signage exterior to the building.
[8.321.11.40 NMAC - N, 7/1/2024]

8.321.11.41 PHYSICAL ENVIRONMENT AND GENERAL BUILDING REQUIREMENTS:

A. 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 CTC must be submitted.

B. CTCs licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and clients and in compliance with the American’s with Disabilities Act (ADA), current edition.

C. All buildings of the premises providing client care and services will be considered part of the CTC and must meet all requirements of these regulations. Where a part of the CTC services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

D. A CTC 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 by the licensing authority through plan review, consultation and on-site surveys during the licensing process.
[8.321.11.41 NMAC - N, 7/1/2024]

8.321.11.42 COMMON ELEMENTS FOR FACILITIES:

A. Public services shall include:

- (1) conveniently accessible wheelchair storage;
- (2) an ADA compliant reception and information counter or desk;
- (3) waiting areas;
- (4) conveniently accessible public toilets; and
- (5) drinking fountain (s) or water dispensers easily accessible to clients or other visitors.

B. Interview space(s) for private interviews related to mental health, medical information, etc., shall be provided.

C. General or individual office(s) for business transactions, records, administrative, and professional staff shall be provided. These areas shall be separated from public areas for confidentiality.

D. Special storage for staff personal effects with locking drawers or cabinets shall be provided.

E. General storage facilities for supplies and equipment shall be provided.
[8.321.11.42 NMAC - N, 7/1/2024]

8.321.11.43 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible hard-wired telephone for summoning help, in case of emergency, must be available in the CTC.

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).
[8.321.11.43 NMAC - N, 7/1/2024]

8.321.11.44 PARKING:

Sufficient space for off-street parking for staff, clients and visitors shall be provided. A designated parking

space(s) for one emergency, and one police vehicle shall be provided. Parking should be compliant with local zoning requirements and the 2009 New Mexico commercial building code, or current version.
[8.321.11.44 NMAC - N, 7/1/2024]

8.321.11.45 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, 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 used for client care 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 CTC must be maintained in a safe and sanitary condition at all times.
[8.321.11.45 NMAC - N, 7/1/2024]

8.321.11.46 HOUSEKEEPING:

A. The CTC must be kept free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.

B. Treatment rooms, waiting areas and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the clients.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a slip resistant finish.

D. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

E. Storage areas must be kept free from accumulation of refuse, discarded equipment, furniture, paper, et cetera.
[8.321.11.46 NMAC - N, 7/1/2024]

8.321.11.47 CUSTODIAL CLOSET(S):

A. Each CTC shall have at least one custodial closet which must be locked and restricted from client access.

B. Each custodial closet shall contain:
(1) a service sink; and

(2) storage for housekeeping supplies and equipment.

C. Each custodial closet must be mechanically vented to the exterior.

D. Custodial closets are hazardous areas and must be provided with one hour fire separation and one and three-quarter inches solid core doors which are rated at a 20 minute fire protection rating.
[8.321.11.47 NMAC - N, 7/1/2024]

8.321.11.48 HAZARDOUS AREAS:

A. Hazardous areas include the following:

(1) fuel fired equipment rooms;

(2) bulk laundries or laundry rooms with more than 100 sq. ft.;

(3) storage rooms with more than 50 sq. ft. but less than 100 sq. ft. not storing combustibles;

(4) storage rooms with more than 100 sq. ft. storing combustibles;

(5) chemical storage rooms with more than 50 sq. ft.; and

(6) garages, 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 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 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) any 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.

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. Doors to these rooms shall be one and three-quarter inches solid core. [8.321.11.48 NMAC - N, 7/1/2024]

8.321.11.49 FLOORS AND WALLS:

A. 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.

B. Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts. [8.321.11.49 NMAC - N, 7/1/2024]

8.321.11.50 EXITS:

A. Each floor of a CTC shall have exits as required by the New Mexico commercial building code and applicable version of the National fire protection association 11.

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 must be maintained in operable condition at all times.

D. Exit ways must be kept free from obstructions at all times. [8.321.11.50 NMAC - N, 7/1/2024]

8.321.11.51 CORRIDORS:

A. Minimum corridor width shall be five feet except work corridors less than six feet in length may be four feet in width.

B. For facilities

contained within existing commercial or residential buildings, less stringent corridor widths may be allowed if not in conflict with building or fire codes. A waiver or variance may be requested but must be approved by the licensing authority prior to occupying the licensed part of the building. [8.321.11.51 NMAC - N, 7/1/2024]

8.321.11.52 STAFF STATION:

A. Each client care area in the residential unit shall have a staff station located to provide visual or virtual monitoring of all resident room corridors and access to secured access to outdoor area, equipped with access to residential clients' records, a desk or work counter, a cleaning area with a sink with hot and cold running water, operational telephone, and emergency call system.

B. Locked storage area for drugs or pharmacy grade, locked medication cart.

C. Access to a biohazard disposal unit for needles, and other "sharps," and breakable items.

D. A reliable monitored emergency call system shall be provided for staff use in the event of an emergency.

E. If a kitchen is not open at all times to residents, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving residents between meal nourishment shall be provided.

F. View of fire alarm control panel, generator panel (if any), and any other life safety code components. [8.321.11.52 NMAC - N, 7/1/2024]

8.321.11.53 SECURED ENVIRONMENT/OUTDOOR AREA:

A. The CTC shall provide a secure environment for client safety. A secured environment is a CTC and grounds that have secured or monitored exits. A secured environment for facilities that offer residential services may include but is not limited to: double alarm systems; gates connected to the fire alarm; or

tab alarms for residents at risk for elopement. Locked areas shall have an access code or key which CTC employees shall have on their person or available at all times in accordance with the Life Safety Code, NPFA 11, 212 or subsequent updates. For a CTC located within an existing licensed facility, a request for waiver may be submitted to the licensing authority containing an alternate plan for providing security for clients, provided that health, safety or welfare of the clients or staff would not be adversely affected.

B. In addition to the interior common areas required by this rule, a CTC providing residential services shall provide an outdoor secured environment independently accessible to residents for their year-round use.

(1) Fencing or other enclosures, not less than six feet high, shall protect the safety, security and privacy of the residents and have emergency egress gates that are connected to the emergency call system.

(2) Outdoor area shall not provide access to contact with the public. [8.321.11.53 NMAC - N, 7/1/2024]

8.321.11.54 ASSESSMENT ROOMS:

A. general purpose assessment rooms shall meet the following requirements:

B. minimum floor area of 80 square feet, excluding vestibules, toilets, and closets;

C. room arrangement shall permit at least two feet - eight inch clearance around furniture items used for exam or assessment;

D. a lavatory or sink for hand washing. [8.321.11.54 NMAC - N, 7/1/2024]

8.321.11.55 THERAPY/ TREATMENT ROOMS:

A. Shall have a minimum floor area of 120 square feet, excluding vestibule, toilet, and closets.

B. All walls shall be constructed to a minimum length of

10 feet.

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

8.321.11.56 ACTIVITY OR MULTIPURPOSE ROOM: The CTC shall provide a minimum of 250 square feet for common living area, dining and social spaces, or 40 square feet per resident, whichever is greater.

A. The CTC shall have a living or multipurpose room for the use of the residents. The furnishings shall be well constructed, comfortable and in good repair.

B. The activity or multi-purpose room may be used as a dining area.

C. The activity room or multipurpose rooms shall be provided with supplies to reasonably meet the interests and needs of the residents.

D. Each activity room shall have a window area of at least one tenth of the floor area with a minimum of at least 10 square feet.

E. A dining area shall be provided for meals. Facilities shall have tables and chairs in the dining area to accommodate the total number of residents in one sitting. All seating arrangements during meals shall allow clear access to the exits. Lunch times for adults and youth must be separate if there is only one lunch room.

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

8.321.11.57 MEETING ROOM: The CTC shall have adequate meeting rooms and office space for use by staff, the interdisciplinary care team and client and family visits. Other rooms may serve as meeting rooms, provided resident confidentiality is maintained. Meeting and treatment rooms must not hold both adults and youth at the same time.

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

8.321.11.58 RESIDENT ROOMS: The regulations in Section 8.321.11.58 NMAC apply to those facilities providing a residential treatment program.

A. A CTC providing residential treatment shall not exceed

the bed capacity approved by the licensing authority.

B. Resident rooms may be private or semi-private or dormitory style depending on assessed, resident acuity and need. Resident rooms must be separated by gender.

C. Facilities serving youth and adults must locate youth resident rooms and restrooms in a unit or wing that is physically separated from the adult facilities.

(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 resident and shall be furnished in such a manner that the room is not crowded and passage out of the room is not obstructed.

(3) A separate closet, bed (at least 36 inch wide), chair, towel bar, and non-metal trash receptacle, for each resident shall be provided.

(4) The beds shall be spaced at least three feet apart. Bunk beds, roll away beds, stacked beds, hide-a-beds, or beds with springs, cranks, rails or wheels, are not allowed.

D. Each resident room shall have a window to the outside. The area of the outdoor window shall be at least one tenth of the floor area of the room and allow for emergency egress. Windows may be textured or obscured glass to provide privacy without the use of any window coverings.

E. Resident rooms shall not be less than seven feet in any horizontal direction.

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

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

8.321.11.59 TOILETS, LAVATORIES AND BATHING FACILITIES:

A. General

Requirements:

(1) All fixtures and plumbing must be installed in accordance with current state and local plumbing codes.

(2) All toilets must be enclosed and vented.

(3) All toilet rooms must be provided with a lavatory for hand washing.

(4) All toilets must be kept supplied with toilet paper.

(5) All lavatories for hand washing must be kept supplied with disposable towels for hand drying or provided with mechanical blower.

(6) The number of and location of toilets, lavatories and bathing facilities shall be in accordance with International Building Code (IBC) requirements. Toilets for public use shall be located adjacent to the waiting area. Such factors as extent of services provided and size of CTC will also dictate requirements.

(7) Facilities serving youth must provide separate toilet and shower facilities for adults and youth.

B. Residential

component: Separate facilities shall be provided for male and female patients. Toilet and bathing facilities shall be located appropriately to meet the needs of residents.

(1) Facilities serving youth and adults must locate youth resident rooms and restrooms in a unit or wing that is physically separated from the adult facilities.

(2) 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.

(3) Toilets to be flush meter type (no tank).

(4) Mirrors cannot be glass or polished metal. A polycarbonate mirror, fully secured and flat mounted to the wall is required.

(5) Individual

shower stalls and dressing areas shall be provided. The shower head shall be recessed or have as smooth curve from which items cannot be hung.

(6) There shall not be any overhead rods, fixtures or privacy stall supports or protrusions capable of carrying more than a 30-pound load.

C. Staff restroom:

The CTC shall provide a separate staff toilet including, lavatory and shower, near staff station.

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

8.321.11.60 COLLECTION/

DRAW/LAB AREA: Facilities shall be reward to support laboratory procedures, if provided. Minimum facilities provided on-site shall include space for the following:

A. A urine collection room equipped with a toilet and hand washing sink.

B. Blood collection facilities with space for a chair, work counter, and lavatory.

C. Each CTC shall have accommodations for storage and refrigeration of blood, urine and other specimens in a dedicated specimen refrigerator.

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

8.321.11.61 NUTRITION:

A CTC offering a residential treatment program 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.

A. Menus must be approved by a licensed nutritionist. 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.

B. Dietary services. The CTC will develop and implement written policies and procedures that are maintained on the premises. All CTC 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;

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

(5) each CTC shall have seating capacity to accommodate the licensed capacity and be able to feed adult and youth clients separately, although clients may eat or be served in shifts during daily operations;

(6) nutritional snacks shall be available to each client; and

(7) weekly menus shall be posted in the dining area.

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

8.321.11.62 FOOD SERVICE:

Requirements of Section 8.321.11.62 NMAC apply to facilities providing a residential treatment program.

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

B. A CTC that contracts food preparation shall have a dietary or a kitchen area adequate to meet food service needs and arranged and equipped for the refrigeration, storage, preparation, and serving of food, dish and utensil cleaning and refuse storage and removal.

C. Dietary areas consisting of a food warming and refrigeration area 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.

D. A CTC that provides onsite food preparation shall comply with the New Mexico

environment department food preparation regulations.

E. A CTC with a kitchen area, whether used for on-site food preparation or not, must adhere to the following requirements:

(1) limit traffic incidental to the receiving, preparation and serving of food and drink;

(2) toilet facilities may not open directly into the kitchen;

(3) food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside;

(4) a separate hand washing sink with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen;

(5) a separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided;

(6) at least a three compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drain boards, at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drain board shall be available for prewashing and 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.

(7) 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;

(8) 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 an 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;

(9) approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment;

(10) the walls shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, and washable surface;

(11) the ceiling shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, washable, and seamless surface;

(12) 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;

(13) an exterior door from a food preparation area shall be effectively screened. Screen doors shall be self-closing;

(14) all rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted;

(15) rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or waste lines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

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

8.321.11.63 LAUNDRY SERVICES:

A. General requirements. The CTC shall provide laundry services, 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) All linens shall be changed as needed and at least weekly or when a new resident is to occupy the bed.

(6) The mattress pad, blankets and bedspread shall be laundered as needed and when a new resident is to occupy the bed.

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

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

(9) CTC 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.

(10) CTC shall have a small washer and dryer for immediate unit needs and to wash clients' clothes. These washing and drying units shall be equipped to sanitize clothes as a preventive measure of infection control.

(11) Residents may do their own laundry, if it is their preference and they are capable of doing so.

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

8.321.11.64 WATER:

A. A CTC 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.

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 CTC'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.

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. Back flow preventers (vacuum breakers) must be installed on hose bibs, laboratory sinks, service 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.

F. Hot water to hand washing facilities must not exceed 120 degrees fahrenheit.

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

8.321.11.65 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 CTC must be inspected and approved by the New Mexico environment department or recognized local authority.

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 closed and clean. [8.321.11.65 NMAC - N, 7/1/2024]

8.321.11.66 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; and
- (7) each panel board will be marked showing the services.

C. The use of jumpers or devices to bypass circuit breakers or fused switches is prohibited.

D. Light switches and electrical devices in the residential unit shall be secured with tamper resistant screws. [8.321.11.66 NMAC - N, 7/1/2024]

8.321.11.67 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 clients in mind.

E. Lighting fixtures in the residential unit shall be recessed, tamperproof or protective translucent cover. [8.321.11.67 NMAC - N, 7/1/2024]

8.321.11.68 ELECTRICAL CORDS AND RECEPTACLES:

A. 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.

B. 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.

C. The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited. [8.321.11.68 NMAC - N, 7/1/2024]

8.321.11.69 EMERGENCY POWER & LIGHTING:

Emergency electrical service with an independent power source which covers lighting at attendant stations, exit and corridor lights, boiler room, and fire alarm systems shall be provided.

A. The service may be battery operated if effective for at least four hours.

B. Facilities shall have emergency lighting with a minimum of two bulbs to light exit passageways.

C. Independent power source shall be in an exterior area near the exits and activate automatically

upon disruption of electrical service. [8.321.11.69 NMAC - N, 7/1/2024]

8.321.11.70 FIRE SAFETY COMPLIANCE:

All current applicable requirements of state and local codes for fire prevention and safety must be met by the CTC. [8.321.11.70 NMAC - N, 7/1/2024]

8.321.11.71 FIRE CLEARANCE AND INSPECTIONS:

Each CTC 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 CTC, the CTC 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 CTC. [8.321.11.71 NMAC - N, 7/1/2024]

8.321.11.72 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM:

Facilities with residential services 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. Sprinkler heads in the residential unit shall be of the protective type, either vandal proof or tamper resistant. Sprinkler systems for facilities without residential services must be in compliance with current state building code requirements regarding a sprinkler system. [8.321.11.72 NMAC - N, 7/1/2024]

8.321.11.73 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:

The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable.

A. Facilities 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. 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, living or activity 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 feet spacing.

(4) Heat detectors shall be installed in all kitchens and also powered by the house electrical service.
[8.321.11.73 NMAC - N, 7/1/2024]

8.321.11.74 FIRE

EXTINGUISHERS: Fire extinguisher(s) must be located in the CTC, 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 CTC;

(3) all fire extinguishers shall be inspected yearly, recharged as needed and 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.
[8.321.11.74 NMAC - N, 7/1/2024]

8.321.11.75 STAFF FIRE AND SAFETY TRAINING:

A. All staff of the CTC 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 CTC should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

B. CTC 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 CTC must conduct at least one fire and evacuation drill for each work shift for each quarter. When drills are conducted between 9:00 pm and 6:00 am, a coded announcement shall be permitted for use instead of audible alarms. A log must be maintained by the CTC showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill.

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

8.321.11.76 EVACUATION

PLAN: Each CTC 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 emergencies.

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

8.321.11.77 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, ventilation and air-conditioning system must be able to maintain interior temperatures in all rooms used by clients, staff or visitors with interior temperatures between 65 degrees fahrenheit and 78 degrees fahrenheit year-round.

C. The use of non-vented 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 CTC 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 CTC must be provided with a system for maintaining clients and staff's comfort during periods of hot weather, evaporative cooling is not allowed.

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. The door must be self-closing with three - quarter hour fire resistance.

J. Fireplace or wood burning stoves are prohibited.

K. The ceiling and air distribution devices (supply & return, etc.) in the residential component shall be a tamper resistant type.

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

8.321.11.78 WATER HEATERS:

A. Must be able to supply hot water to all hot water taps within the CTC 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). [8.321.11.78 NMAC - N, 7/1/2024]

8.321.11.79 ADDITIONAL REQUIREMENTS FOR FACILITIES SERVING YOUTH:

All requirements in the above rules apply to all facilities. For facilities serving youth, the additional requirements of this section must also be met.

A. Physical environment for general building requirements: Facilities serving adults and youth must locate youth resident rooms and restrooms in a unit or wing that is separated by sight and sound barriers from the adult facilities.

B. Enforcement involving suspension of license without prior hearing: Any CTC that allows any person, subject to all applicable statutes and regulations, to work at the CTC if that person is listed on the CYFD unreasonable risk background check and related regulations, as amended, may be subject to immediate suspension of its license without prior hearing.

C. Reporting of incidents: All facilities licensed under these regulations, must comply with all incident intake, processing, training and reporting requirements under all applicable NM Children’s Code, Section 32A-1-1 NMSA 1978, Children’s Mental Health and Developmental Disabilities Act, Section 32A-6A-1 NMSA 1978, Section 7.20.11 and Section 7.20.12 NMAC.

D. Policies And Procedures: The CTC shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the CTC’s operation. The administrator shall ensure that these policies and procedures are adopted,

administered and enforced to provide quality services in a safe environment. At a minimum, the CTC’s written policies and procedures shall include how the CTC intends to comply with all requirements of these regulations and address:

(1) immediate reporting of suspected child abuse, neglect or exploitation, pursuant to the NM Children’s Code and these licensing regulations;

(2) actions to be taken in case of accidents or emergencies involving a youth, including death;

(3) immediate personnel actions to be taken by the CTC if child abuse or neglect allegations are made involving a direct service staff;

(4) confidentiality of youth’ records;

(5) management of a youth who is a danger to themselves or others or presents a likelihood of serious harm to themselves or others. The CTC procedures must specify that immediate actions be taken to prevent such harm. At a minimum, the policies and procedures require that the following actions be taken and documented in the youth’s file:

(a) all appropriate actions to protect the health and safety of other youth, clients and staff who are endangered;

(b) all appropriate efforts to manage the youth’s behavior prior to proposing emergency discharge;

(6) Clinically appropriate and legally permissible methods of youth behavior management and discipline.

(7) The CTC shall prohibit in policy and practice the following:

(a) degrading punishment;

(b) corporal or other physical punishment;

(c) group punishment for one client’s behavior;

(d) deprivation of a client’s rights and needs (e.g., food, phone contacts, etc.) when not based on documented clinical rationale;

(e) aversive stimuli used in behavior modification;

(f) punitive work assignments;

(g) isolation or seclusion;

(h) harassment; and

(i) chemical or mechanical restraints.

(8) For those CTCs that serve mixed age occupants, the CTC shall establish policies and procedures to ensure the health and safety of all residents.

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

8.321.11.80 RISK

ASSESSMENT: Use of physical restraint must be consistent with federal and state laws and regulations and must include the following:

A. Physical restraints of youth are implemented only by staff who have been trained and certified by a state recognized body in the prevention and use of physical restraint. This training emphasizes de-escalation techniques and alternatives to physical contact with clients as a means of managing behavior. Clients and youth do not participate in the physical restraint of other clients and youth.

B. Youth treatment plans document the use of physical restraints and include: consideration of the client’s medical condition(s); the role of the client’s history of trauma in their behavioral patterns; the treatment team’s solicitation and consideration of specific suggestions from the client regarding prevention of future physical interventions.

C. Physical restraints orders for youth are issued by a restraint clinician within one hour of initiation of physical restraint and include documented clinical justification for the use of physical restraint.

D. If the youth has a

treatment team physician or advanced practice registered nurse and they are available, only they can order physical restraint.

E. If physical restraint is ordered by someone other than the youth's treatment team physician or advanced practice registered nurse, the restraint clinician will consult with the youth's treatment team physician or advanced practice registered nurse as soon as possible and inform them of the situation requiring the youth to be restrained and document in the youth's record the date and time the treatment team physician or advanced practice registered nurse was consulted and the information imparted.

F. The restraint clinician must order the least restrictive emergency safety intervention that is most likely to be effective in resolving the situation.

G. If the order for physical restraint is verbal, the verbal order must be received by a restraint clinician or a New Mexico licensed registered nurse (RN) or practical nurse (LPN). The restraint clinician must verify the verbal order in a signed, written form placed in the youth's record within 24 hours after the order is issued.

H. A restraint clinician's order must be obtained by a restraint clinician or New Mexico licensed RN or LPN prior to or while the physical restraint is being initiated by staff, or immediately after the situation ends.

I. Each order for physical restraint must be documented in the youth's record and will include:

- (1) the name of the restraint clinician ordering the physical restraint;
- (2) the date and time the order was obtained;
- (3) the emergency safety intervention ordered, including the length of time;
- (4) the time the emergency safety intervention actually began and ended;
- (5) the time and results of any one-hour assessment(s) required; and

(6) the emergency safety situation that required the client to be restrained; and

(7) the name, title, and credentials of staff involved in the emergency safety intervention.

J. The CTC will notify the parent(s) or legal guardian(s) that physical restraint has been ordered as soon as possible after the initiation of each emergency safety intervention. This will be documented in the client's record, including the date and time of notification, the name of the staff person providing the notification, and who was notified.

K. After an incident of restraint, the professionals involved in the incident shall conduct a debriefing with the client to discuss the event with the intent of preventing future incidents. Within five days of an incident of restraint, the treatment team must meet to review the incident and revise plan of treatment if appropriate.

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

8.321.11.81 CLIENT

RIGHTS: All licensed facilities shall understand, protect and respect the rights of all youth demonstrating substantial compliance with all applicable New Mexico Children's Code, Section 32A-1-1 NMSA 1978, including the NM Children's Mental Health and Developmental Disabilities Act, Section 32A-6A-1 NMSA 1978.

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

8.321.11.82 CLIENT CLINICAL RECORD:

The client clinical records maintained by a crisis triage center in a paper-based or electronic system shall document the degree and intensity of the treatment provided to clients who are furnished services by the CTC. A client's clinical record shall contain at a minimum all required NM Children's Code documentation defined in Subsection A through Subsection O of Section 32A-6A-10 NMSA 1978 associated with the use of any emergency interventions such as physical restraint.

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

8.321.11.83 STAFFING REQUIREMENTS: Other staff requirements:

A. All CYFD background check requirements governing criminal records clearances must remain in effect while a program is accredited.

B. When a prospective employee that will work with or have access to youth has not lived in the United States continuously for the five years prior to hire, the CTC must obtain the equivalent of a criminal records and background clearance from any country in which the prospective employee has lived within the last five years, for a period longer than one year.

C. If the CTC receives reliable evidence that indicates that an employee or prospective employee poses an unreasonable risk, as defined or pursuant to Subsection W of Section 8.8.3.7 NMAC, the CTC may not hire the prospective employee or retain the employee.

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

8.321.11.84 PERSONNEL

RECORDS: Each CTC licensed pursuant to these regulations intending to work with youth must maintain a complete record on file for each staff member or volunteer including:

A. Completed CYFD criminal records and background check, including the FBI-approved electronic fingerprint for each employee that serves as direct service staff working with youth including licensed and certified staff. (supervisors, physicians, nurses, therapists, client care workers, coordinators, or other agency personnel who work in immediate direct unsupervised contact with youth.) The agency must have received the background clearance from the CYFD background check unit prior to the employee's direct, unsupervised contact with youth.

B. The date the employee was first employed and dates of transfers or changes in position.

C. Documentation that of a minimum of three references were checked.

D. A clearance letter from CYFD stating the applicant's background check has been conducted with negative results or a signed statement by the administrator, director, or operator attesting to direct supervision of an uncleared employee by a cleared employee until official clearance is received.

E. Documentation that each uncleared employee is identified on the staff schedule. [8.321.11.84 NMAC - N, 7/1/2024]

8.321.11.85 STAFF

TRAINING: At least 12 hours of on-going training shall be provided to staff that provides direct care at least annually; the training and proof of competency shall include at a minimum: NM Children's Mental Health and Developmental Disabilities Act Section 32A-6A-1 et. seq., NMSA 1978. [8.321.11.85 NMAC - N, 8.321.11.85 7/1/2024]

HISTORY of 8.321.11 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 2 ADJUDICATORY HEARINGS FOR LICENSED FACILITIES**

8.370.2.1 ISSUING
AGENCY: This rule is promulgated and issued by the New Mexico Health Care Authority. [8.370.2.1 NMAC - N, 7/1/2024]

8.370.2.2 SCOPE: Except as otherwise specifically provided by statute or rule, the scope of the sections in this part apply to

adjudicatory proceedings conducted by the authority. [8.370.2.2 NMAC - N, 7/1/2024]

8.370.2.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the authority granted under Section 9-8-1 et seq. NMSA 1978 which establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation; the authority granted pursuant to 42 U.S.C. Section 1396a(i); the authority granted under 42 C.F.R. Sections 431.151 through 431.154; 442.118; and 8.353.2.9 NMAC, based on sanctions imposed by the authority on licensed facilities in which medicaid recipients receive services. This rule does not provide adjudicatory procedures for appeals from actions related to the home and community based waiver. [8.370.2.3 NMAC - N, 7/1/2024]

8.370.2.4 DURATION:
Permanent. [8.370.2.4 NMAC - N, 7/1/2024]

8.370.2.5 EFFECTIVE DATE: This rule becomes effective on July 1, 2024, unless a later date is cited at the end of a section. [8.370.2.5 NMAC - N, 7/1/2024]

8.370.2.6 OBJECTIVE:
This rule provides adjudicatory procedures for licensed health facilities: administrative appeals of the initial denial of an annual license; of an emergency prehearing suspension of license and of emergency intermediate sanctions; of authority action denying renewal, suspending, or revoking a license, or of the authority's imposition of an intermediate sanction or civil monetary penalty; and of a cease and desist order. [8.370.2.6 NMAC - N, 7/1/2024]

8.370.2.7 DEFINITIONS:
For purposes of this rule, the

following shall apply.

A. "Adjudicate"
means to decide, settle or determine a disputed action. The term applies to a determination of facts and the application of law and reason to the facts by an impartial decision maker.

B. "Administrator"
means the person or manager in charge of the day-to-day operation of the facility or medicaid provider. The administrator may be the licensee or an authorized representative of the licensee.

C. "Annual license"
is the legally required authority-issued license authorizing a facility to operate for the one year period of time noted on the face of the document and issued on an initial and renewal basis.

D. "Appellant" means the party seeking review in a court of competent jurisdiction of a final decision of the licensing authority.

E. "Applicant"
means the individual responsible for the day-to-day operations of the facility, and who signs the license application. The applicant must be the individual. The applicant may be the same individual as the prospective licensee or may be an authorized representative of the prospective licensee.

F. "Application"
means the forms, attachments and other writings and drawings required by the licensing authority, to be completed and submitted by the applicant for the licensing authority's review for granting or denying a license.

G. "Burden of proof"
refers to the requirement of a party to produce an amount of evidence tending to prove a proposition.

H. "Cease and desist order" means a formal, enforceable order of the licensing authority issued to a facility, usually in instances where the facility is operating without a license.

I. "Certification"
means the determination made by the licensing authority as to whether a health facility or agency complies with applicable federal regulations and the conditions of participation in

the medicare or medicaid program. Certification of noncompliance may be the basis for denial or termination of provider participation in the medicare or medicaid programs, or the basis for the imposition of other sanctions including license revocation.

J. “Denial of an application” and “denial of an annual license” mean action by the licensing authority declining to grant an annual license on the basis of noncompliance with applicable laws and regulations.

K. “Director” means the director of the division of health improvement of the New Mexico health care authority.

L. “Emergency suspension of license” means the licensing authority’s prohibition of operation of a facility for a stated period of time by temporary withdrawal of the license, prior to a hearing on the matter, when immediate action is required to protect human health and safety. The emergency suspension is carried out by personal service of an emergency suspension order and notice of a hearing. A hearing must be held within five working days of the effective date of suspension (“five-day hearing”), as noticed in the emergency suspension order and notice of hearing, unless the right to a hearing is waived by the licensee or the right to a five-day hearing is waived and a hearing is requested at a later date by the licensee.

M. “Facility” means any health facility or health agency required to be licensed by the licensing authority pursuant to the authority of the Public Health Act, Sections 24-1-1 to 24-1-21 NMSA 1978, as amended, or required to be certified by the licensing authority in order to be eligible to receive and medicaid reimbursement for services provided to eligible recipients. This does not refer to community providers.

N. “Final decision” means the dispositive written document entered following a request for hearing under this rule, stating the

final determination of the secretary made after review of the hearing officer’s report and recommendation.

O. “Five-day hearing” means the hearing noticed in the emergency suspension order and notice of hearing. See the definition of “emergency suspension of license” in Subsection E of this section.

P. “Hearing” means a proceeding in which legal rights, duties or privileges of a party are at issue and which shall include an opportunity for the parties to present such testimony and evidence as the hearing officer deems relevant and material to the issues to be adjudicated.

Q. “Hearing officer” means an individual designated to conduct prehearing conferences and hearings and to make reports and recommendations, based on the evidence taken, to the secretary.

R. “Initial applicant” means the individual who signs the initial license application.

S. “License” means the document issued by the licensing authority which authorizes the lawful operation of a facility. The term “license” includes an annual license and a temporary license.

T. “Licensee” means the person in whose name a license for a facility has been issued and who is legally responsible for the facility’s compliance with applicable laws and regulations.

U. “Licensing authority” means the division of health improvement of the New Mexico health care authority. The licensing authority is also the state survey agency authorized to perform survey and certification functions for the medicaid and medicare programs.

V. “Official notice” means administrative notice, the act by which the hearing officer, in conducting the hearing or framing their decision, recognizes the existence and truth of certain facts without the production of evidence by the parties.

W. “Party” and “parties” means the original persons,

entities, or agencies to a hearing under this rule and such intervenors permitted to intervene by written order of the hearing officer.

X. “Person” means an individual, partnership, proprietorship, agency, corporation, company, association, tribal government or tribal organization, state or local government entity, or similar legal entity and the legal successor thereof.

Y. “Prospective licensee” means the person in whose name a license for operation of a facility is to be issued.

Z. “Recipient” means the individual who receives service of notice and, specifically includes the person who receives a cease and desist order issued by the licensing authority.

AA. “Renewal applicant” means the individual who signs the renewal license application.

BB. “Revocation of license” means the licensing authority’s cancellation and withdrawal of a license on a permanent basis.

CC. “Secretary” means the secretary of the New Mexico health care authority and includes their authorized representative.

DD. “Subpoena” means a written command issued by the hearing officer, at the request of a party, directing the appearance by a person, at a designated time and place, to give testimony upon a certain matter. The subpoena may include a command to produce books, papers, documents and other things, in which case it is issued as a subpoena duces tecum.

EE. “Suspension of license” means the licensing authority’s temporary cancellation and withdrawal of a license for a stated period of time.

FF. “Taking of appearances” means recording for the record the names of persons appearing at the hearing and their representatives, if any.

GG. “Temporary license” means, with respect to a health facility, an operating license

issued for a stated period of time not to exceed 120 days. Not more than two consecutive temporary licenses may be granted by the licensing authority.

HH. “Working days” means, when determining compliance with various deadlines in this rule, Monday through Friday of each calendar week, excluding state observed holidays.
[8.370.2.7 NMAC - N, 7/1/2024]

8.370.2.8 STANDARD OF COMPLIANCE: The degree of compliance required by this rule is designated by the use of the words “shall” or “must” and “may”. “Shall” and “must” designate mandatory requirements; “may” is permissive.
[8.370.2.8 NMAC - N, 7/1/2024]

8.370.2.9 USAGE: The singular number includes the plural, and the plural includes the singular.
[8.370.2.9 NMAC - N, 7/1/2024]

8.370.2.10 SEVERABILITY: If any portion of this rule or the application of this rule, is held to be invalid, the validity of the remainder of the regulations, or the application of the regulations to different situations or persons, shall not be affected.
[8.370.2.10 NMAC - N, 7/1/2024]

8.370.2.11 HEARING PROCESS AND PROCEDURES: GROUNDS FOR REQUESTING HEARING: The actions or proposed actions of the authority which may be contested are:

- A. denial of an application for initial annual license;
- B. denial of an application for renewal of an annual license;
- C. a cease and desist order;
- D. emergency suspension of license (pre-hearing);
- E. suspension of license (non-emergency, post-hearing);
- F. revocation of license;
- G. intermediate

sanctions or civil monetary penalties.
[8.370.2.11 NMAC - N, 7/1/2024]

8.370.2.12 INITIATION OF HEARING PROCESS: The hearing process is begun upon receipt by the licensing authority of a timely request for hearing, or, in the case of a pre-hearing emergency suspension of license, by service upon the licensee of an emergency suspension order and notice of hearing.
[8.370.2.12 NMAC - N, 7/1/2024]

8.370.2.13 REQUEST FOR HEARING:

A. Written and signed: the request for hearing shall be made in writing and shall be signed by the person or an authorized representative of the person against whom the action of the authority is taken.

B. Delivery: the request for hearing shall be addressed to the director of the division of health improvement or to any other authority employee indicated in the authority’s notice, and it shall be hand delivered or mailed, return receipt requested, to such person.
[8.370.2.13 NMAC - N, 7/1/2024]

8.370.2.14 TIME FOR REQUESTING HEARING: The request for hearing must be received by the authority:

- A. within 10 working days after receipt by the initial applicant, renewal applicant or prospective licensee of notice of the decision denying the application for license;
- B. within five working days after receipt of a cease and desist order;
- C. within 10 working days after receipt by the licensee of a notice of suspension or notice of revocation;
- D. within four working days after receipt by the licensee of an emergency suspension order or emergency intermediate sanction and notice of hearing (pre-hearing emergency suspension of license).
[8.370.2.14 NMAC - N, 7/1/2024]

8.370.2.15 EFFECT OF

REQUEST FOR HEARING; STAY:

A. Denial of an initial annual license: receipt by the licensing authority of a timely request for hearing upon the denial of an initial annual license does not allow the facility to begin operation. If the facility begins operation without a license, it is operating illegally and is subject to appropriate administrative and judicial sanctions and criminal charges.

B. Denial of renewal of annual license: receipt by the licensing authority of a timely request for hearing upon the denial of renewal of an annual license stays the expiration of the current license until a final decision.

C. Cease and desist order: receipt by the licensing authority of a timely request for hearing following issuance of a cease and desist order does not allow a facility to operate.

D. Emergency suspension of license: if the licensee intends to appear for the five-day hearing noticed in the emergency suspension order and notice of hearing, a request for hearing need not be made. If the licensee timely waives the five-day hearing and requests a hearing to be held at a later date, the effect of such waiver is to allow time for additional prehearing discovery. Such waiver and request for later hearing does not stay the emergency suspension. The facility operates without legal authority if it continues operation after the effective date of the emergency suspension and becomes subject to appropriate administrative and judicial sanctions and criminal charges.

E. Suspension, revocation, intermediate sanctions and civil monetary penalties: receipt by the licensing authority of a timely request for hearing following notice of the suspension or revocation of a current license stays suspension or revocation of the license until a final decision is reached following the hearing.
[8.370.2.15 NMAC - N, 7/1/2024]

8.370.2.16 SCHEDULING HEARING:

A. Scheduling: promptly upon receipt of a timely request for hearing, the authority shall schedule a hearing to be held in Santa Fe, unless the hearing is required to be held elsewhere by applicable regulation.

B. Change of location: upon timely motion, and with a showing of undue hardship and burden, the hearing officer may order the hearing location changed.

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

8.370.2.17 HEARING OFFICER:

A. Designation of hearing officer: promptly upon receipt of a timely request for hearing, the secretary or authorized representative of the authority shall designate a hearing officer.

B. Qualifications: the hearing officer shall be impartial and shall have no personal bias or interest in the matter to be heard. He or she may be an officer or employee of the New Mexico health care authority as long as he was not involved in making the challenged administrative decision. The hearing officer need not be a licensed attorney, however, he should have relevant experience with evidentiary, adjudicatory proceedings.

C. Disqualification: a hearing officer designated to preside at the hearing may disqualify himself on their own motion, or upon written request to, and approval of, the secretary of the New Mexico health care authority.

D. Party's request for disqualification: whenever any party deems the hearing officer to be disqualified to preside, such party may file a written request to disqualify with the secretary of the New Mexico health care authority. The request shall be supported by affidavits setting forth the grounds for disqualification. The secretary shall promptly determine the validity of the grounds alleged and take appropriate action.

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

8.370.2.18 DUTIES OF HEARING OFFICER:

A. Official file: upon appointment, the hearing officer shall establish an official file which will contain all the filed notices, pleadings, briefs, recommendations, correspondence and decisions. It shall also contain the authority's notice of action as well as the request for hearing. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall turn over to the authority this official file for future custody.

B. Preside at hearing: the hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and any motions or other matters that arise prior to or during the hearing.

C. Evidence file: the hearing officer shall maintain an evidence file with each document or item admitted into evidence. Proffered items not admitted into evidence, at the request of the offering party, shall be so identified and separately maintained by the hearing officer.

D. Subpoenas: the hearing officer, upon request by a party, may issue subpoenas and subpoenas duces tecum.

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

8.370.2.19 PARTIES: The principal and original parties to a hearing conducted under this rule shall be the appropriate agency of the authority, and the applicant or prospective licensee, the licensee, licensed medicare provider applicant, or the recipient of a cease and desist order, depending upon the nature of the hearing. Generally, intervenors are not allowed to participate as a party.

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

8.370.2.20 LEGAL REPRESENTATION:

A. Natural persons: natural persons may appear on their own behalf or by an attorney licensed to practice in New Mexico.

B. Entities: the authority, corporations and other

organizations and entities may appear by a bona fide officer, employee or representative or may be represented by an attorney licensed to practice in New Mexico.

C. Filing: any party filing documents in the appeal shall sign the original and hand deliver or mail it to the hearing officer and shall hand deliver or mail copies to all other parties.

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

8.370.2.21 DISCOVERY:

A. Minimum discovery; inspection and copying of documents: each party shall have access to the relevant documents in the possession of the other party, except confidential or privileged documents. Access to the authority's relevant documents may be had during normal business hours at the authority's appropriate business offices. A reasonable copying fee may be charged.

B. Minimum discovery; witnesses: the parties shall each disclose to each other orally or in writing and to the hearing officer, the names of witnesses to be called, together with a brief summary of the testimony of each witness. In situations where statements will be presented to the hearing officer, rather than witnesses examined, the names of the persons making the statements and the summary of the statements, shall be disclosed.

C. Additional discovery: at the hearing officer's discretion, upon a written request by a party which sets out reasons that additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, examinations and premise inspections, interviews or written interrogatories may be ordered. In exercising their authority to determine whether further discovery is necessary or desirable, the hearing officer should consider whether the complexity of fact or law reasonably requires further discovery to ensure a fair opportunity to prepare for the hearing and whether such request will result in unnecessary

hardship, cost, or delay in holding the hearing.

D. Costs: cost of document copying, mail or delivery service, interviews or written interrogatories, including mileage and per diem, paid in accordance with the New Mexico Per Diem and Mileage Act (Section 10-8-1, NMSA 1978) shall be paid by the requesting party.

E. Depositions prohibited: oral or written depositions are not permitted.
[8.370.2.21 NMAC - N, 7/1/2024]

8.370.2.22 PREHEARING CONFERENCE:

A. Purpose: at the discretion of the hearing officer, upon request of a party or upon the hearing officer’s own motion, a prehearing conference shall be scheduled by the hearing officer at a time and place reasonably convenient to all parties, in order to: limit and define issues; discuss possible prehearing disposition; consider possible stipulations of factual or legal issues, or stipulations concerning the admissibility of evidence; limit the testimony or the number of witnesses, the issues or the evidence; and, discuss such other matters as may aid in the simplification of evidence and disposition of the proceedings.

B. Informal: such a conference shall be informal. No offer of settlement made at the conference shall be admissible in evidence at any later hearing. Stipulations and admissions shall be binding and may be used as evidence at the hearing. At the hearing officer’s discretion, stipulations and admissions may be made in writing and filed with the hearing officer as part of the official record of the proceedings.

C. Notice: the hearing officer will give notice of the time and place of the pre-hearing conference to the parties by telephone, in person or by mail.

D. Costs: each party shall bear its own costs, including transportation costs.

E. Record: a record of the prehearing conference shall not be kept. A prehearing order or other

pleadings may be filed as a result of the prehearing conference.
[8.370.2.22 NMAC - N, 7/1/2024]

8.370.2.23 PREHEARING DISPOSITION: The subject matter of any hearing may be disposed of by stipulation, settlement or consent order, unless otherwise precluded by law. Any stipulation, settlement or consent order reached between the parties shall be written, signed by the hearing officer and the parties or their attorneys, and submitted to the secretary of the New Mexico health care authority. Such prehearing disposition shall be effective only if approved by the secretary.
[8.370.2.23 NMAC - N, 7/1/2024]

8.370.2.24 POSTPONEMENT OR CONTINUANCE: The hearing officer in their discretion, may postpone or continue a hearing upon their own motion or upon motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.
[8.370.2.24 NMAC - N, 7/1/2024]

8.370.2.25 ADDITIONAL PLEADINGS: Solely at the discretion of the hearing officer, pleadings, motions and briefs allowed in the state district courts of New Mexico may be filed.
[8.370.2.25 NMAC - N, 7/1/2024]

8.370.2.26 CONDUCT OF THE HEARING:

A. Public: all hearings shall be open to the public, unless a closed hearing is asked for by the person requesting the hearing and the hearing officer finds good cause exists for closing the hearing. The authority shall not request a closed hearing.

B. Powers of hearing officer: the hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to: administer

oaths or affirmations on the request of any party; schedule continuances; examine witnesses and direct witnesses to testify; limit repetitious and cumulative testimony; and set reasonable limits on the amount of time a witness may testify; decide objections to the admissibility of evidence or receive the evidence subject to later ruling; receive offers of proof for the record; direct parties to appear and confer for the settlement or simplification of issues, and to otherwise conduct prehearing conferences; dispose of procedural requests or similar matters; and, enter findings of fact, conclusions of law, orders, and reports and recommendations.
[8.370.2.26 NMAC - N, 7/1/2024]

8.370.2.27 ORDER OF PRESENTATION; GENERAL RULE: Except as specifically provided in the following section, the order of presentation for hearings in all cases, including but not limited to those arising from suspension, revocation, denial of renewal of license, intermediate sanctions, civil monetary penalties, emergency suspension, emergency intermediate sanctions shall be:

A. appearances: opening of proceeding and taking of appearances by the hearing officer;

B. pending matters: disposition by the hearing officer of preliminary and pending matters;

C. opening statements: the opening statement of the authority; and then the opening statement of the licensee or the party challenging the authority’s action;

D. cases: the authority’s case-in-chief; and then the case-in-chief of the licensee or the party challenging the authority’s action;

E. rebuttal: the authority’s case-in-rebuttal;

F. closing argument: the authority’s closing statement, which may include legal argument; and then the closing statement, which may include legal argument of the licensee or the party challenging the authority’s action; and

G. close: closing of proceedings by the hearing officer. [8.370.2.27 NMAC - N, 7/1/2024]

8.370.2.28 ORDER OF PRESENTATION; SPECIAL CASES RULE:

The order of presentation in denial of an initial annual license and cease and desist order cases is:

A. appearances: opening of proceeding and taking of appearances by the hearing officer;

B. pending matters: disposition by the hearing officer of preliminary and pending matters;

C. opening statements: applicant's or recipient's opening statement; and then the opening statement of the licensing authority;

D. cases: the applicant's or recipient's case-in-chief; and then the licensing authority's case-in-chief;

E. rebuttal: the applicant's/prospective licensee's or recipient's case-in-rebuttal;

F. closing argument: the applicant's/prospective licensee's or recipient's closing statement, which may include legal argument; and then the licensing authority's closing statement, which may include legal argument; and

G. close: closing of proceedings by the hearing officer. [8.370.2.28 NMAC - N, 7/1/2024]

8.370.2.29 BURDEN OF PROOF:

A. General rule: except as specifically provided for in the following paragraph, in all cases, including but not limited to those arising from suspension, revocation, denial of renewal of license, intermediate sanctions, civil monetary penalties, emergency suspension, emergency intermediate sanctions, or medicaid provider appeals, the authority shall present evidence supporting its decision. The party challenging the authority's decision shall then present evidence to show that the authority's decision is incorrect. The burden of proving by a preponderance of the evidence the basis for the decision at issue rests

with the authority.

B. Special cases: in cases arising from the denial of initial license and cease and desist orders, the applicant for initial license or the recipient of the cease and desist order shall present evidence supporting the license application, or evidence supporting the legality of operating without a license. The licensing authority shall then present evidence supporting the denial of the application, or evidence of the propriety and of cease and desist order. The burden of proving by a preponderance of the evidence:

(1) that the application was improperly denied by the licensing authority and should be approved, or

(2) that operation is proper and in accordance with law, rests with the license applicant or recipient of the cease and desist order.

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

8.370.2.30 EVIDENCE:

A. Technical rules not applicable: in general, the technical rules of evidence, such as the New Mexico rules of evidence, shall not apply but may be used as a guide to the principles of evidence and may be considered in determining the weight to be given any item of evidence. Nonprivileged, material and relevant evidence of the type which is relied upon by reasonably prudent persons in the conduct of serious affairs is admissible. The hearing officer may exclude, either with or without formal objection, unreliable, immaterial, irrelevant and unduly repetitious testimony and evidence.

B. Objections: a party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

C. Official notice: official notice may be taken of all facts of which judicial notice may be taken. Any party shall, on timely

request, be afforded an opportunity to contest the noticed fact.

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

8.370.2.31 EVIDENCE FROM WITNESSES:

A. Statement or examination of witnesses: the hearing officer, at their discretion, may receive evidence in the form of statements where a party is not represented by counsel; otherwise, the normal manner of witness testimony shall be by direct examination, cross examination and redirect examination, and through questioning by the hearing officer.

B. Written form: any part of the evidence may be received by the hearing officer in writing when a hearing will be expedited and the interests of the parties will not be substantially prejudiced.

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

8.370.2.32 RECORD:

A. Content: the record of a proceeding under this rule shall include all documents contained in the official files maintained by hearing officer, including findings of fact and conclusions of law, the recommendations of the hearing officer; and the final decision of the secretary.

B. Recording the hearing: proceedings at which evidence is presented orally shall be recorded by means of a mechanical or electronic sound recording device provided by the authority. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription. Any party who seeks judicial review, in conformity with applicable appellate rules, must request leave to file the audio tapes of the administrative proceeding as the transcript of the proceedings together with the necessary copies made and certified as true and correct by an authorized employee of the authority. [8.370.2.32 NMAC - N, 7/1/2024]

8.370.2.33 REPORT AND RECOMMENDATION OF HEARING OFFICER:

A. Hearing officer’s report shall contain: a statement of the issues raised at the hearing; findings of fact and conclusions of law, applying law and regulations to the facts. Findings of fact shall be based on the evidence presented at the hearing or known to all parties, including matters officially noticed; and recommended determination.

B. Submission for final decision: the hearing officer’s report together with the full hearing record shall be submitted to the secretary of the New Mexico health care authority for a final determination. The report and recommendation shall be submitted within 30 working days after expiration of the time set for submittal of the last post hearing submission of requested findings and conclusions, arguments or briefs.

C. Optional announcement of decision: at the close of the hearing, the hearing officer may announce their decision and request that the parties prepare appropriate post hearing submissions, including a decision for approval by the hearing officer. The hearing officer’s oral and written decision is a recommendation to the secretary of the New Mexico health care authority and is not a final order.
[8.370.2.33 NMAC - N, 7/1/2024]

8.370.2.34 FINAL DECISION: The secretary of the authority shall render a final administrative determination within ten working 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.
[8.370.2.34 NMAC - N, 7/1/2024]

8.370.2.35 FAILURE TO APPEAR:
A. Default: failure of the party requesting the hearing to appear on the date and at the time set for hearing, without good cause shown, shall constitute a default and the hearing officer shall so notify all parties in writing.

B. Entry of decision: the hearing officer shall enter such findings, conclusions, decisions, recommendations, rulings and orders as are appropriate.
[8.1.2.35 NMAC - N, 7/1/2024]

8.370.2.36 PERSONAL SERVICE: Whenever this rule requires or allow delivery of notice of administration action or proposed action by way of personal service, such service shall be made by a licensing authority employee or other authority representative, or by any individual over the age of 18 years.
[8.370.2.36 NMAC - N, 7/1/2024]

8.370.2.37 MANNER OF SERVICE:
A. Service on the person or at the place where found: personal delivery of any notice shall be given when the applicant licensee or recipient of a cease and desist order is present, by personal delivery to the individual, applicant, licensee or recipient at the facility or where the person is found; if delivery is refused, service is effected by leaving the notice at the place where such person was found. If the person to be served refuses to accept the notice or to permit the notice to be left, valid service is achieved by the attempts described above to personally deliver or leave the notice.

B. Service on a representative: service shall be complete when the individual, applicant, licensee or recipient is absent, by personal delivery at the facility to an administrative or other employee who reasonably appears to be capable of delivering the notice to the applicant licensee, recipient; or if no such person is available or willing to accept delivery, service may be made by posting notice on the most public part of the facility and by mailing, by U.S. postal service return receipt requested mail, a copy of the notice to the individual, applicant licensee, or recipient at the facility address or to the known address of the individual.

C. Mail: when notice is given by U.S. postal service

certified return receipt requested mail, service shall be deemed to have been made on the date delivered, or if delivery is refused, service shall be deemed to have been made on the date on which delivery is attempted for the purpose of calculating all time requirements in this rule. When notice or service is given by regular first class mail, then receipt shall be deemed to have occurred on the third day following deposit in the U.S. mail, except when the third day falls on a Saturday, Sunday or legal holiday in which case receipt shall be deemed to have occurred on the next working day.
[8.370.2.37 NMAC - N, 7/1/2024]

8.370.2.38 PROOF OF SERVICE: The licensing authority employee, authority representative, or other individual making such service shall prepare and sign a statement indicating upon whom, where and when such personal service was made. If possible, the licensee’s or applicant’s or other recipient’s signed acknowledgment of notice may be obtained. Failure to make proof of service shall not affect the validity of service. Personal service shall be deemed to be made at the time that notice is handed to the recipient of service, left or posted, in accordance with this section.
[8.370.2.38 NMAC - N, 7/1/2024]

8.370.2.39 JUDICIAL REVIEW: District court: to the extent provided by law, a final decision may be reviewed by the district court for the county of Santa Fe.
[8.370.2.39 NMAC - N, 7/1/2024]

8.370.2.40 RULES GOVERNING JUDICIAL REVIEW: The procedural rules for review of a final order are contained in the New Mexico statutes governing procedure for civil cases in the court of appeals and the district courts.
[8.370.2.40 NMAC - N, 7/1/2024]

8.370.2.41 RECORD:
A. The appellant shall make satisfactory arrangements with

the authority for the preparation of the record of the proceeding for which judicial review is sought.

B. The record shall consist of the official file maintained by the hearing officer together with exhibits admitted into evidence, and the tapes or other transcript of the hearing.

C. The expense of copying tape recorded testimony and any other expense of preparing the record, including copying costs, shall be borne by the appellant.

D. The appellant shall certify in applicable pleadings filed with the court that arrangements have been made for preparation of a sufficient number of transcripts of the hearing and other items making up the record of the proceedings.

E. Within 30 days after service of notice of judicial appeal, the authority shall file in the appropriate court a certified copy of the original and duplicate copies of the tapes of the hearing under review together with the original and copies of the official file maintained and certified by the hearing officer.
[8.370.2.41 NMAC - N, 7/1/2024]

8.370.2.42 COURT

ORDERED STAY: Filing for judicial review does not itself stay enforcement of the final decision. Any party may petition the court whose jurisdiction has been properly invoked for an order staying enforcement.
[8.370.2.42 NMAC - N, 7/1/2024]

8.370.2.43 STANDARD OF

REVIEW: The reviewing court shall set aside the final order only if it is found to be:

A. arbitrary, capricious, or an abuse of discretion;

B. not supported by substantial evidence in the record;

C. beyond the authority of the authority; or

D. otherwise not in accordance with law.

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

History of 8.370.2 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS PART 3 HEALTH FACILITY LICENSURE FEES AND PROCEDURES

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

8.370.3.2 SCOPE: These regulations apply to any health facility as defined by Subsection D of Section 24-1-2 NMSA 1978, as amended which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding.
[8.370.3.2 NMAC - N, 7/1/2024]

**8.370.3.3 STATUTORY
AUTHORITY:** The regulations set forth herein govern the imposition of intermediate sanctions and civil monetary penalties levied on health facilities licensed by the authority. These regulations have been promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the general authority granted under Subsection E of Section 9-8-6 of the Health Care Authority Act, NMSA 1978, as amended; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and 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 facility licensure and health care purchasing and regulation.
[8.370.3.3 NMAC - N, 7/1/2024]

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

**8.370.3.5 EFFECTIVE
DATE:** July 1, 2024, unless a different date is cited at the end of a section.
[8.370.3.5 NMAC - N, 7/1/2024]

8.370.3.6 OBJECTIVE:
The purpose of these regulations is to:

A. comply with Section 24-1-5.2 NMSA 1978 which mandates that the authority adopt and promulgate regulations specifying the criteria for imposition of any intermediate sanction, including the amount of monetary penalties and the type and extent of intermediate sanctions;

B. encourage health facilities to maintain compliance with licensing requirements and accelerate compliance when found in violation; intermediate sanctions and civil monetary penalties are intended as alternatives to implementation of more drastic measures such as revocation or suspension of license.

(1) The objective of the base penalty component of the civil monetary penalty is deterrence. The base penalty is imposed without regard to the time required for the correction.

(2) The objective of the daily penalty component of the civil monetary penalty is principally to motivate prompt correction of the deficiency and to protect the health and safety of the residents.

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

8.370.3.7 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. “Class A deficiency” means:

(1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible which results in death, or serious physical or psychological harm; or

(2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$1,500; or

(3) a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a patient, resident, or client.

D. “Class B deficiency” means:

(1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible; or

(2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$100, but is less than \$1,500; or

(3) a violation

or group of violations of applicable regulations which present a potential risk of injury or harm to any patient, resident or client.

E. “Class C deficiency” means:

(1) a violation or a group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any patient, resident or client if the violation is not corrected; or

(2) any exploitation of a patient, resident, or client by a facility employee in which the value of the property was less than \$100.

F. “Health facility” means any health care entity identified in the Public Health Act which requires state licensure in order to provide health services.

G. “Intermediate sanction” means a measure imposed on a facility for a violation(s) of applicable licensing laws and regulations other than license revocation, suspension, denial of renewal of license or loss of certification.

H. “Licensing authority” means the New Mexico health care authority.

I. “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.

J. “Serious physical harm” means physical harm of a type that causes a temporary or permanent

physical loss of a bodily member or organ or functional loss of a bodily member or organ or of a major life activity.

K. “Serious psychological harm” means psychological harm that causes a temporary or permanent mental or emotional incapacitation or that causes an obvious behavioral change or obvious physical symptoms or that requires psychological or psychiatric treatment or care.

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

8.370.3.8 TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON ANY LICENSED HEALTH CARE FACILITY:

A. A directed plan of correction: The licensing authority may direct a licensee to correct violations in a time specified, detailed plan.

B. Facility monitors: The licensing authority may select a facility monitor for a specified period of time to closely observe a health facility’s compliance efforts. The facility monitor shall have authority to review all applicable facility records, policies, procedures and financial records; and the authority to interview facility staff and residents. The facility monitor may also provide consultation to the facility management and staff in the correction of violations. The health facility must pay all reasonable costs of a facility monitor.

C. Temporary management: The licensing authority may appoint temporary management with expertise in the field of health services to oversee the operation of the health facility. The management appointed will ensure that the health and safety of the facility’s patients, residents, or clients is protected. The health facility must pay all reasonable costs of temporary management.

D. Restricted admissions or provision of services: The licensing authority may restrict the health facility from providing

designated services and from accepting any new patients, residents, or clients until deficiencies are corrected.

E. Reduction of licensed capacity: The licensing authority may reduce the licensed capacity of a health facility.

F. Civil monetary penalty: The licensing authority may impose on any health facility a civil monetary penalty.

(1) The amount of the civil monetary penalty is based upon the total of:

(a) the initial base penalty;

(b) a daily penalty which is calculated based on the uncorrected deficiencies which exist for each day following the notice to the facility, and;

(c) any penalty doubling for repeat deficiencies. Civil monetary penalties shall not exceed a total of \$5,000 per day.

(2) Limitation: A civil monetary penalty is not intended to force the closure of a licensed facility in lieu of license revocation.

(3) Burden of proof; limitation: Any facility seeking to show that the imposition of a civil monetary penalty will result in the forced closure of the facility must prove the same by clear and convincing evidence.

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

8.370.3.9 EMERGENCY APPLICATION: The intermediate sanctions may be imposed on an emergency basis when there exists an immediate threat to human health and safety. An administrative hearing will be schedule within five working days, unless waived by the facility. A request for a hearing does not stay the imposition of the emergency sanction. [8.370.3.9 NMAC - N, 7/1/2024]

8.370.3.10 ADDITIONAL TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED

ON MEDICAID CERTIFIED NURSING FACILITIES:

A. Denial of payment and a facility monitor:

The licensing authority may recommend denial of payment and a facility monitor to the medical assistance division, New Mexico health care authority, when survey findings document non-compliance with federal regulations governing conditions of participation. Substandard quality of care must be documented on three consecutive surveys. The facility monitor shall remain until the facility has demonstrated, to the satisfaction of the licensing authority, that it is in compliance with the conditions of participation and that it will remain in compliance with such requirements.

B. Temporary management or termination of medicaid participation:

The licensing authority may impose temporary management or recommend termination of the medicaid provider participation agreement when survey findings document deficiencies which immediately jeopardize the health and safety of the residents. Notice of this sanction must provide that a hearing will be conducted within five working days of the imposition of the sanction. [8.370.3.10 NMAC - N, 7/1/2024]

8.370.3.11 CONSIDERATIONS FOR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

Before intermediate sanctions or civil monetary penalties are imposed, they will be reviewed and approved by the director of the public health division or their designee. The following factors shall be considered by supervisory personnel of the licensing authority when determining whether to impose one or more intermediate sanctions or civil monetary penalties:

A. death or serious injury to a patient, resident or client;

B. abuse, neglect or exploitation of a patient, resident or client;

C. regulatory

violations which immediately jeopardize the health or safety of the patients, residents or clients of a health facility;

D. numerous violations, which combined, jeopardize the health or safety of patients, residents or clients of a health facility;

E. repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a health facility;

F. failure of a health facility to correct violations found during previous surveys or visits;

G. compliance history;

H. intentional deceit regarding condition of the facility;

I. effect of a civil monetary penalty on financial viability of the facility;

J. extenuating circumstances. Extenuating circumstances allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.

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

8.370.3.12 CORRECTION OF DEFICIENCIES:

When the licensing authority has determined deficiencies exist, the facility must correct the deficiencies according to the following time frames:

A. Immediate response: The risk of injury or harm created or presented by the Class A and B deficiencies must be immediately eliminated. Under no circumstance should a situation that presents a risk of injury or harm to residents be allowed to continue. The facility must immediately stop the risk of injury or harm, even if the Class A or B deficiency is not corrected, by eliminating such risk of injury or harm. The facility, in addition to any other sanction imposed by the licensing authority, shall submit a plan of correction addressing systemic causes of the deficiencies within a determinate period of time approved by the licensing authority.

B. Plan of correction: All deficiencies must be corrected

within a fixed period of time approved by the licensing authority.

C. Failure to timely correct: A separate civil monetary penalty may be imposed for each uncorrected Class A, Class B or Class C deficiency for each day that the particular violation continues beyond the date specified for correction. [8.370.3.12 NMAC - N, 7/1/2024]

8.370.3.13 CIVIL MONETARY PENALTIES;

INITIAL BASE PENALTY: The authority shall impose civil monetary penalties in accordance with these regulations on licensed facilities, not to exceed \$5,000 per day.

A. Civil monetary penalty; initial base penalty assessed: An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation. The base penalty amount is usually greater than the daily penalty amount for the same deficiency.

B. Civil monetary penalty; initial base penalty amount: The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

(1) Class A deficiency: not less than \$500 and not greater than \$5,000.

(2) Class B deficiency: not less than \$300 and not greater than \$3,000.

(3) Class C deficiency: not less than \$100 and not greater than \$500.

C. Doubling authorized for repeat violations: Where the facility was assessed

a civil monetary penalty for class A or B deficiencies within the previous 24 months, the initial base penalty amount is doubled for each instance of the licensed facility's noncompliance with applicable regulation(s) previously assessed as a class A or B deficiency. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the initial base penalty amount may be doubled for the facility's noncompliance with the applicable regulation(s) previously assessed as a class C deficiency. If such doubling results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day. [8.370.3.13 NMAC - N, 7/1/2024]

8.370.3.14 CIVIL MONETARY PENALTY; DAILY PENALTY:

A. Accrual: The daily civil monetary penalty amount accrues from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority. The daily civil monetary penalty continues until notice is provided to the licensing authority that all the deficiencies which were originally cited and relied upon in calculating the amount of the daily penalty are corrected. No piecemeal reduction of the daily penalty is available for partial correction of regulatory violations cited as the basis for all or part of the daily penalty.

B. Calculation of amount: For a class A, class B, or class C deficiency, a daily civil monetary penalty is determined by multiplying the facility's licensed capacity times the facility penalty rate, times the severity index. The sum of the civil penalties for each class A, class B and class C deficiency is the total daily civil monetary penalty amount for all class A, class B and class C deficiencies. For each day that the total daily civil monetary penalty for each class A, class B and repeat class C deficiency exceeds

\$5,000, the civil monetary penalty is \$5,000. Expressed as a formula, the calculation of the civil monetary penalty amount per deficiency equals the lesser of either:

(1) \$5,000; or
(2) (licensed capacity) x (facility penalty rate) x (severity index). [8.370.3.14 NMAC - N, 7/1/2024]

8.370.3.15 CALCULATION OF AMOUNT OF CIVIL MONETARY PENALTY - DOUBLING FOR REPEAT DEFICIENCIES:

A. General: In addition to doubling the base penalty, doubling the daily civil monetary penalty is authorized and is intended to eliminate repeat regulatory violations. Doubling occurs in instances where the facility was assessed a base penalty or a daily civil monetary penalty for class A or B deficiencies cited within the previous 24 months, and the facility is cited for noncompliance with one or more of the same regulations on the current survey or investigation for which the previous civil monetary penalty was assessed. The licensing authority has greater discretion to double the civil monetary penalty for class C deficiencies. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the civil monetary penalty may be doubled for the facility's noncompliance with the same regulation that previously was assessed as a class C deficiency. If such doubling of the civil monetary penalty results in civil monetary penalties in excess of five thousand dollars (\$5,000) per day, then the civil monetary penalty is five thousand dollars (\$5,000) per day.

B. Doubling; repeat class A or B deficiencies: The amount of the daily civil monetary penalty for a deficiency, as calculated above, shall be doubled for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations

that resulted in, the imposition of intermediate sanctions or civil monetary penalties as class A or B deficiencies.

C. Doubling; repeat class C deficiencies: The amount of the daily civil monetary penalty may be doubled, in the discretion of the licensing authority, for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or in civil monetary penalties as a class C deficiency.
[8.370.3.15 NMAC - N, 7/1/2024]

8.370.3.16 LICENSED CAPACITY AND FACILITY PENALTY RATES:

A. Licensed capacity:
For purposes of calculating the amount of civil monetary penalties, the facility's licensed capacity is determined by one of the following two methods, depending on the type of facility:

(1) For a facility having a capacity stated on its license, that capacity amount is employed in calculating the daily civil monetary penalty imposed by the licensing authority.

(2) For facilities not having a capacity reflected on the license, the licensed capacity will be based on the average number of patients or clients receiving services from the facility each day for the five working days preceding the day deficiencies were noted during the survey or investigation by the licensing authority.

B. Facility penalty rates: For purposes of calculation of the amount of civil monetary penalties the following penalty rates for facilities are as listed below:

TYPE OF FACILITY	PENALTY RATE
(1) Adult residential facilities:	
adult residential shelter care home	\$10.00

(b) community residential facility for developmentally disabled individuals	\$10.00
(c) residential treatment home	\$10.00
(d) boarding home	\$10.00
(e) halfway home	\$10.00
(f) new or innovative programs	\$10.00
(2) Adult day care facilities:	
(a) adult day care center	\$10.00
(b) adult day care home	\$10.00
(c) new or innovative programs	\$10.00
(3) General and special hospitals:	
(a) rehabilitation hospital	\$10.00
(b) general hospital	\$10.00
(c) psychiatric hospital	\$10.00
(d) specialty hospitals	\$10.00
(e) rural primary care hospital	\$10.00
(4) Long term care facilities:	
(a) intermediate care facility (ICF)	\$10.00
(b) medicaid certified nursing facilities (NF)	\$10.00
(c) skilled nursing facility (SNF)	\$10.00
(d) intermediate care facility for the mentally retarded (ICF/MR)	\$10.00

(5) Facilities providing outpatient medical services and infirmaries:	
(a) ambulatory surgical center	\$65.00
(b) diagnostic and treatment center	\$10.00
(c) limited diagnostic and treatment center	\$10.00
(d) rural health clinic	\$10.00
(e) infirmary	\$10.00
(f) new or innovative clinic	\$10.00
(6) Other facilities:	
(a) home health agency	\$10.00
(b) end stage renal disease	\$65.00
(c) hospice	\$10.00

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

8.370.3.17 SEVERITY INDEX: Three index ratings, in descending order of severity, are established and applied as follows:

A. Class A: Severity index of five is applied for class A deficiencies.

B. Class B: Severity index of three is applied for class B deficiencies.

C. Class C: Severity index of one is applied for class C deficiencies.

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

8.370.3.18 CIVIL MONETARY PENALTIES CUMULATIVE:

The civil monetary penalties imposed by the licensing authority are cumulative and are in addition to any other fines or penalties, remedies, or other intermediate sanctions provided by law.

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

8.370.3.19 PAYMENT OF MONETARY PENALTIES: The following will govern the payment of monetary penalties:

A. Unless an appeal has been filed, the facility has 30 calendar days to pay the monetary penalty. Calculation begins from the date the facility received the notice of penalty assessment.

B. Payment of monetary penalties must be in the form of a money order, certified check, business or personal check payable to state of New Mexico.

C. The check or money order must clearly indicate the purpose for the payment, i.e. payment of monetary penalty.

D. Payment shall be sent to health facility licensing and certification bureau, public health division, health care authority. [8.370.3.19 NMAC - N, 7/1/2024]

8.370.3.20 COLLECTION OF CIVIL MONETARY

PENALTY: A civil monetary penalty assessed under these regulations shall be paid to the authority within 30 days following such assessment or following the resolution of any appeal. Interest shall accrue at the current judgment interest rate after 30 days of such assessment or following the resolution of any appeal. If the facility fails to submit payment of the civil monetary penalty, then the authority is authorized to take any of the following actions:

A. The authority may add the amount of the civil monetary penalty together with accrued interest to the facility's annual license fee. If the facility fails to pay such civil monetary penalty and accrued interest, the license shall not be renewed.

B. The authority may bring action in a court of competent jurisdiction to recover the amount of the civil monetary penalty and accrued interest. [8.370.3.20 NMAC - N, 7/1/2024]

8.370.3.21 DAILY ACCRUAL OF CIVIL MONETARY

PENALTIES: The daily penalty of

the civil monetary penalty is imposed for each day that any cited deficiency exists.

A. Begin date: The accrual of the daily civil monetary penalties begins from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority.

B. End date: Daily civil monetary penalties cease accruing on the first full day that all deficiencies are corrected.

C. Retroactive accrual for uncorrected deficiencies: A civil monetary penalty may be assessed for uncorrected deficiencies cited in a revisit or follow up survey, when the facility was cited for such deficiencies, but was not assessed daily civil monetary penalties at the time of the preceding survey. The daily civil monetary penalty may accrue beginning with the date the uncorrected deficiencies were cited at the preceding survey. [8.370.3.21 NMAC - N, 7/1/2024]

8.370.3.22 CESSATION OF DAILY ACCRUAL OF CIVIL MONETARY PENALTIES:

The licensing authority will terminate the daily accrual of civil monetary penalties attributable to any class A, B, or C deficiency upon the facility's provision of evidence to the licensing authority that the specific deficiency has been corrected. [8.370.3.22 NMAC - N, 7/1/2024]

8.370.3.23 SERVICE OF

NOTICE: The authority shall provide notification, by certified mail, personal delivery, or by facsimile if the notice is also mailed, of its intent to impose any intermediate sanction or civil monetary penalty. Notice may be given of the intent to impose a civil monetary penalty where the total accrued amount of the civil monetary penalty is not yet determined. Notice setting out the base amount and final total accrued amount of the daily civil monetary penalty shall be provided

at the time of the determination. Notification of other actions contemplated under these regulations may be by regular mail, certified mail, or personal delivery or by facsimile if the notice is also mailed. All time periods for response shall be calculated beginning on the date of service, unless otherwise provided. [8.370.3.23 NMAC - N, 7/1/2024]

8.370.3.24 RIGHT TO

APPEAL: The facility may appeal the authority's notice of license suspension, license revocation, imposition of intermediate sanctions, or civil monetary penalties. The administrative appeal hearing shall be conducted by an impartial hearing officer appointed by the secretary of the authority. [8.370.3.24 NMAC - N, 7/1/2024]

8.370.3.25 TIMELINESS:

To obtain an administrative appeal hearing, the facility must make a timely request in writing.

A. Suspensions, revocations, intermediate sanctions, or civil monetary penalties: The authority must receive written request for an appeal hearing within ten working days after the facility receives the authority's final notice of suspension, revocation, intermediate sanction, or civil monetary penalty. In any appeal of the authority's imposition of civil monetary penalties, final notice from which an appeal may be taken is that notice which sets out the total civil monetary penalty, including both the base amount and the daily accrual amount.

B. Emergency suspension and emergency intermediate sanctions: The authority shall provide notice of an administrative appeal hearing concurrently with notice of an emergency suspension or emergency intermediate sanction. The administrative appeal hearing is scheduled within five working days of the date of imposition of the authority's emergency action. The facility may waive this hearing and request a hearing at a later date. The authority must receive such a

waiver and written request for a later hearing within four working days after the facility receives notice of the emergency action.

C. Cease and desist order: The authority must receive written request for an appeal hearing within five working days after the facility receives the cease and desist order.
[8.370.3.25 NMAC - N, 7/1/2024]

8.370.3.26 APPEAL PROCEDURES: Adjudicatory Hearings, New Mexico Health care authority, 8.370.2 NMAC shall apply in all administrative appeals provided by these regulations.
[8.370.3.26 NMAC - N, 7/1/2024]

8.370.3.27 RESOLUTION WITHOUT HEARING - PENALTY REDUCTION: The facility may satisfy, in full, the amount of any civil monetary penalty imposed under these regulations if, within ten working days following receipt of the notice:

A. the authority receives the facility's written waiver of any right to appeal; and

B. the authority receives the facility's payment of one-half (fifty percent) of the amount of the civil monetary penalty imposed.
[8.370.3.27 NMAC - N, 7/1/2024]

8.370.3.28 STAY OF SANCTION: The authority's receipt of the facility's notice of appeal shall operate as a stay of suspension, revocation, intermediate sanction (except temporary manager or monitor), or civil monetary penalty. In the case of emergency suspension or emergency intermediate sanctions, however, neither the immediate five day hearing nor the facility's request for a later hearing will stay the authority's action.
[8.370.3.28 NMAC - N, 7/1/2024]

8.370.3.29 PREHEARING NEGOTIATIONS; NO TOLLING: Discussions and negotiations between the authority and a facility prior to hearing do not postpone any deadlines for an appeal, unless as a result of

negotiations the authority and facility agree to postponement in writing.
[8.370.3.29 NMAC - N, 7/1/2024]

8.370.3.30 RELATED REGULATION AND CODES:

Health 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. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. Requirements for long term care facilities, New Mexico health care authority, 8.370.16 NMAC.

C. Requirements for general and special hospitals, New Mexico health care authority, 8.370.12 NMAC.

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

E. Requirements for adult day care facilities, New Mexico health care authority, 8.370.20 NMAC.

F. Requirements for adult residential care facilities, New Mexico health care authority, 8.370.14 NMAC.

G. Requirements for inhome and inpatient hospice care, New Mexico health care authority, 8.370.19 NMAC.

H. Requirements for home health agencies, New Mexico health care authority, 8.370.24 NMAC.

I. Requirements for facilities providing outpatient medical services and infirmaries, New Mexico health care authority, 8.370.18 NMAC.

J. Requirements for intermediate care facilities for the mentally retarded, New Mexico health care authority, 8.370.22 NMAC.

K. Requirements for end stage renal disease facilities, New Mexico health care authority, 8.370.26 NMAC.

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

History of 8.370.3 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 4 HEALTH FACILITY SANCTIONS AND CIVIL MONETARY PENALTIES

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

8.370.4.2 SCOPE: These regulations apply to any health facility as defined by Subsection D of Section 24-1-2 NMSA 1978, as amended which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding.
[8.370.4.2 NMAC - N, 7/1/2024]

8.370.4.3 STATUTORY AUTHORITY: The regulations set forth herein govern the imposition of intermediate sanctions and civil monetary penalties levied on health facilities licensed by the authority. These regulations have been promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the general authority granted under Subsection E of Section 9-8-6 of the Health Care Authority Act, 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 as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.4.3 NMAC - N, 7/1/2024]

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

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

8.370.4.6 OBJECTIVE: The purpose of these regulations is to:

A. comply with Section 24-1-5.2 NMSA 1978 which mandates that the authority adopt and promulgate regulations specifying the criteria for imposition of any intermediate sanction, including the amount of monetary penalties and the type and extent of intermediate sanctions;

B. encourage health facilities to maintain compliance with licensing requirements and accelerate compliance when found in violation; intermediate sanctions and civil monetary penalties are intended as alternatives to implementation of more drastic measures such as revocation or suspension of license.

(1) The objective of the base penalty component of the civil monetary penalty is deterrence. The base penalty is imposed without regard to the time required for the correction.

(2) The objective of the daily penalty component of the civil monetary penalty is principally to motivate prompt correction of the deficiency and to protect the health and safety of the residents.

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

8.370.4.7 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. "Serious physical harm" means physical harm of a type that causes a temporary or permanent physical loss of a bodily member or organ or functional loss of a bodily member or organ or of a major life activity.

D. "Serious psychological harm" means psychological harm that causes a temporary or permanent mental or emotional incapacitation or that causes an obvious behavioral change or obvious physical symptoms or that requires psychological or psychiatric treatment or care.

E. "Health facility" means any health care entity identified in the Public Health Act which requires state licensure in order to provide health services.

F. "Intermediate sanction" means a measure imposed on a facility for a violation(s) of applicable licensing laws and regulations other than license revocation, suspension, denial of renewal of license or loss of certification.

G. "Licensing

authority" means the New Mexico health care authority.

H. "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.

I. "Class A deficiency" means:

(1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible which results in death, or serious physical or psychological harm; or

(2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$1,500; or

(3) a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a patient, resident, or client.

J. "Class B deficiency" means:

(1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible; or

(2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$100, but is less than \$1,500; or

(3) a violation or group of violations of applicable

regulations which present a potential risk of injury or harm to any patient, resident or client.

K. “Class C deficiency” means:

(1) a violation or a group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any patient, resident or client if the violation is not corrected; or

(2) any exploitation of a patient, resident, or client by a facility employee in which the value of the property was less than \$100.

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

8.370.4.8 TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON ANY LICENSED HEALTH CARE FACILITY:

A. A directed plan of correction: The licensing authority may direct a licensee to correct violations in a time specified, detailed plan.

B. Facility monitors: The licensing authority may select a facility monitor for a specified period of time to closely observe a health facility’s compliance efforts. The facility monitor shall have authority to review all applicable facility records, policies, procedures and financial records; and the authority to interview facility staff and residents. The facility monitor may also provide consultation to the facility management and staff in the correction of violations. The health facility must pay all reasonable costs of a facility monitor.

C. Temporary management: The licensing authority may appoint temporary management with expertise in the field of health services to oversee the operation of the health facility. The management appointed will ensure that the health and safety of the facility’s patients, residents, or clients is protected. The health facility must pay all reasonable costs of temporary management.

D. Restricted admissions or provision of services:

The licensing authority may restrict the health facility from providing designated services and from accepting any new patients, residents, or clients until deficiencies are corrected.

E. Reduction of licensed capacity: The licensing authority may reduce the licensed capacity of a health facility.

F. Civil monetary penalty: The licensing authority may impose on any health facility a civil monetary penalty.

(1) The amount of the civil monetary penalty is based upon the total of:

(a) the initial base penalty;

(b) a daily penalty which is calculated based on the uncorrected deficiencies which exist for each day following the notice to the facility, and;

(c) any penalty doubling for repeat deficiencies. Civil monetary penalties shall not exceed a total of \$5,000 per day.

(2) Limitation: A civil monetary penalty is not intended to force the closure of a licensed facility in lieu of license revocation.

(3) Burden of proof; limitation: Any facility seeking to show that the imposition of a civil monetary penalty will result in the forced closure of the facility must prove the same by clear and convincing evidence.

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

8.370.4.9 EMERGENCY APPLICATION: The intermediate sanctions may be imposed on an emergency basis when there exists an immediate threat to human health and safety. An administrative hearing will be schedule within five working days, unless waived by the facility. A request for a hearing does not stay the imposition of the emergency sanction. [8.370.4.9 NMAC - N, 7/1/2024]

8.370.4.10 ADDITIONAL

TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON MEDICAID CERTIFIED NURSING FACILITIES:

A. Denial of payment and a facility monitor: The licensing authority may recommend denial of payment and a facility monitor to the medical assistance division, New Mexico health care authority when survey findings document non-compliance with federal regulations governing conditions of participation. Substandard quality of care must be documented on three consecutive surveys. The facility monitor shall remain until the facility has demonstrated, to the satisfaction of the licensing authority, that it is in compliance with the conditions of participation and that it will remain in compliance with such requirements.

B. Temporary management or termination of medicaid participation: The licensing authority may impose temporary management or recommend termination of the medicaid provider participation agreement when survey findings document deficiencies which immediately jeopardize the health and safety of the residents. Notice of this sanction must provide that a hearing will be conducted within five working days of the imposition of the sanction. [8.370.4.10 NMAC - N, 7/1/2024]

8.370.4.11 CONSIDERATIONS FOR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

Before intermediate sanctions or civil monetary penalties are imposed, they will be reviewed and approved by the director of the public health division or their designee. The following factors shall be considered by supervisory personnel of the licensing authority when determining whether to impose one or more intermediate sanctions or civil monetary penalties:

- A. death or serious injury to a patient, resident or client;
- B. abuse, neglect or

exploitation of a patient, resident or client;

C. regulatory violations which immediately jeopardize the health or safety of the patients, residents or clients of a health facility;

D. numerous violations, which combined, jeopardize the health or safety of patients, residents or clients of a health facility;

E. repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a health facility;

F. failure of a health facility to correct violations found during previous surveys or visits;

G. compliance history;

H. intentional deceit regarding condition of the facility;

I. effect of a civil monetary penalty on financial viability of the facility;

J. extenuating circumstances. Extenuating circumstances allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.

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

8.370.4.12 CORRECTION

OF DEFICIENCIES: When the licensing authority has determined deficiencies exist, the facility must correct the deficiencies according to the following time frames:

A. Immediate response: The risk of injury or harm created or presented by the Class A and B deficiencies must be immediately eliminated. Under no circumstance should a situation that presents a risk of injury or harm to residents be allowed to continue. The facility must immediately stop the risk of injury or harm, even if the Class A or B deficiency is not corrected, by eliminating such risk of injury or harm. The facility, in addition to any other sanction imposed by the licensing authority, shall submit a plan of correction addressing systemic causes of the deficiencies within a

determinate period of time approved by the licensing authority.

B. Plan of correction: All deficiencies must be corrected within a fixed period of time approved by the licensing authority.

C. Failure to timely correct: A separate civil monetary penalty may be imposed for each uncorrected Class A, Class B or Class C deficiency for each day that the particular violation continues beyond the date specified for correction. [8.370.4.12 NMAC - N, 7/1/2024]

8.370.4.13 CIVIL MONETARY PENALTIES;

INITIAL BASE PENALTY: The authority shall impose civil monetary penalties in accordance with these regulations on licensed facilities, not to exceed \$5,000 per day.

A. Civil monetary penalty; initial base penalty assessed: An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation. The base penalty amount is usually greater than the daily penalty amount for the same deficiency.

B. Civil monetary penalty; initial base penalty amount: The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

(1) Class A deficiency: not less than \$500 and not greater than \$5,000.

(2) Class B deficiency: not less than \$300 and not greater than \$3,000.

(3) Class C deficiency: not less than \$100 and not

greater than \$500.

C. Doubling authorized for repeat violations: Where the facility was assessed a civil monetary penalty for class A or B deficiencies within the previous 24 months, the initial base penalty amount is doubled for each instance of the licensed facility's noncompliance with applicable regulation(s) previously assessed as a class A or B deficiency. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the initial base penalty amount may be doubled for the facility's noncompliance with the applicable regulation(s) previously assessed as a class C deficiency. If such doubling results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day. [8.370.4.13 NMAC - N, 7/1/2024]

8.370.4.14 CIVIL MONETARY PENALTY; DAILY PENALTY:

A. Accrual: The daily civil monetary penalty amount accrues from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority. The daily civil monetary penalty continues until notice is provided to the licensing authority that all the deficiencies which were originally cited and relied upon in calculating the amount of the daily penalty are corrected. No piecemeal reduction of the daily penalty is available for partial correction of regulatory violations cited as the basis for all or part of the daily penalty.

B. Calculation of amount: For a class A, class B, or class C deficiency, a daily civil monetary penalty is determined by multiplying the facility's licensed capacity times the facility penalty rate, times the severity index. The sum of the civil penalties for each class A, class B and class C deficiency is the total daily civil monetary penalty amount for all class A, class

B and class C deficiencies. For each day that the total daily civil monetary penalty for each class A, class B and repeat class C deficiency exceeds \$5,000, the civil monetary penalty is \$5,000. Expressed as a formula, the calculation of the civil monetary penalty amount per deficiency equals the lesser of either:

- (1) \$5,000; or
- (2) (licensed

capacity) x (facility penalty rate) x (severity index).
[8.370.4.14 NMAC - N, 7/1/2024]

8.370.4.15 CALCULATION OF AMOUNT OF CIVIL MONETARY PENALTY - DOUBLING FOR REPEAT DEFICIENCIES:

A. General: In addition to doubling the base penalty, doubling the daily civil monetary penalty is authorized and is intended to eliminate repeat regulatory violations. Doubling occurs in instances where the facility was assessed a base penalty or a daily civil monetary penalty for class A or B deficiencies cited within the previous 24 months, and the facility is cited for noncompliance with one or more of the same regulations on the current survey or investigation for which the previous civil monetary penalty was assessed. The licensing authority has greater discretion to double the civil monetary penalty for class C deficiencies. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the civil monetary penalty may be doubled for the facility's noncompliance with the same regulation that previously was assessed as a class C deficiency. If such doubling of the civil monetary penalty results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day.

B. Doubling; repeat class A or B deficiencies: The amount of the daily civil monetary penalty for a deficiency, as calculated above, shall be doubled for a second or subsequent violation of the same regulatory requirement or provision,

the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or civil monetary penalties as class A or B deficiencies.

C. Doubling; repeat class C deficiencies: The amount of the daily civil monetary penalty may be doubled, in the discretion of the licensing authority, for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or in civil monetary penalties as a class C deficiency.
[8.370.4.15 NMAC - N, 7/1/2024]

8.370.4.16 LICENSED CAPACITY AND FACILITY PENALTY RATES:

A. Licensed capacity: For purposes of calculating the amount of civil monetary penalties, the facility's licensed capacity is determined by one of the following two methods, depending on the type of facility:

(1) For a facility having a capacity stated on its license, that capacity amount is employed in calculating the daily civil monetary penalty imposed by the licensing authority.

(2) For facilities not having a capacity reflected on the license, the licensed capacity will be based on the average number of patients or clients receiving services from the facility each day for the five working days preceding the day deficiencies were noted during the survey or investigation by the licensing authority.

B. Facility penalty rates: For purposes of calculation of the amount of civil monetary penalties the following penalty rates for facilities are as listed below:

TYPE OF FACILITY	PENALTY RATE
(1) Adult residential facilities:	

(a) adult residential shelter care home	\$10.00
(b) community residential facility for developmentally disabled individuals	\$10.00
(c) residential treatment home	\$10.00
(d) boarding home	\$10.00
(e) halfway home	\$10.00
(f) new or innovative programs	\$10.00
(2) Adult day care facilities:	
(a) adult day care center	\$10.00
(b) adult day care home	\$10.00
(c) new or innovative programs	\$10.00
(3) General and special hospitals:	
(a) rehabilitation hospital	\$10.00
(b) general hospital	\$10.00
(c) psychiatric hospital	\$10.00
(d) specialty hospitals	\$10.00
(e) rural primary care hospital	\$10.00
(4) Long term care facilities:	
(a) intermediate care facility (ICF)	\$10.00
(b) medicaid certified nursing facilities (NF)	\$10.00
(c) skilled nursing facility (SNF)	\$10.00

<p>(d) intermediate care facility for the mentally retarded (ICF/MR) \$10.00</p> <p>(5) Facilities providing outpatient medical services and infirmaries:</p> <p>(a) ambulatory surgical center \$65.00</p> <p>(b) diagnostic and treatment center \$10.00</p> <p>(c) limited diagnostic and treatment center \$10.00</p> <p>(d) rural health clinic \$10.00</p> <p>(e) infirmary \$10.00</p> <p>(f) new or innovative clinic \$10.00</p> <p>(6) Other facilities:</p> <p>(a) home health agency \$10.00</p> <p>(b) end stage renal disease \$65.00</p> <p>(c) hospice \$10.00 [8.370.4.16 NMAC - N, 7/1/2024]</p>	<p>(d) and are in addition to any other fines or penalties, remedies, or other intermediate sanctions provided by law. [8.370.4.18 NMAC - N, 7/1/2024]</p>
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8.370.4.17 SEVERITY INDEX: Three index ratings, in descending order of severity, are established and applied as follows:

A. Class A: Severity index of five is applied for class A deficiencies.

B. Class B: Severity index of three is applied for class B deficiencies.

C. Class C: Severity index of one is applied for class C deficiencies.
[8.370.4.17 NMAC - N, 7/1/2024]

8.370.4.18 CIVIL MONETARY PENALTIES CUMULATIVE: The civil monetary penalties imposed by the licensing authority are cumulative

8.370.4.19 PAYMENT OF MONETARY PENALTIES: The following will govern the payment of monetary penalties:

A. Unless an appeal has been filed, the facility has 30 calendar days to pay the monetary penalty. Calculation begins from the date the facility received the notice of penalty assessment.

B. Payment of monetary penalties must be in the form of a money order, certified check, business or personal check payable to state of New Mexico.

C. The check or money order must clearly indicate the purpose for the payment, i.e. payment of monetary penalty.

D. Payment shall be sent to health facility licensing and certification bureau, public health division, health care authority.
[8.370.4.19 NMAC - N, 7/1/2024]

8.370.4.20 COLLECTION OF CIVIL MONETARY PENALTY: A civil monetary penalty assessed under these regulations shall be paid to the authority within 30 days following such assessment or following the resolution of any appeal. Interest shall accrue at the current judgment interest rate after 30 days of such assessment or following the resolution of any appeal. If the facility fails to submit payment of the civil monetary penalty, then the authority is authorized to take any of the following actions:

A. The authority may add the amount of the civil monetary penalty together with accrued interest to the facility's annual license fee. If the facility fails to pay such civil monetary penalty and accrued interest, the license shall not be renewed.

B. The authority may bring action in a court of competent jurisdiction to recover the amount of the civil monetary penalty and

accrued interest.
[8.370.4.20 NMAC - N, 7/1/2024]

8.370.4.21 DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The daily penalty of the civil monetary penalty is imposed for each day that any cited deficiency exists.

A. Begin date: The accrual of the daily civil monetary penalties begins from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority.

B. End date: Daily civil monetary penalties cease accruing on the first full day that all deficiencies are corrected.

C. Retroactive accrual for uncorrected deficiencies: A civil monetary penalty may be assessed for uncorrected deficiencies cited in a revisit or follow up survey, when the facility was cited for such deficiencies, but was not assessed daily civil monetary penalties at the time of the preceding survey. The daily civil monetary penalty may accrue beginning with the date the uncorrected deficiencies were cited at the preceding survey.
[8.370.4.21 NMAC - N, 7/1/2024]

8.370.4.22 CESSATION OF DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The licensing authority will terminate the daily accrual of civil monetary penalties attributable to any class A, B, or C deficiency upon the facility's provision of evidence to the licensing authority that the specific deficiency has been corrected.
[8.370.4.22 NMAC - N, 7/1/2024]

8.370.4.23 SERVICE OF NOTICE: The authority shall provide notification, by certified mail, personal delivery, or by facsimile if the notice is also mailed, of its intent to impose any intermediate sanction or civil monetary penalty. Notice may be given of the intent to impose a

civil monetary penalty where the total accrued amount of the civil monetary penalty is not yet determined. Notice setting out the base amount and final total accrued amount of the daily civil monetary penalty shall be provided at the time of the determination. Notification of other actions contemplated under these regulations may be by regular mail, certified mail, or personal delivery or by facsimile if the notice is also mailed. All time periods for response shall be calculated beginning on the date of service, unless otherwise provided. [8.370.4.23 NMAC - N, 7/1/2024]

8.370.4.24 RIGHT TO

APPEAL: The facility may appeal the authority's notice of license suspension, license revocation, imposition of intermediate sanctions, or civil monetary penalties. The administrative appeal hearing shall be conducted by an impartial hearing officer appointed by the secretary of the authority. [8.370.4.24 NMAC - N, 7/1/2024]

8.370.4.25 TIMELINESS:

To obtain an administrative appeal hearing, the facility must make a timely request in writing.

A. Suspensions, revocations, intermediate sanctions, or civil monetary penalties: The authority must receive written request for an appeal hearing within 10 working days after the facility receives the authority's final notice of suspension, revocation, intermediate sanction, or civil monetary penalty. In any appeal of the authority's imposition of civil monetary penalties, final notice from which an appeal may be taken is that notice which sets out the total civil monetary penalty, including both the base amount and the daily accrual amount.

B. Emergency suspension and emergency intermediate sanctions: The authority shall provide notice of an administrative appeal hearing concurrently with notice of an emergency suspension or emergency intermediate sanction. The administrative appeal hearing is

scheduled within five working days of the date of imposition of the authority's emergency action. The facility may waive this hearing and request a hearing at a later date. The authority must receive such a waiver and written request for a later hearing within four working days after the facility receives notice of the emergency action.

C. Cease and desist order: The authority must receive written request for an appeal hearing within five working days after the facility receives the cease and desist order. [8.370.4.25 NMAC - N, 7/1/2024]

8.370.4.26 APPEAL

PROCEDURES: Adjudicatory hearings, New Mexico Health care authority, 8.370.2 NMAC shall apply in all administrative appeals provided by these regulations. [8.370.4.26 NMAC - N, 7/1/2024]

8.370.4.27 RESOLUTION WITHOUT HEARING -

PENALTY REDUCTION: The facility may satisfy, in full, the amount of any civil monetary penalty imposed under these regulations if, within 10 working days following receipt of the notice:

A. the authority receives the facility's written waiver of any right to appeal; and

B. the authority receives the facility's payment of one-half (fifty percent) of the amount of the civil monetary penalty imposed. [8.370.4.27 NMAC - N, 7/1/2024]

8.370.4.28 STAY OF

SANCTION: The authority's receipt of the facility's notice of appeal shall operate as a stay of suspension, revocation, intermediate sanction (except temporary manager or monitor), or civil monetary penalty. In the case of emergency suspension or emergency intermediate sanctions, however, neither the immediate five day hearing nor the facility's request for a later hearing will stay the authority's action. [8.370.4.28 NMAC - N, 7/1/2024]

8.370.4.29 PREHEARING NEGOTIATIONS; NO TOLLING: Discussions and negotiations between the authority and a facility prior to hearing do not postpone any deadlines for an appeal, unless as a result of negotiations the authority and facility agree to postponement in writing. [8.370.4.29 NMAC - N, 7/1/2024]

8.370.4.30 RELATED REGULATION AND CODES:

Health 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. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. Requirements for long term care facilities, New Mexico health care authority, 8.370.16 NMAC.

C. Requirements for general and special hospitals, New Mexico health care authority, 8.370.12 NMAC.

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

E. Requirements for adult day care facilities, New Mexico health care authority, 8.370.20 NMAC.

F. Requirements for adult residential care facilities, New Mexico health care authority, 8.370.14 NMAC.

G. Requirements for inhome and inpatient hospice care, New Mexico health care authority, 8.370.19 nmac.

H. Requirements for home health agencies, New Mexico health care authority, 8.370.24 NMAC.

I. Requirements for facilities providing outpatient medical services and infirmaries, New Mexico health care authority, 8.370.18 NMAC.

J. Requirements for intermediate care facilities for the mentally retarded, New Mexico health care authority, 8.370.22 NMAC.

K. Requirements for

end stage renal disease facilities, New Mexico health care authority, 8.370.26 NMAC. [8.370.4.30 NMAC - N, 7/1/2024]

History of 8.370.4 NMAC:
[RESERVED]

**HUMAN SERVICES
DEPARTMENT**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 370 OVERSIGHT
OF LICENSED HEALTHCARE
FACILITIES AND COMMUNITY
BASED WAIVER PROGRAMS
PART 5 CAREGIVERS
CRIMINAL HISTORY
SCREENING REQUIREMENTS**

8.370.5.1 ISSUING
AGENCY: New Mexico Health Care Authority. [8.370.2.1 NMAC - N, 7/1/2024]

8.370.5.2 SCOPE: This rule has general applicability to all applicants, caregivers, hospital caregivers, and care providers in New Mexico as defined in 8.370.5.7 NMAC of this rule. This rule does not apply to caregivers as set forth in Paragraph (2) of Subsection D of 8.370.5.7 NMAC and does not apply to care providers as set forth in Paragraph (2) of Subsection E of 8.370.5.7 NMAC. [8.370.5.2 NMAC - N, 7/1/2024]

8.370.5.3 STATUTORY AUTHORITY: Sections 29-17-2 through 29-17-5, NMSA 1978 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 facility licensure and health care purchasing and regulation. [8.370.5.3 NMAC - N, 7/1/2024]

8.370.5.4 DURATION: Permanent. [8.370.5.4 NMAC - N, 7/1/2024]

8.370.5.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section. [8.370.5.5 NMAC - N, 7/1/2024]

8.370.5.6 OBJECTIVE: The objective of this part is to establish the requirements for complying with the Caregivers Criminal History Screening Act. Generally included within these rules are the requirements and procedures for submission of applicant, caregiver and hospital caregiver fingerprints, payment of fees and administrative reconsideration for a disqualifying conviction. These rules are intended to have all covered care providers meeting the requirements of the act. [8.370.5.6 NMAC - N, 7/1/2024]

8.370.5.7 DEFINITIONS: For purposes of this rule, the following definitions shall apply:
A. "act" means Sections 29-17-2 to 29-17-5, NMSA 1978 of the Caregivers Criminal History Screening Act;
B. "applicant" means a person who applies, and is offered employment or contractual service with a care provider to provide services as a caregiver or hospital caregiver whether as an employee or contractor;
C. "care" means the therapy, services, treatment, support, supervision, assistance with the activities of daily living or management of a care recipient;
D. "caregiver" means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that provider;
(1) "caregiver" includes:
(a) compensated persons such as employees, contractors and employees of contractors;
(b) guardianship service providers and case management entities that provide services to people with developmental disabilities; and

(c) administrators or operators of facilities who are routinely on site;
(2) "caregiver" does not include:
(a) persons who provide natural supports;
(b) independent health care professionals, licensed or medicaid certified in good standing, who are not otherwise associated with the care provider as an administrator, operator or employee, and who are involved in the treatment or management of the medical care of a care recipient such as attending or treating physicians or other health care professionals providing consultation or ancillary services; or
(c) a person who has undergone a nationwide or statewide criminal history screening under Sections 32A-15-1 to 32A-15-4, NMSA 1978, of the Children's and Juvenile Facility Criminal Records Screening Act.
E. "care provider" includes:
(1) state owned or operated health care facilities, intermediate care facilities for the mentally retarded, general acute care hospitals, long-term care hospitals, psychiatric hospitals, rehabilitation hospitals, hospice services, guardianship providers, adult residential care facilities, adult community residential facilities, adult limited diagnostic treatment centers, case management entities providing services to persons with developmental disabilities, adult boarding homes, adult day care centers, adult family care homes, adult halfway homes, care providers operating respite, companion or personal care programs funded by the New Mexico aging and long term services department, care providers funded through the New Mexico children youth and families department providing homemaker and adult care services, disabled and elderly residential care providers providing services paid for in whole or in part by state funds, home health agencies, all residential habilitation

service or respite service care providers authorized to be reimbursed in whole or in part by state funds or under any medicaid or medicaid waiver program, nursing home facilities, any other care provider entity which is licensed or medicaid certified and which is not specifically identified herein;

(2) **“care provider”** does not include: outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians’ offices or other clinics that operate in the same manner as private physicians’ offices in group practice settings, and any care facility located at or performing services exclusively for any correctional facility;

F. “care recipient” means any person under the care of a care provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person’s activities;

G. “conditional employment” means supervised employment pursuant to a bona fide offer of employment by a care provider to an applicant, caregiver or hospital caregiver, which is contingent upon the receipt of notice from the authority that the applicant’s, caregiver’s or hospital caregiver’s nationwide and statewide criminal history screening indicates no existence of a disqualifying conviction, or notice from the authority pending an administrative reconsideration procedure; this includes that period of employment during the time allowed for responding to the authority’s request for additional information in cases where the applicant’s, caregiver’s or hospital caregiver’s criminal history record indicates an arrest without a final disposition for a crime listed under 8.370.5.11 NMAC.

H. “consent” means the written acknowledgment of permission to conduct a nationwide or statewide criminal history

screening; consent also includes, with respect to the criminal history record, permission for the authority, following an attempt to obtain clarifying information from the applicant, caregiver or hospital caregiver to attribute, as a rebuttable presumption, disqualifying conviction status to any arrest for crimes that would constitute a disqualifying conviction and for which the arrest appearing on the nationwide criminal history record lacks a final disposition;

I. “authority” means the New Mexico health care authority;

J. “disqualifying conviction” means a plea, judgment or verdict of guilty, a plea of nolo contendere, an *alford* plea or any plea or judgment entered in connection with a suspended sentence, in this state or from any other state or jurisdiction to a felony crime listed in 8.370.5.11 NMAC; if a conviction may be considered in or used for sentence enhancement in a subsequent proceeding, then it is a disqualifying conviction under these rules if the conviction is for a crime listed in 8.370.5.11 NMAC;

K. “hospital caregiver” means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that care provider in an inpatient setting who is not a licensed New Mexico health care professional practicing within the scope of a profession’s license;

L. “nationwide criminal history screening” means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints reviewed by the authority of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant, caregiver or hospital caregiver;

M. “nationwide criminal history record” means information collected by criminal

justice agencies concerning an applicant’s, caregiver’s or hospital caregiver’s arrests, indictments or other formal criminal charges, and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision;

N. “natural supports” means those resources, systems and persons that are readily available to the general community, including a care recipient, without regard to the care provider;

O. “routine” means in the context of care provision or financial access by an applicant, caregiver or hospital caregiver, that which is non-episodic and regularly scheduled or assigned;

P. “supervised” means, in the context of care provision or financial access, the supervisory oversight a care provider employs to ensure the prevention of abuse, neglect or the misappropriation of property of a care recipient by a caregiver or hospital caregiver during the caregiver’s or hospital caregiver’s conditional employment period; supervisory oversight shall include but is not limited to a management program utilized by the care provider, which demonstrates a systematic and routine monitoring of the safety and quality of service provided by the caregiver or hospital caregiver to the care recipient during the caregiver’s or hospital caregiver’s conditional employment period;

Q. “statewide criminal history screening” means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints reviewed by the authority of public safety resulting in the generation of a statewide criminal history record of the applicant, caregiver or hospital caregiver;

R. “unsupervised” means, in the context of care provision or financial access, that which occurs without the on-site, visual or physical presence of another caregiver or hospital caregiver or a family member of the care recipient

or of another individual representing the care provider.
[8.370.5.7 NMAC - N, 7/1/2024]

8.370.5.8 CAREGIVER AND HOSPITAL CAREGIVER EMPLOYMENT REQUIREMENTS:

A. General: The responsibility for compliance with the requirements of the act applies to both the care provider and to all applicants, caregivers and hospital caregivers. All applicants for employment to whom an offer of employment is made or caregivers and hospital caregivers employed by or contracted to a care provider must consent to a nationwide and statewide criminal history screening, as described in Subsections D, E and F of this section, upon offer of employment or at the time of entering into a contractual relationship with the care provider. Care providers shall submit all fees and pertinent application information for all applicants, caregivers or hospital caregivers as described in Subsections D, E and F of this section. Pursuant to Section 29-17-5 NMSA 1978 (amended) of the act, a care provider's failure to comply is grounds for the state agency having enforcement authority with respect to the care provider to impose appropriate administrative sanctions and penalties.

B. Exception: A caregiver or hospital caregiver applying for employment or contracting services with a care provider within 12 months of the caregiver's or hospital caregiver's most recent nationwide criminal history screening which list no disqualifying convictions shall only apply for a statewide criminal history screening upon offer of employment or at the time of entering into a contractual relationship with the care provider. At the discretion of the care provider a nationwide criminal history screening, additional to the required statewide criminal history screening, may be requested.

C. Conditional employment: Applicants, caregivers, and hospital caregivers who have

submitted all completed documents and paid all applicable fees for a nationwide and statewide criminal history screening may be deemed to have conditional supervised employment pending receipt of written notice given by the authority as to whether the applicant, caregiver or hospital caregiver has a disqualifying conviction.

D. Application: In order for a nationwide criminal history record to be obtained and processed, the following shall be submitted to the authority on forms provided by the authority.

(1) A form containing personal identification which has a photograph of the person and which meets the requirements for employment eligibility in accordance with the immigration and nationality act as amended. A reasonable xerographic copy of a drivers license photograph will suffice under Subsection D of 8.370.5.8 NMAC.

(2) A signed authorization for release of information form.

(3) Three complete sets of readable fingerprint cards or other authority approved media acceptable to the department of public safety and the federal bureau of investigation submitted using black ink.

(4) The fee specified by the authority for the nationwide and statewide criminal history screening investigation shall not exceed \$74. Of which, \$24 shall be applied for the federal bureau of investigation nationwide criminal history screening, seven dollars shall be applied for the statewide criminal history screening. The remaining application fee shall be applied to cover costs incurred by the authority to support activities required by the act and these rules. The fees will not be applied to any other activity or expense undertaken by the authority.

(5) If the applicant, caregiver or hospital caregiver must submit another readable set of fingerprint cards upon notice that the fingerprint cards previously submitted were

found unreadable, as determined by the federal bureau of investigation or department of public safety, the submission of a second set of fingerprint cards is required, a separate fee will not be charged. A fee shall be charged for submission of a third and subsequent fingerprint sets.

(6) If the applicant, caregiver or hospital caregiver has a physical or medical condition which prevents the applicant, caregiver or hospital caregiver from producing readable fingerprints using commonly available fingerprinting techniques, the applicant, caregiver or hospital caregiver shall submit the fingerprint cards with a notarized affidavit signed by the applicant, caregiver, hospital caregiver, returned to the authority within 14 calendar days, as determined by the postmark, which provides:

(a) identification of the applicant, caregiver or hospital caregiver; and
(b) an explanation of, or a statement describing, the applicant's, caregiver's or hospital caregiver's good faith efforts to supply readable fingerprints; and

(c) the physical or medical reason that prevents the applicant, caregiver or hospital caregiver from producing readable fingerprints using commonly available fingerprinting techniques;

(d) an applicant, caregiver or hospital caregiver meeting the conditions of this paragraph and who has resided in the state of New Mexico for less than 10 years must also submit a 10 year work history in addition to the required affidavits.

(7) All documentation submitted to the authority for the purposes of criminal history screening and for the purposes set forth in 8.370.5.9 NMAC and 8.370.5.10 NMAC shall become the sole property of the authority with the exception of fingerprint cards which shall be destroyed upon clearance by both the federal bureau

of investigation and department of public safety. All other submitted documentation shall be retained by the authority for a period of one year from the final date of closure and thereafter shall be archived.

E. Fees: The federal bureau of investigation has a mandatory processing fee with no exceptions. The authority and department of public safety impose a state processing and administrative fee. The fee payment must accompany the fingerprint application, or otherwise be credited to the authority prior to or at the same time with the authority's receipt of the application documents. The manner of payment of the fee is by bank cashier check or money order payable to the New Mexico health care authority or other method of funds transfer acceptable to the authority. Business checks will be accepted unless the business tendering the check has previously tendered a check to the authority unsupported by sufficient funds. Neither cash nor personal checks will be accepted. The fee may be paid by the care provider or by the applicant, caregiver or hospital caregiver. The authority will set a fee in addition to the fees imposed by department of public safety and the federal bureau of investigation that will fully and completely cover costs incurred by the authority to support activities required by the act and these rules. The fees will not be applied to any other activity or expense undertaken by the authority.

F. Timely submission: Care providers shall submit all fees and pertinent application information for all individuals who meet the definition of an applicant, caregiver or hospital caregiver as described in Subsections B, D and K of 8.370.5.7 NMAC, no later than 20 calendar days from the first day of employment or effective date of a contractual relationship with the care provider.

G. Maintenance of records: Care providers shall maintain documentation relating to all employees and contractors evidencing

compliance with the act and these rules.

(1) During the term of employment, care providers shall maintain evidence of each applicant, caregiver or hospital caregiver's clearance, pending reconsideration, or disqualification.

(2) Care providers shall maintain documented evidence showing the basis for any determination by the care provider that an employee or contractor performs job functions that do not fall within the scope of the requirement for nationwide or statewide criminal history screening. A memorandum in an employee's file stating "This employee does not provide direct care or have routine unsupervised physical or financial access to care recipients served by (name of care provider)" together with the employee's job description, shall suffice for record keeping purposes.

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

8.370.5.9 CAREGIVERS OR HOSPITAL CAREGIVERS AND APPLICANTS WITH DISQUALIFYING CONVICTIONS:

A. Prohibition on employment: A care provider shall not hire or continue the employment or contractual services of any applicant, caregiver or hospital caregiver for whom the care provider has received notice of a disqualifying conviction, except as provided in Subsection B of this section.

(1) In cases where the criminal history record lists an arrest for a crime that would constitute a disqualifying conviction and no final disposition is listed for the arrest, the authority will attempt to notify the applicant, caregiver or hospital caregiver and request information from the applicant, caregiver or hospital caregiver within timelines set forth in the authority's notice regarding the final disposition of the arrest. Information requested by the authority may be evidence, for example, a certified copy of an acquittal, dismissal or conviction of a lesser included crime.

(2) An applicant's, caregiver's or hospital caregiver's failure to respond within the required timelines regarding the final disposition of the arrest for a crime that would constitute a disqualifying conviction shall result in the applicant's, caregiver's or hospital caregiver's temporary disqualification from employment as a caregiver or hospital caregiver pending written documentation submitted to the authority evidencing the final disposition of the arrest. Information submitted to the authority may be evidence, for example, of the certified copy of an acquittal, dismissal or conviction of a lesser included crime. In instances where the applicant, caregiver or hospital caregiver has failed to respond within the required timelines the authority shall provide notice by certified mail that an employment clearance has not been granted. The care provider shall then follow the procedure of Subsection A of 8.370.5.9 NMAC.

(3) The authority will not make a final determination for an applicant, caregiver or hospital caregiver with a pending potentially disqualifying conviction for which no final disposition has been made. In instances of a pending potentially disqualifying conviction for which no final disposition has been made, the authority shall notify the care provider, applicant, caregiver or hospital caregiver by certified mail that an employment clearance has not been granted. The care provider shall then follow the procedure of Subsection A of 8.370.5.9 NMAC.

B. Employment pending reconsideration determination: At the discretion of the care provider, an applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction and who has requested administrative reconsideration may continue conditional supervised employment pending a determination on reconsideration.

C. Notice of final determination of disqualification:

Upon receipt of a notice of final determination of disqualification a care provider shall:

(1) immediately and permanently remove an applicant, caregiver or hospital caregiver from any position of employment that meets the definition of an applicant, caregiver or hospital caregiver as set forth in Subsections D and K of 8.370.5.7 NMAC; and

(2) notify the authority by letter within 14 calendar days, as determined by the postmark, of the date and type of action taken to satisfy the removal requirements of as set forth in Paragraph (1) of Subsection C of this section via written documentation signed by an authorized agent of the care provider. [8.370.5.9 NMAC - N, 7/1/2024]

8.370.5.10 ADMINISTRATIVE RECONSIDERATION:

A. Availability: The applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction may request an informal administrative reconsideration from the authority.

B. Procedure for requesting administrative reconsideration:

(1) An applicant, caregiver or hospital caregiver given notice of a disqualifying conviction may submit a written request for an administrative reconsideration. To be effective, the written request shall:

(a) be made within 14 calendar days, as determined by the postmark, from the date of the notice issued by the authority;

(b) be properly addressed to the authority;

(c) state the applicants', caregivers' or hospital caregivers' name, home and work address, and telephone numbers;

(d) state the applicants', caregivers' or hospital caregivers' employer or proposed employer name, address and telephone numbers;

(e) state the date of hire;

(f) state the position title;

(g) describe the duties of the position; and

(h) describe the care recipients.

(2) If the applicant, caregiver or hospital caregiver wishes to submit and have considered additional documentation (as specified in Paragraph (1) of Subsection C of this section) that additional documentation must be included with the request for an administrative reconsideration.

(3) An applicant, caregiver or hospital caregiver requesting reconsideration shall include a signed declaration identifying with specificity any criminal felony convictions.

C. Written documentation: The documentation submitted with the request for an administrative reconsideration may include information on the following.

(1) Credible and reliable evidence of the actual disposition of any arrest for which the nationwide criminal history record was incomplete. This could be evidence, for example, of the certified copies of an acquittal, a dismissal, or conviction of a lesser included crime, submitted to refute or rebut the presumption of a disqualifying conviction created because the nationwide criminal history record was incomplete in not showing the final disposition of an arrest for a crime that constitutes a disqualifying conviction.

(2) The applicant's, caregiver's or hospital caregiver's age at the time of each disqualifying conviction.

(3) Any mitigating circumstances when the offense was committed.

(4) Any court imposed sentence or punishment and, if completed, when completed.

(5) Any successfully completed rehabilitation program since the offense.

(6) The applicant's, caregiver's or hospital caregiver's full employment history since the disqualifying convictions.

(7) And other relevant materials the applicant, caregiver or hospital caregiver may wish to submit.

D. Reconsideration proceeding: The reconsideration proceeding is intended to be an informal non-adversarial administrative review of written documentation. It will be conducted by a reconsideration committee designated for that purpose by the authority. The reconsideration committee will issue an employment clearance determination based upon the completed request for reconsideration and all supporting documents submitted. In cases where the reconsideration committee finds the need for additional or clarifying information, the reconsideration committee may request that the applicant, caregiver or hospital caregiver supply such additional information within the time set forth in the reconsideration committees' request.

E. Factors in determination: In determining whether an applicant's caregiver's or hospital caregiver's nationwide criminal history record reflects a disqualifying conviction may be employed, the reconsideration committee shall take into account the requirements of Section 28-2-1 to 28-2-6, NMSA 1978 of the criminal offender employment act. However, that act is not dispositive. The following factors may be considered:

(1) total number of disqualifying convictions;

(2) time elapsed since last disqualifying conviction or since discharge of sentence;

(3) circumstances of crime including whether violence was involved;

(4) activities evidencing rehabilitation, including but not limited to substance abuse or other rehabilitation programs;

(5) whether

conviction was expunged by the court or whether an unconditional pardon was granted;

(6) false or misleading statements about any conviction in the signed declaration;

(7) evidence that applicant, caregiver or hospital caregiver poses no risk of harm to the health and safety of care recipients; and

(8) age of applicant, caregiver or hospital caregiver at time of disqualifying conviction.

F. Grounds for reconsideration employment clearance determination: An applicant, caregiver or hospital caregiver may be issued a reconsideration employment clearance determination by the authority where the request for reconsideration and accompanying documentation clearly demonstrates that the applicant, caregiver or hospital caregiver has satisfied one of the following three grounds for a reconsideration employment clearance determination.

(1) **Inaccuracy:** The nationwide criminal history record inaccurately reflects a disqualifying conviction. This ground for a reconsideration employment clearance determination applies:

(a) in instances of factual error in the nationwide criminal history record, from any source;

(b) in instances of error arising from the authority's application or use of the inappropriate criminal statute or standard to the disqualifying conviction at issue; and

(c) in instances where the authority, pursuant to the applicant's, caregiver's or hospital caregiver's required consent, applies a rebuttable presumption of a disqualifying conviction to an arrest for a felony that lacks a final disposition in the nationwide criminal history record.

(2) **No risk of harm:** The employment or contractual services provided by an applicant, caregiver or hospital

caregiver with a disqualifying conviction presents no risk of harm to a care recipient. The reconsideration employment clearance determination issued by the reconsideration committee under this ground may be limited, in certain cases, based upon the evidence in the request for reconsideration and the accompanying documentation. The reconsideration determination of whether the applicant, caregiver or hospital caregiver presents no risk of harm to a care recipient is based upon the risk arising from the disqualifying conviction.

(3) **No bearing on fitness:** The disqualifying conviction does not directly bear upon the applicant's, caregiver's, or hospital caregiver's fitness for employment.
[8.370.5.10 NMAC - N, 7/1/2024]

8.370.5.11 DISQUALIFYING CONVICTIONS. The following felony convictions disqualify an applicant, caregiver or hospital caregiver from employment or contractual services with a care provider:

A. homicide;
B. trafficking, or trafficking in controlled substances;
C. kidnapping, false imprisonment, aggravated assault or aggravated battery;

D. rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

E. crimes involving adult abuse, neglect or financial exploitation;

F. crimes involving child abuse or neglect;

G. crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property; or

H. an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.
[8.370.5.11 NMAC - N, 7/1/2024]

History of 8.370.5 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS PART 6 ACCESS TO MEDICAL RECORDS BY DISABILITY APPLICANTS

8.370.6.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.6.1 NMAC - N, 07/01/2024]

8.370.6.2 SCOPE: This regulation applies to requests for copies of medical records by any person, or that person's authorized representative, who is applying for social security disability benefits or appealing a denial of social security disability benefits.
[8.370.6.2 NMAC - N, 07/01/2024]

8.370.6.3 STATUTORY AUTHORITY: This regulation is promulgated pursuant to Section 14-6-3, 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 facility licensure and health care purchasing and regulation.
[8.370.6.3 NMAC - N, 07/01/2024]

8.370.6.4 DURATION: Permanent.
[8.370.6.4 NMAC - N, 07/01/2024]

8.370.6.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.6.5 NMAC - N, 07/01/2024]

8.370.6.6 OBJECTIVE: The purpose of this regulation is to establish the health care provider's duty to furnish medical records within 30 days of the request, and to set and enforce fee schedules for the provision of copies of medical records, when copies of such medical

records are requested by persons applying for social security disability or appealing a denial of such benefits. [8.370.6.6 NMAC - N, 07/01/2024]

8.370.6.7 DEFINITIONS:

A. “Authorized representative” means a person who lawfully may act on behalf of the individual who is applying for social security disability or appealing a denial of such benefits and whose medical records are the subject of a request to furnish copies.

B. “Health care provider” means a person licensed or certified by the state of New Mexico, or otherwise authorized by law to provide health care services in New Mexico in the ordinary course of business or practice of a profession, and includes facilities and entities that employ or contract with such a person, and it includes entities which maintain, process or store, medical records for such persons or facilities.

C. “Medical records” means information in a medical or mental health patient file, including drug or alcohol treatment records, clinical notes, nurses’ notes, history of injury, subjective and objective complaints, diagnostic and laboratory test results and interpretations of tests, reports and summaries of interpretations of tests and other reports, diagnoses and prognoses, bills, invoices, referral requests, consultative reports, and reports of any services requested by the medical care provider.

D. “Person” means an individual who has been a patient of a health care provider or health care facility. [8.370.6.7 NMAC - N, 07/01/2024]

8.370.6.8 REQUIREMENT OF WRITTEN REQUEST:

A. A person applying for social security disability, or appealing denial of such benefits, or the authorized representative, shall be furnished copies of requested medical records by health care providers who are provided a written and dated request for medical records signed by such person or authorized representative.

B. Requests shall be accompanied by a written verification that a person is applying for social security disability benefits, or is appealing a denial of such benefits. [8.370.6.8 NMAC - N, 07/01/2024]

8.370.6.9 PRODUCTION OF RECORDS:

Any records requested pursuant to this regulation or Section 14-6-3, NMSA 1978 as amended, shall be produced within 30 calendar days of receipt of the written request, regardless of prior receipt of the fee for the records. [8.370.6.9 NMAC - N, 07/01/2024]

8.370.6.10 FEES

AUTHORIZED; SCHEDULE: A reasonable fee for copying and furnishing requested medical records may be charged by the health care provider. No health care provider shall charge more than:

A. \$2.00 per page for the first 10 one-sided pages;

B. For each page after the first 10 one-sided pages, not more than twenty cents per page. [8.370.6.10 NMAC - N, 07/01/2024]

8.370.6.11 COMPLAINTS; ENFORCEMENT:

A. Complaints by any person, or person’s authorized representative, that a health care provider has failed to comply with the requirements of this rule, shall be made, in writing, to the New Mexico health care authority, division of health improvement.

B. Complaints shall include a description of manner in which the health care provider failed to follow this rule, and shall include copies of all documents relevant to the alleged violation.

C. Complaints alleging violation of this rule made against health care providers which are substantiated by the authority, or any failure by a health care provider to timely submit payment of any assessed civil monetary penalty, may be referred to the appropriate professional or facility licensure or certification authority for further action. [8.370.6.11 NMAC - N, 07/01/2024]

8.370.6.12 PENALTIES: If the authority finds that the health care provider has violated these regulations, the authority may impose a civil monetary penalty in an amount not to exceed \$100 per violation. [8.370.6.12 NMAC - N, 07/01/2024]

History of 8.370.6 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 7 HEALTH FACILITY RECEIVERSHIP REQUIREMENTS

8.370.7.1 ISSUING AGENCY: The New Mexico Health Care Authority. [8.370.7.1 NMAC - N, 7/01/2024]

8.370.7.2 SCOPE: This rule applies to the New Mexico health care authority (authority) in actions taken pursuant to the Health Facility Receivership Act, Chapter 24, Article 1E, NMSA 1978. [8.370.7.2 NMAC - N, 7/01/2024]

8.370.7.3 STATUTORY AUTHORITY: Section 24-1E-3.1, NMSA 1978 (2001). 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 facility licensure and health care purchasing and regulation. [8.370.7.3 NMAC - N, 7/01/2024]

7.1.11.4 DURATION: Permanent. [8.370.7.4 NMAC - N, 7/01/2024]

8.370.7.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited in a section. [8.370.7.5 NMAC - N, 7/01/2024]

8.370.7.6 OBJECTIVE:
This rule implements provisions of the Health Facility Receivership Act and sets out the conditions for the authority to petition for appointment of a health facility receiver; the duties, authority and responsibility of the health facility receiver; the authority for imposing financial conditions on the facility; the minimum qualifications for the deputy receiver; and the provisions which the secretary will request for inclusion in district court orders.

[8.370.7.5 NMAC - N, 7/01/2024]

8.370.7.7 DEFINITIONS:
As used in this rule, unless the context requires otherwise:

A. "Abandonment"
means the elimination of, or the failure to provide, one or more essential support services for all or a portion of the residents of a health facility, including but not limited to appropriate personnel, shelter, medical care, sustenance, assistance with the activities of daily living, habilitation or individual treatment plan activities and support.

B. "Closure Plan"
means the health facility's written plan, including any amendments, detailing the manner in which the health facility will satisfy all applicable legal or contractual requirements, including any requirements that the authority may request be included in such written plan, and which at a minimum sets forth the discharge planning and transfer of the residents, and the manner in which the health facility will fully meet the needs of the residents during the period of the facility closure.

C. "Constructive Abandonment" means a situation in which abandonment of the residents of a health facility can be inferred from the totality of circumstances, as, for example, the health facility's untimely payment or nonpayment of suppliers or staff resulting in the lack of necessary supplies or services.

D. "Facility" means:

(1) a health facility as defined in Subsection D

of Section 24-1-2 NMSA 1978 other than a child-care center or facility, whether or not licensed by New Mexico; or,

(2) a community-based program providing services funded, directly or indirectly, in whole or in part, by the home and community-based Medicaid waiver program or by developmental disabilities, traumatic brain injury or other medical disabilities programs.

E. "Imminent danger" means a significant, foreseeable jeopardy, risk or threat existing at the present time or in the immediate future.

F. "Receivership" means, pursuant to a court order, the condition or occurrence of the legal vesting of authority in the Secretary, acting as a receiver, and vesting of authority in the deputy receiver, to exercise management and control over all of, or a portion of, a facility, in derogation of the rights of the facility owner or operator.

G. "Receivership estate" means the totality of the property, accounts, assets, rights and obligations over which the receiver has authority to manage and control in accordance with a court's order.

H. "Secretary" means the secretary of the New Mexico health care authority.
[8.370.7.7 NMAC - 7/01/2024]

8.370.7.8 CONDITIONS FOR FILING RECEIVERSHIP PETITION:

When any of the following situations exist, the secretary may petition the district court seeking appointment as a health facility receiver.

A. Facility closure.
The health facility will close, or cease all or part of its operations, within 60 days; and the health facility has failed to provide the secretary with, and obtained written approval from the secretary for, the health facility's detailed closure plan. The closure plan must demonstrate that the health facility will maintain and safeguard the health and safety of the care recipients. Upon receipt of a facility closure plan, the secretary will

respond within 10 days to the facility with written notice of the secretary's approval or rejection of the closure plan. At a minimum, the closure plan will specify the facility's:

(1) Procedures and arrangements to insure that the health facility's care recipients obtain, or continue to receive, accessible, appropriate and affordable care; and

(2) The method of protecting all legal rights of the care recipients as such rights are affected by the closure; and

(3) Staffing; and

(4) Transfer planning and procedures with respect to the care recipients, including the funds, accounts, and property of the care recipients, medical and financial authorizations, and any other relevant documents executed by or on behalf of the care recipient in the possession of the health facility; and

(5) Other arrangements which the secretary may specify for inclusion in the closure plan.

B. No license. The health facility is operated without such license as otherwise may be required.

C. Abandonment. The health facility is abandoned, care recipients of the health facility are abandoned or constructively abandoned, or such abandonment is imminent.

D. Imminent danger. The health facility presents an imminent danger of death or significant mental or physical harm to the care recipients of the health facility. Such imminent danger may arise from:

(1) A single factor, or combination of factors, adversely affecting the health or safety of the facility's care recipients; or

(2) A physical condition of a service location for the health facility's care recipients; or

(3) A practice or method of operation of the health facility.

[8.370.7.8 NMAC - N, 7/01/2024]

8.370.7.9 QUALIFICATIONS OF THE DEPUTY RECEIVER:

Unless otherwise permitted by order of the district court, the secretary will seek appointment of a deputy receiver who possesses the following qualifications:

A. Free of conflicts of interest. The deputy receiver may not have a financial interest which conflicts with:

(1) Carrying out any of the duties and responsibilities imposed by the district court on the receiver or deputy receiver; or

(2) Fully protecting the persons receiving care from the health facility; or

(3) The management and operation of the receivership estate.

B. Experience. The deputy receiver must have relevant experience in health care management appropriate to the health facility. Such experience preferably would reflect successful management experience similar to that reasonably required to manage and operate the facilities within the receivership estate. Experience or licensure as a clinician is discretionary unless otherwise required by law.

C. Education and licensure. The deputy receiver must have achieved such educational level and have such licensure as customarily is held by persons managing and operating health care facilities similar to the facility or facilities within the receivership estate.

[8.370.7.9 NMAC - N, 7/01/2024]

8.370.7.10 DUTIES, AUTHORITY & RESPONSIBILITIES OF THE DEPUTY RECEIVER:

Unless otherwise ordered by the district court the deputy receiver generally will carry out the duties of the receiver, as established in the Health Facility Receivership Act, NMSA 1978, Sections 24-1E-1 to 24-1E-7 (2001), including the following.

A. Removal of care recipients from settings or situations

within the receivership estate which threaten the care recipients with imminent danger of death or significant mental or physical harm.

B. All necessary actions needed to:

(1) Correct or remedy each condition on which the receiver's appointment was based.

(2) Ensure adequate care and services, in accordance with applicable authority, law, regulations, and accrediting requirements, for each care recipient of the health facility.

(3) Manage and operate the health facility, including, where deemed appropriate in the judgment of the receiver or deputy receiver, any of the following:

(a) Closing the health facility.

(b) Expanding existing and initiating new services and operations.

(c) Hiring and firing officers and employees.

(d) Contracting for necessary services, personnel, supplies, equipment, facilities, and all other appropriate things.

(e) Reasonably expending funds of the health facility.

(f) Paying the health facility's obligations, borrowing money and property and giving security as necessary for such.

(g) Purchasing, selling, marshalling and otherwise managing the health facility's property and assets.
[8.370.7.10 NMAC - N, 7/01/2024]

8.370.7.11 FINANCIAL OBLIGATIONS AND CONDITIONS:

The deputy receiver, unless granted prior approval from the district court, will not obligate the health facility to the purchase of real property, the sale of the health facility's real property, or the long-term lease of real property.
[8.370.7.11 NMAC - N, 7/01/2024]

8.370.7.12 PROVISIONS SOUGHT IN AN ORDER GRANTING PETITION FOR HEALTH FACILITY RECEIVERSHIP:

The secretary will seek provisions in the order granting the petition pertaining to:

A. Prior approval from the district court for the sale or purchase of real property;

B. Periodic accounting to the court and the parties;

C. The posting of bond for the deputy receiver and the waiver of any such bonds;

D. Allocation of income and assets of the health facility to the receiver to carry out the purposes of the receivership;

E. Expansion and restrictions on the statutory authority granted to the receiver or deputy receiver;

F. The scope of the receivership estate; and,

G. Any other provisions deemed necessary to carry out the duties, authority and responsibilities of the deputy receiver, including provisions that may limit or expand the duties, authority and responsibilities.
[8.370.7.12 NMAC - N, 7/01/2024]

History of 8.370.7 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS PART 8 EMPLOYEE ABUSE REGISTRY

8.370.8.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.8.1 NMAC - N, 07/01/2024]

8.370.8.2 SCOPE: This rule applies to a broad range of New Mexico providers of health

care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing an individual on the registry. This rule provides for the investigation and determination of complaints alleging abuse, neglect or exploitation of recipients of care or services by employees. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed by care providers subject to the Caregiver Criminal History Screening Act, Sections 29-17-1 et seq. NMSA 1978, and that Act's implementing rule, 8.370.5 NMAC. It also supplements requirements for pre-employment screening of certified nurse aides applicable to nursing facilities pursuant to 42 CFR Sections 483.75(e) and 488.335; and 8.370.25 NMAC. This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible.

[8.370.8.2 NMAC - N, 07/01/2024]

8.370.8.3 STATUTORY AUTHORITY: The Employee Abuse Registry Act, Sections 27-7A-1 to 27-7A-8 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.

[8.370.8.3 NMAC - N, 07/01/2024]

8.370.8.4 DURATION: Permanent.

[8.370.8.4 NMAC - N, 07/01/2024]

8.370.8.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.370.8.5 NMAC - N, 07/01/2024]

8.370.8.6 OBJECTIVE:

The objective of this rule is to implement the Employee Abuse Registry Act. The rule is intended to provide guidance as to the rights and responsibilities under the Employee Abuse Registry Act of providers, employees of providers, the health care authority and the adult protective services division of the department of aging and long term services, and the public including recipients of care and services from providers.

[8.370.8.6 NMAC - N, 07/01/2024]

8.370.8.7 DEFINITIONS:

A. "Abuse" means,
(1) knowingly, intentionally or negligently 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.

B. "Adjudicated" means with respect to a substantiated registry-referred complaint, a final determination by the Secretary following a hearing, or by a court, that the employee committed abuse, neglect, or exploitation requiring the listing of the employee on the registry.

C. "APS" means the adult protective services division of the New Mexico aging and long term services department.

D. "Behavioral change" means an observable manifestation of psychological, emotional or mental harm, injury, suffering or damage, and includes, but is not limited to, crying, hysterical speech, or disruptions to sleeping, working, eating, speech, nonverbal communications, socially interacting, or other activities which were performed routinely before the harm, injury, suffering, or damage.

E. "Complaint" means any report, assertion, or allegation of abuse, neglect, or exploitation made by a reporter to the incident management system, and includes any reportable incident

that a licensed or certified health care facility or community based services provider is required to report under applicable law.

F. "Custodian" means the person assigned by the secretary to maintain the registry in accordance with this rule and the Employee Abuse Registry Act.

G. "Direct care" means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of care or services.

H. "Employee" means a person employed by or on contract with a provider, either directly or through a third party arrangement to provide direct care. "Employee" does not include a New Mexico licensed health care professional practicing within the scope of the professional's license or a certified nurse aide practicing as a certified nurse aide.

I. "Exploitation" means an unjust or improper use of a person's money or property for another person's profit or advantage, pecuniary or otherwise.

J. "Investigation" means a systematic fact finding process that has as its goal the gathering of all information relevant to making a determination whether an incident of abuse, neglect or exploitation occurred.

K. "Licensed health care professional" means a person who is required to be licensed, and is licensed, by a New Mexico health care professional licensing board or authority, and the issuance of whose professional license is conditioned upon the successful completion of a post secondary academic course of study resulting in a degree or diploma, including physicians and physician assistants, audiologists, acupuncture practitioners, dentists, registered nurses, licensed practical nurses, chiropractors, pharmacists, podiatrists, certified nurse-midwife, nurse practitioners, occupational therapists, optometrists, respiratory therapists, speech language pathologists, pharmacists, physical therapists, psychologists and psychologist associates, dietitians,

nutritionists and social workers.

L. “Manager” means the authority employee designated by the secretary to manage the employee abuse registry program pursuant to the New Mexico Employee Abuse Registry Act and this rule.

M. “Mental Anguish” means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these and includes a mental sensation of extreme or excruciating pain.

N. “Neglect” means, 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.

O. “Provider” means an intermediate care facility for the mentally retarded; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; programs

funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care, deliver home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly.

P. “Registry” means an electronic database operated by the authority that maintains current information on substantiated registry-referred employee abuse, neglect or exploitation, including the names and identifying information of all employees who, during employment with a provider, engaged in a substantiated registry-referred or an adjudicated incident of abuse, neglect or exploitation involving a recipient of care or services from a provider.

Q. “Reporter” means a person who or an entity that reports possible abuse, neglect or exploitation to the authority’s incident management system.

R. “Secretary” means the secretary of the health care authority.

S. “Sexual abuse” means the inappropriate touching of a recipient of care or services by an employee for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch the employee for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming or depiction of acts considered pornographic.

T. “Substantiated” means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

U. “Substantiated registry-referred” means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

V. “Unsubstantiated” means that the complaint’s alleged abuse, neglect or exploitation did not or could not have occurred, or there is not a preponderance of reliable evidence to substantiate the complaint, or that there is conflicting evidence that is inconclusive.

W. “Verbal abuse” means profane, threatening, derogatory, or demeaning language, spoken or conveyed by an employee with the intent to cause pain, distress or injury, and which does cause pain, distress or injury as objectively manifested by the recipient of care or services.

[8.370.8.7 NMAC - N, 07/01/2024]

8.370.8.8 REGISTRY ESTABLISHED; PROVIDER INQUIRY REQUIRED: Upon the effective date of this rule, the authority has established and maintains an accurate and complete electronic registry that contains the name, date of birth, address, social security number, and other appropriate identifying information of all persons who, while employed by a provider, have been determined by the authority, as a result of an investigation of a complaint, to have engaged in a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider. Additions and updates to the registry shall be posted no later than two business days following receipt. Only authority staff designated by the custodian may access, maintain and update the data in the registry.

A. Provider requirement to inquire of registry. A provider, prior to employing or contracting with an employee, shall inquire of the registry whether the individual under consideration for employment or contracting is listed on the registry.

B. Prohibited employment. A provider may

not employ or contract with an individual to be an employee if the individual is listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

C. Applicant's identifying information required.

In making the inquiry to the registry prior to employing or contracting with an employee, the provider shall use identifying information concerning the individual under consideration for employment or contracting sufficient to reasonably and completely search the registry, including the name, address, date of birth, social security number, and other appropriate identifying information required by the registry.

D. Documentation of inquiry to registry. The provider shall maintain documentation in the employee's personnel or employment records that evidences the fact that the provider made an inquiry to the registry concerning that employee prior to employment. Such documentation must include evidence, based on the response to such inquiry received from the custodian by the provider, that the employee was not listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation.

E. Documentation for other staff. With respect to all employed or contracted individuals providing direct care who are licensed health care professionals or certified nurse aides, the provider shall maintain documentation reflecting the individual's current licensure as a health care professional or current certification as a nurse aide.

F. Consequences of noncompliance. The authority or other governmental agency having regulatory enforcement authority over a provider may sanction a provider in accordance with applicable law if the provider fails to make an appropriate and timely inquiry of the registry, or fails to maintain evidence of such inquiry, in connection with the hiring or contracting of an employee; or for

employing or contracting any person to work as an employee who is listed on the registry. Such sanctions may include a directed plan of correction, civil monetary penalty not to exceed \$5,000 per instance, or termination or non-renewal of any contract with the authority or other governmental agency.

[8.370.8.8 NMAC - N, 07/01/2024]

8.370.8.9 INCIDENT MANAGEMENT SYSTEM

INTAKE: The authority has established an incident management system for receipt, tracking and processing of complaints. Complaints may be reported to the authority's incident management system using the authority website's on-line form completion utility, by telephone using a toll free number, facsimile, U.S. mail, email, or in-person. The method of reporting preferred by the authority is on-line form completion via the authority's website, <http://dhi.health.state.nm.us/elibrary/ironline/ir.php>. The toll free telephone line is staffed by the authority during normal business hours and a message system is available for reporting complaints during non-business hours.

A. Incident report form. Complaints of suspected abuse, neglect or exploitation will be reported by providers on the department's incident report form if possible. This form and instructions for completing and filing the form are available at the department's website or may be obtained from the department by calling the toll free number 800-752-8649 or 800-445-6242 or by mailing a request to the incident management bureau, division of health improvement, health care authority.

B. Reportable intake information. Reports of suspected abuse, neglect or exploitation made to the authority by persons who do not have access to, or are unable to use, the authority's current incident report form shall provide as specific a description of the incident or situation as possible, and shall contain the following information where applicable:

(1) the location, date and time or shift of the incident;

(2) the name, age and gender, address and telephone number of the person the reporter suspects to have been abused, neglected, or exploited, and the name, address and telephone number of the guardian or health care decision maker for such person, if applicable;

(3) the names, addresses, phone numbers and other identifying information of the providers who provide services to the person the reporter suspects to have been abused, neglected, or exploited;

(4) the names, addresses, phone numbers and other identifying information of the following people who the reporter believes may have been involved with, or have knowledge of, the incident; provider's staff and employees; family members or guardians of the person the reporter suspects to have been abused, neglected, or exploited; other health care professionals or facilities; and any other persons who may have such knowledge;

(5) the condition and status of the person the reporter suspects to have been abused, neglected, or exploited;

(6) the reporter's name, address, telephone number and other contact information, together with the name and address of the provider with whom the reporter is employed, if applicable.

C. Method of filing complaint. The completed incident report form must be filed with the department. It may be hand delivered, mailed, emailed, or, preferably, filed by use of the department's procedure for on-line form completion.

[8.370.8.9 NMAC - N, 07/01/2024]

8.370.8.10 COMPLAINT PROCESSING:

A. Assignment of complaint. The manager or designee shall review the complaints, reports or allegations of abuse, neglect or exploitation, prioritize these complaints and assign appropriate

authority staff to investigate when warranted, and refer the complaint, report, or allegation to APS, and other appropriate oversight agencies for investigation.

(1)

Assignment shall be made to appropriate staff of the authority of all complaints of abuse, neglect or exploitation involving a provider for whom the authority has oversight authority or for whom the authority has agreed to investigate.

(2)

Referral shall be made to APS of complaints of abuse, neglect or exploitation in all instances where the complaint involves a provider of medicaid waiver services administered by the aging and long-term services department and the provider is not otherwise licensed by or under contract with the authority.

(3)

The manager shall prioritize the complaints and ensure that the complaints that allege the most serious incidents of abuse, neglect or exploitation, or that present a high risk of future harm, are promptly investigated.

B. Immediate threat to health or safety. In instances where the investigation determines that there exists an immediate threat to the health or safety of a person in the care of a provider, the authority or APS, in accordance with applicable statutory authority, will make the necessary arrangements or referrals to ensure the protection of persons at risk of harm or injury. The authority will take appropriate action to eliminate or reduce the immediate threat to health or safety with respect to providers it licenses or with whom it contracts.

C. Conducting the investigation. The authority investigation of complaints will follow the procedures in this rule. The investigations conducted by APS will comply with applicable APS rules or with the provisions herein.

(1)

The investigators shall gather all relevant evidence, weigh the evidence including making credibility

determinations. Individuals from whom information is gathered may include the reporter, witnesses identified by the reporter, listed on the incident report form or discovered during the investigation, the alleged victim, appropriate representatives of the provider, medical personnel with relevant information, family members and guardians of the alleged victim, any employee suspected of abuse, neglect or exploitation, other recipients of care and services, and other persons possibly having relevant information.

(2) Physical

injuries that are the subject of the complaint will be observed in person and documented. Complete documentation must be obtained of all objectively verifiable manifestations of mental anguish, verbal abuse, sexual abuse or neglect on the part of the recipient of care or services.

(3) The

investigator will generally follow authority guidelines addressing face-to-face individualized interviews, telephonic interviews, witness statements and documentation of contacts.

(4) The

investigator will follow established guidelines for clinical consultations.

(5) In

instances where the investigation results in discovery of other, unrelated instances of possible abuse, neglect or exploitation, the investigator will file an incident report form with the incident management system. However, additional allegations involving the same complaint as the one under investigation are considered the same case and will not be separately reported, although the investigator may supplement the Incident Report.

(6) At any

time during the investigation, the manager shall make referrals to other licensing authorities based upon information of possible violations of applicable health facility, community provider or health care professional standards.

(7)

The investigator will submit an

investigation report to the manager with recommendations as to whether the complaint is:

(a)

unsubstantiated;

(b)

substantiated; or

(c)

substantiated registry-referred.

(8) Where

appropriate, the investigation report may make findings and recommendations with respect to provider responsibility for abuse, neglect or exploitation.

(9) The

manager shall review the investigation report and recommendations and shall make a determination whether the complaint of abuse, neglect or exploitation is substantiated.

(10) If the

manager determines, as a result of the manager's review of the investigation report and recommendations, that the complaint is substantiated, the manager shall apply the appropriate severity standard to the substantiated complaint to further determine if the complaint is substantiated registry-referred.

D. Investigation file and report. The authority shall establish an investigation file, which shall contain all applicable information relating to the complaint including the incident report form, correspondence, investigation, referrals, determinations, secretary's decision, and notices of appeal. Following the investigation and determination by the manager, the complaint and investigation file will be maintained by the custodian. The investigator, or the investigator from the lead agency in a joint investigation, shall prepare and submit a written investigation report. The investigation report shall be part of the investigation file. The investigation report shall contain a review of the evidence obtained during the investigation, including but not limited to:

(1) interviews

conducted and written statements;

(2) interviews

and statements reviewed that were

originally conducted or obtained by other entities such as the provider, other health care facilities and medical providers, or law enforcement;

(3) documents, diagrams, photographs and other tangible evidence obtained or reviewed;

(4) a description of any actions taken by the provider in a response to the complaint or situation under investigation; and,

(5) analysis of the evidence and recommendations.

E. Timeline and processing of a complaint. The investigation of each complaint shall be completed by the authority within 60 calendar days of receipt of the complaint.

(1) The investigation report shall be submitted to the manager no later than 60 calendar days following the receipt of the complaint.

(2) The manager shall review the investigatory findings and recommendations and make a determination within five business days of receipt of the findings as to whether the complaint of abuse, neglect or exploitation is substantiated registry-referred.

(3) The manager may issue a specific extension of any complaint processing deadline if reasonable grounds exist for such extension and the reasons are set out in the written extension. The written extension is included in the investigation file. Grounds for an extension may include, but are not limited to, the temporary non-availability of witnesses or documentary evidence, or the need for information not yet available from other entities that may be involved with an investigation into the facts that form the basis of the complaint, including the office of the medical investigator and agencies charged with law enforcement, auditing, financial oversight, fraud investigation, or advocacy.

F. Validity of enforcement actions. Failure by the authority or APS to comply with the procedures or time requirements set out in this section does not abrogate or invalidate any action taken against an employee pursuant to this rule, or any action taken against a provider for noncompliance with this rule or any other applicable law or regulation. However, any such failure may be admitted into evidence at a hearing. [8.370.8.10 NMAC - N, 07/01/2024]

8.370.8.11 SEVERITY STANDARD: A determination of the severity of all substantiated complaints of abuse, neglect or exploitation is made for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or exploitation on the recipient of care or services, and by assessing the employee for aggravating factors.

A. Abuse. A substantiated complaint of abuse meets the severity standard if:

(1) the abuse results in, or is a contributing factor to, death;

(2) the abuse results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;

(3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;

(4) the abuse results in the infliction of excruciating pain or pain that endures over a significant time period;

(5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes;

(6) the abuse is sexual abuse; or

(7) the abuse is verbal abuse that causes significant mental anguish, including psychological or emotional damage, and which is evidenced by significant behavioral changes or physical symptoms.

B. Neglect. A substantiated complaint of neglect meets the severity standard if:

(1) the neglect results in, or is a contributing factor to, death;

(2) the neglect results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;

(3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;

(4) the neglect results in the infliction of excruciating pain or pain that endures over a significant time period; or,

(5) the neglect causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes.

C. Exploitation. A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

(1) a single instance of an objectively quantifiable loss, the value of which exceeds the lesser of either:

(a) \$25.00; or,

(b) twenty five percent the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or

(2) a subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.

D. Aggravating factors. A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:

(1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or

(2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation. [8.370.8.11 NMAC - N, 07/01/2024]

8.370.8.12 PROVIDER COOPERATION:

A. Access to provider by investigators. The provider shall provide immediate physical access to the provider’s entire facility or its service delivery sites to investigators from the authority or APS. The investigators may require such access during any or all shifts.

B. Access to provider records. The provider shall provide to investigators from the authority or APS immediate access to all information obtained as a result of the provider’s own internal investigation of the matters that form the basis of the complaint, including but not limited to written statements, interviews, affidavits, physical items, medical information, electronic and computer data, and photographic information.

C. Interviews. Investigators from the authority or APS shall have a reasonable opportunity to conduct confidential interviews with any person who may have relevant information relating to the complaint, including employees and other staff including licensed health care professionals and certified nurse aides, other licensed health care

professionals and other provider staff, recipients of care or services from the provider and their family members, guardians, health care decision makers and friends.

D. Physical access to recipients of care and services. The provider must allow reasonable access to individuals receiving care or services from the provider to investigators from the authority or APS when such investigators announce that they are investigating a complaint. Such access may be telephonic or face-to-face.

E. Access to the provider’s records, patient trust accounts and patient property. The provider must provide immediate access to investigators from the authority or APS to the provider’s billing records, patient trust accounts, representative payee records, patient care and medical records, and patient property. In addition the provider must assure access to employee and personnel records, including documentation showing provider inquiry to the registry.

F. Copying. The access required to be provided to investigators includes copying paper documents and printing and copying electronic and computer records or data. Copied documents shall be retained in accordance with applicable state retention policies.

G. Consequences of provider’s denial of cooperation. The authority shall administer sanctions for a provider’s failure to comply with the Employee Abuse Registry Act, including failure to provide access as required herein to conduct investigations of complaints, and such sanctions include a directed plan of correction, a civil monetary penalty not to exceed \$5,000, or such sanctions as are available under applicable contract or licensing provisions. [8.370.8.12 NMAC - N, 07/01/2024]

8.370.8.13 NOTIFICATION FOLLOWING INVESTIGATION:

A. Notification to provider and employee. If the authority or APS determines,

following an investigation, that an instance of either substantiated or substantiated registry-referred employee abuse, neglect, or exploitation has occurred, then the authority, if it substantiated the complaint, or APS, if it substantiated the complaint, shall promptly notify the employee and the provider.

B. Required information for substantiated registry-referred complaints. The notice to the provider and employee for substantiated registry-referred complaints shall be by certified mail and shall include the following information.

(1) The nature of the abuse, neglect, or exploitation.

(2) The date and time of the occurrence.

(3) The right to request a hearing, and the time and manner for requesting a hearing.

(4) The fact that the substantiated registry-referred findings will be reported to the registry, once the employee has had an opportunity for a hearing.

(5) The failure by the employee to request a hearing in writing within 30 calendar days from the date of the notice shall result in the reporting of the substantiated findings to the registry and the provider.

C. Required information for substantiated complaints. The notice to the provider and employee for substantiated complaints may be by mail or by email and shall include the following information.

(1) The nature of the abuse, neglect, or exploitation.

(2) The date and time of the occurrence.

(3) The fact that the substantiated complaint was not sufficiently severe to warrant reporting the employee to the registry.

(4) The fact that the employee may not request a hearing.

D. Unsubstantiated complaints. Notice of a determination that an investigated complaint is unsubstantiated shall

be mailed or emailed to the provider following such determination.

E. APS notification to the authority. APS shall notify the manager of substantiated complaints of abuse, neglect and exploitation, and substantiated registry-referred complaints of abuse, neglect and exploitation.

[8.370.8.13 NMAC - N, 07/01/2024]

8.370.8.14 HEARINGS:

Hearings are provided to employees by either the authority or APS. This section provides rules applicable to hearings held by the authority.

A. Request for hearing. An employee may request an evidentiary hearing if the employee is notified that as a result of substantiated registry-referred findings of abuse, neglect, or exploitation the employee will be reported to the registry. The request for hearing shall be made to the authority if the authority conducted the investigation and issued the notice. The employee's request for hearing shall be made to APS if APS conducted the investigation and issued the notice. A provider may not request a hearing pursuant to the Employee Abuse Registry Act. The following applies to hearings properly requested of the authority.

(1) The request for a hearing shall be in writing and mailed or delivered to the New Mexico health care authority at the address set forth in the notice.

(2) The request for hearing shall include a copy of the notice.

(3) The request for hearing must be mailed or hand-delivered no later than 30 calendar days after the date of the notice.

B. Scheduling order. The authority, or the hearing officer, shall issue a scheduling order that sets the hearing at a location reasonably convenient for the employee and at a date and time reasonably convenient to the parties. The scheduling order shall establish deadlines for completion of discovery and provide for the filing of a confidentiality

order. The hearing shall be scheduled within 30 calendar days following the authority's receipt of the request for hearing. Either party may request a continuance of the hearing for good cause. If a hearing is continued it shall be rescheduled at the earliest date and time available to the parties.

C. Hearing officer. The hearing will be conducted before an impartial and independent hearing officer of the authority. The hearing officer is not required to be an attorney. Upon appointment, the hearing officer shall establish an official file of the case. The hearing officer shall resolve all prehearing matters, including amendment of the scheduling order, schedule and conduct prehearing conferences, rule on prehearing motions, and resolve discovery disputes. The hearing officer will preside over the hearing and allow each party an opportunity to present its case, and shall resolve all motions, evidentiary issues and other matters as may be necessary. Within 30 calendar days of the conclusion of the hearing the hearing officer will issue a report and recommended decision to the secretary.

D. Parties. The parties to the hearing are the authority, through the manager or designee, and the employee. Each party may be represented by an attorney.

E. Confidentiality. The hearing officer shall require the filing of an appropriate signed confidentiality order in which each party agrees to maintain and protect the confidentiality of all individually identifiable health information that is, or may be, used or disclosed at any time during the course of the entire proceeding in accordance with applicable state and federal law and regulations. Refusal or failure to sign an appropriate confidentiality order constitute grounds for denying discovery to the non-signing party, limiting the number and testimony of the non-signing party's witnesses, limiting the admission of evidence that discloses individually identifiable health information, and the imposition of other appropriate measures to limit the scope of disclosure of individually

identifiable health information to the non-signing party.

F. Discovery.

(1) Exhibit and witness lists will be exchanged between the parties and provided to the hearing officer prior to the hearing by the parties in accordance with the scheduling order, any prehearing order, or by agreement of the parties. The witness list shall include a summary of the subject matter of the anticipated testimony of each witness listed.

(2) No depositions are allowed except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing. Pursuant to provisions in the scheduling order or upon agreement of the parties, and with the consent of the witness if the witness is not employed by the authority or another governmental entity, a party may interview witnesses identified by the other party at a reasonable time and in a reasonable manner.

(3) Production of documents. Upon request by the employee, the authority shall provide a copy of the investigation to the employee. The parties may request the production of other relevant documents in accordance with the scheduling order or other discovery order.

G. Hearing procedures. The hearing shall be closed to the public. The hearing officer shall conduct the hearing in an efficient and orderly manner that respects the rights of the parties to present their cases. The hearing officer shall maintain proper decorum and shall assure that all participants in the hearing are courteous to one another. The hearing officer is authorized to resolve motions and other disputes before and during the hearing.

(1) Recording. The hearing officer will cause a record to be made of the hearing and retained in the official file. Generally such record is made by use of commonly

available audio recording technology. A log of the recording shall be maintained.

(2) Order of presentation at hearing. The authority shall present its case, the employee shall present the employee’s case, and the authority may present its rebuttal case.

(3) Public. The hearing is a closed, nonpublic hearing.

(4) Evidence. The New Mexico rules of evidence do not apply, although they may be referred to for guidance as to type of evidence that may be admitted. Generally, evidence shall be admitted if it is of a type relied upon by reasonable persons in the conduct of important affairs. Proffered evidence may be excluded if it is not relevant, or is repetitious or cumulative.

(5) Telephonic testimony. Upon timely notice to the opposing party and the hearing officer and with the approval of the hearing officer, the parties may present witnesses by telephone, or live video.

(6) Recommended decision. The hearing officer shall issue a recommended decision to the secretary within 30 days of the closing of the hearing and transfer the official record to the custodian.

(7) The custodian shall maintain the official record of the hearing, which shall include the recommendation of the hearing officer and the secretary’s adjudicated decision.

H. Secretary’s decision. Within 10 business days of receipt of the authority’s or the APS’ hearing officer recommendation, the secretary of the authority shall issue a final decision, and promptly provide the parties with a copy. If the decision of the secretary finds that the employee was responsible for abuse, neglect or exploitation of sufficient severity for referral to the registry, it shall be the adjudicated decision of abuse, neglect or exploitation.

I. Judicial review. An employee may appeal the secretary’s adjudicated decision

of abuse, neglect or exploitation to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. The custodian will enter the employee’s name into the registry within two working days following receipt of the adjudicated decision. The custodian shall promptly remove the employee from the registry upon the authority’s receipt of an order issued by the district court granting a stay pending the outcome of the appeal, or upon the authority’s receipt of a district court order reversing the adjudicated decision.

J. Court of appeals. If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, notification shall be made to the custodian who shall promptly remove the employee from the registry.

[8.370.8.14 NMAC - N, 07/01/2024]

8.370.8.15 NOTIFICATION BY APS: APS shall promptly provide all required employee information to the custodian of the final disposition of complaints of substantiated registry-referred abuse, neglect or exploitation after the occurrence of each of the following:

A. No hearing requested. The employee has not requested an administrative hearing within 30 calendar days after the date of the notice to the employee following an investigation resulting in the determination of substantiated registry-referred abuse, neglect, or exploitation.

B. Adjudication of abuse, neglect or exploitation. The employee has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978 after 30 calendar days following the date of the final APS administrative adjudication decision of employee abuse, neglect or exploitation of sufficient severity for registry referral.

C. Judicial decision. Upon the receipt by APS of a district

court order or decision sustaining the APS administrative adjudication decision of abuse, neglect or exploitation of sufficient severity for registry referral, if an employee seeks judicial review in the district court.

D. Court of Appeals. If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, then notification shall be made to the custodian who shall promptly remove the employee from the registry.

[8.370.8.15 NMAC - N, 07/01/2024]

8.370.8.16 ENTRY ON THE REGISTRY: The custodian shall provide the employee and the provider for whom the employee worked with notice of the employee’s listing on the registry. The following employees will be listed on the registry by the custodian:

A. No hearing requested. Any employee determined to have committed substantiated registry-referred abuse, neglect or exploitation who does not request an administrative hearing within 30 calendar days after the date of the notice to the employee.

B. Adjudicated decision. Any employee who, after 30 calendar days following the date of an adjudicated decision of abuse, neglect or exploitation, has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. Judicial decision. Any employee for whom a district court has entered an order or decision sustaining an administrative adjudication of abuse, neglect or exploitation.

D. Court of appeals. Any employee who seeks review in the court of appeals by writ of certiorari shall remain listed on the registry, unless a stay is granted pending the outcome of the case, or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses the

district court, then the custodian shall promptly remove the employee from the registry.

[8.370.8.16 NMAC - N, 07/01/2024]

8.370.8.17 REMOVAL FROM THE REGISTRY: After a period of three years from the effective date of placement on the registry, an individual on the registry may petition for removal from the registry. The petition shall be sent to the custodian. The petition contents shall be reviewed for completeness within five days, and if not complete, notice shall be sent to the petitioner informing the petitioner that the petition is incomplete. The petition review time does not commence to run until the submission of a complete petition.

A. Petition contents.

Any individual whose name is on the registry may petition the custodian in writing for removal of the individual's name from the registry. In addition to the name, address, telephone number, and social security number of the petitioner, the petition shall provide:

(1) the petitioner's employment history since placement on the registry, to include for each employer, the name, address and telephone number of the employer, a brief description of the petitioner's responsibilities, the dates of the employment, reasons for ending the employment, and the names and telephone numbers of any employer contacts;

(2) evidence of any rehabilitation, restitution or education since the incident of abuse, neglect or exploitation, including copies of any certificates or other evidence of successful completion of rehabilitation or other educational programs, and including evidence of relevant volunteer activities;

(3) other relevant information including changed circumstances.

B. Review of petition.

The authority shall establish a process of review of the petition. Such process may include review of the petition by authority or APS employees selected for such reviews,

and shall include a requirement that a recommendation be made to the secretary on the merits of the petition within 20 calendar days from receipt of the completed petition. The burden at all times rests upon the petitioner to present truthful information sufficient to show that good cause exists for removing the petitioner's name from the registry.

C. Review considerations. The review process established by the authority shall consider all relevant factors to determine if the petitioner has presented truthful information sufficient to demonstrate that good cause exists for removing the petitioner's name from the registry, including but not limited to:

(1) the nature and extent of the substantiated abuse, neglect or exploitation which resulted in the placement of the petitioner's name on the registry including records obtained from the employee abuse registry program and the custodian of the registry;

(2) the evidence showing the rehabilitation activities of the petitioner, which may be based in part on relevant volunteer activities, education and restitution;

(3) the petitioner's age at the time of the substantiated abuse, neglect or exploitation, and the length of time since the substantiated abuse, neglect or exploitation;

(4) the likelihood that the petitioner will commit future acts of abuse, neglect or exploitation; and,

(5) the existence and extent of false or misleading statements or information provided by the petitioner in connection with the petition.

D. Decision on

Petition. The secretary shall issue a final written determination on the petition based upon the review of the petition within 30 days of receipt of the completed petition, and shall provide the decision to the petitioner in person or by certified mail. The secretary's final written determination shall be delivered or mailed to the

petitioner within three business days of such determination. If the petition is granted, the petitioner's name shall be promptly removed from the registry.

E. Hearings. If the secretary denies the petition, the petitioner may request an administrative hearing with 10 calendar days of receipt of the decision. Upon receipt of a request for a hearing, an independent hearing officer of the authority shall conduct the hearing. If a petition is denied by the secretary and a hearing is requested and provided, the individual may not thereafter re-petition for removal from the registry. If the petition is denied following a hearing, then the petitioner may seek judicial review pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If a petition is denied by the secretary, and an administrative hearing is not timely requested, then the individual on the registry may petition only one additional time for removal from the registry after a minimum of 36 months from the date of the prior petition denial.

[8.370.8.17 NMAC - N, 07/01/2024]

8.370.8.18 CONFIDENTIALITY:

The authority complies with all state and federal confidentiality requirements regarding information obtained in connection with the operation of the employee abuse registry program, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

A. Confidentiality of information. Information obtained by the incident management system involving incidents or situations of suspected abuse, neglect or exploitation is confidential, and is not subject to public inspection until completion of all investigations and hearings, and then only to the extent specifically permitted by law and only such information that does not identify individuals who are receiving care or services from providers.

B. Unsubstantiated complaints. Complaints of suspected abuse, neglect or exploitation obtained by the incident management

system that are not substantiated following investigation are not public information and are not subject to public inspection.

C. Substantiated complaints. Complaints of suspected abuse, neglect or exploitation obtained by the incident management system that are substantiated following investigation are subject to public inspection only to the extent permitted by law and the disclosure may not include any identifying information about an individual who is receiving health care services from a provider.

D. Permitted disclosures. Nothing herein shall restrict an appropriate disclosure of information to the centers for medicare and medicaid services; nor shall any provision herein restrict disclosures to law enforcement officials, including district attorneys and courts, in accordance with the Adult Protective Services Act and the Resident Abuse and Neglect Act or other law.
[8.370.8.18 NMAC - N, 07/01/2024]

History of 8.370.8 NMAC:
[RESERVED]

HUMAN SERVICES DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 9 INCIDENT REPORTING, INTAKE, PROCESSING AND TRAINING REQUIREMENTS**

8.370.9.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.9.1 NMAC - N, 07/01/2024]

8.370.9.2 SCOPE: This rule is applicable to persons, organizations or legal entities to include each: adult day care center, adult day care home, adult assisted living facility,

ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded or the intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, and rural health clinic.
[8.370.9.2 NMAC - N, 07/01/2024]

8.370.9.3 STATUTORY AUTHORITY: 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.
[8.370.9.3 NMAC - N, 07/01/2024]

8.370.9.4 DURATION: Permanent.
[8.370.9.4 NMAC - N, 07/01/2024]

8.370.9.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.9.5 NMAC - N, 07/01/2024]

8.370.9.6 OBJECTIVE: This rule establishes standards for licensed health care facilities to institute and maintain an incident management system and employee training program for the reporting of abuse, neglect, exploitation injuries of unknown origin and other reportable incidents.
[8.370.9.6 NMAC - N, 07/01/2024]

8.370.9.7 DEFINITIONS:

A. "Abuse" means:
(1)

knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;

(2) the

intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;

(3) sexual

abuse, including criminal sexual contact, incest, and criminal sexual penetration; or

(4) verbal

abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.

B. "Bureau" means the health care authority, division of health improvement, health facility licensing and certification bureau.

C. "Case manager" means the staff person designated to coordinate and monitor the individual service plan for persons receiving services.

D. "Complaint" means any report, assertion, or allegation of abuse, neglect, or exploitation of, or injuries of unknown origin to, a consumer made by a reporter to the incident management system, and includes any reportable incident that a licensed health care facility is required to report under applicable law.

E. "CMS" means the centers for medicare and medicaid services.

F. "Consumer" means any person who engages the professional services of a medical or other health professional on an inpatient or outpatient basis, or person requesting services from a hospital.

G. "Division" means the health care authority, division of health improvement.

H. "Employee" means:

(1) any person

whose employment or contractual service with a licensed health care facility which includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility; or

(2) any

compensated persons such as employees, contractors and employees of contractors; or guardianship service providers or case management entities that provide services to people with developmental disabilities; or administrators or operators of facilities who are routinely on site.

I. “Exploitation” means an unjust or improper use of a person’s money or property for another person’s profit or advantage, financial or otherwise.

J. “Immediate access” means physical or in person direct and unobstructed access, to electronic or other access needed by employees, consumers, family members or legal guardian to the licensed health care facility’s incident management reporting procedures or access to the division’s incident report form.

K. “Immediate reporting” means reporting that is done as soon as practicable and no later than 24 hours from knowledge of the incident.

L. “Immediate jeopardy” means a provider’s noncompliance with one or more requirements of medicaid or medicare participation, which causes or is likely to cause, serious injury, harm, impairment, or death to a consumer.

M. “Incident” means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

N. “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.

O. “Incident report form” means the reporting format issued by the division for the reporting of incidents or complaints.

P. “ISP” means a consumer’s individual service plan.

Q. “Licensed health care facilities” means any organization licensed by the authority for the following services: adult day care center, assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded or

intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic.

R. “Mental anguish” means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these, and is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.

S. “Neglect” means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.

T. “Quality assurance” means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative and clinical practices in meeting the needs of persons served as well as achieving the licensed health care facility’s mission, values and goals.

U. “Quality improvement system” means the adopted or developed licensed health care facility’s policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin, or other reportable incidents for the continuous study and improvement of the efficiency and efficacy of organizational, administrative and preventative practices in employee training and reporting.

V. “Reportable incident” means possible abuse, neglect, exploitation, injuries of unknown origin and other events including but not limited to falls which cause injury, unexpected death, elopement, medication error which causes or is likely to cause harm, failure to follow a doctor’s order or an ISP, or any other incident which may evidence abuse, neglect, or exploitation.

W. “Reporter” means any person who or any entity that reports possible abuse, neglect or exploitation to the division.

X. “Restraints” means use of a mechanical device, or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer’s freedom of movement, performance of physical activity, or normal access to his body.

Y. “Revocation” means a type of sanction making a license null and void through its cancellation.

Z. “Sanction” means a measure imposed by the authority on a licensed program, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

AA. “Substantiated” means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

BB. “Suspension” means a temporary cancellation of a license pending an appeal, hearing or correction of the deficiency. During a suspension the provider’s medicare or medicaid agreement is not in effect.

CC. “Training curriculum” means the instruction manual or pamphlet adopted or developed by the licensed health facility containing policies and procedures for reporting abuse, neglect, misappropriation of consumers’ property or other reportable incidents.

DD. “Unsubstantiated” means that the complaint or incident could not be verified based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

EE. “Volunteer” means any person who works without compensation for a licensed health care facility whose services includes direct care or routine and unsupervised physical or financial

access to any care recipient serviced by that licensed health care facility. [8.370.9.7 NMAC - N, 07/01/2024]

8.370.9.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR LICENSED HEALTH CARE FACILITIES:

A. Duty to report:
(1) All

licensed health care facilities shall immediately report abuse, neglect or exploitation to the adult protective services division.

(2) All

licensed health care facilities shall report abuse, neglect, exploitation, and injuries of unknown origin or other reportable incidents to the bureau within a 24 hour period, or the next business day when the incident occurs on a weekend or holiday.

(3) All

licensed health care facilities shall ensure that the reporter with direct knowledge of an incident has immediate access to the bureau incident report form to allow the reporter to respond to, report, and document incidents in a timely and accurate manner.

B. Notification:

(1) Incident reporting:

Any person may report an incident to the bureau by utilizing the DHI toll free complaint hotline at 1-800-752-8649. Any consumer, employee, family member or legal guardian may also report an incident to the bureau directly or through the licensed health care facility by written correspondence or by utilizing the bureau's incident report form. The incident report form and instructions for the completion and filing are available at the division's website or may be obtained from the authority by calling the toll free number at 1-800-752-8649.

(2)

Division incident report form and notification by licensed health care facilities: The licensed health care facility shall report incidents utilizing the division's incident report form consistent with the requirements of the division's incident management

system guide and CMS regulations as applicable. The licensed health care facility shall ensure that all incident report forms alleging abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents are submitted by a reporter with direct knowledge of an incident, are completed on the bureau's incident report form and received by the division within 24 hours of an incident or allegation of an incident or the next business day if the incident occurs on a weekend or a holiday. The licensed health care facility shall ensure that the reporter with the most direct knowledge of the incident assists with the preparation of the incident report form.

C. Incident policies:

All licensed health care facilities shall maintain policies and procedures which describe the licensed health care facility's immediate response to all reported allegations of abuse, neglect, exploitation, injuries of unknown origin, and deaths, as applicable.

D. Retaliation:

Any individual who, without false intent, reports an incident or makes an allegation of abuse, neglect or exploitation will be free of any form of retaliation.

E. Quality

improvement system for licensed health care facilities: The licensed health care facility shall establish and implement a quality improvement system for reviewing alleged complaints and incidents. The incident management system shall include written documentation of corrective actions taken. The provider shall maintain documented evidence that all alleged violations are thoroughly investigated, and shall take all reasonable steps to prevent further incidents.

[8.370.9.8 NMAC - N, 07/01/2024]

8.370.9.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:

A. General:

All licensed health care facilities shall establish and maintain an incident management system,

which emphasizes the principles of prevention and staff involvement. The licensed health care facility shall ensure that the incident management system policies and procedures require all employees to be competently trained to respond to, report, and document reportable incidents in a timely and accurate manner.

B. Training

curriculum: Prior to working unsupervised with consumers, the licensed health care facility shall provide all employees and volunteers with a written training curriculum and shall train them on incident policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents. Refresher training shall be provided at annual, not to exceed 12 month, intervals. The training curriculum may include computer-based training. Reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the licensed health care facility. Training shall be conducted in a language that is understood by the employee and volunteer.

C. Incident

management system training curriculum requirements:

(1) The

licensed health care facility shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum that includes but is not limited to:

(a)

an overview of the potential risk of abuse, neglect, and exploitation;

(b)

informational procedures for properly filing the division's incident management report form;

(c)

specific instructions of the employees' legal responsibility to report an incident of abuse, neglect or exploitation;

(d)

specific instructions on how to respond to abuse, neglect, and exploitation; and

(e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, or exploitation.

(2) All current employees and volunteers shall receive training within 90 days of the effective date of this rule.

D. Training

documentation: All licensed health care facilities shall prepare training documentation for each employee to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The licensed health care facility shall maintain documentation of an employee's or volunteer's training for a period of at least 12 months. Training curricula shall be kept on the premises and made available on request by the authority. Training documentation shall be made available immediately upon a authority representative's request. Failure to provide employee or volunteer training documentation shall subject the licensed health care facility to the penalties provided for in this rule.

E. Consumer and guardian orientation packet: Consumers, family members and legal guardians shall be made aware of and have available immediate accessibility to the licensed health care facility incident reporting processes. The licensed health care facility shall provide consumers, family members or legal guardians an orientation packet to include incident management systems policies and procedural information concerning the reporting of abuse, neglect or exploitation. The licensed health care facility shall include a signed statement indicating the date, time, and place they received their orientation packet to be contained in the consumer's file. The appropriate consumer, family member or legal guardian shall sign this at the time of orientation.

F. Posting of incident management information poster: All licensed health care facilities and shall post two or

more posters, to be furnished by the division, in a prominent public location which states all incident management reporting procedures, including contact numbers and internet addresses. All licensed health care facilities operating 60 or more beds shall post at least three or more posters, to be furnished by the division, in a prominent public location which states all incident management reporting procedures, including contact numbers and internet addresses. The posters shall also be posted where employees report each day and from which the employees operate to carry out their activities. Each licensed health care facility shall take steps to ensure that the notices are not altered, defaced, removed, or covered by other material.

[8.370.9.9 NMAC - N, 07/01/2024]

8.370.9.10 ACCESS AND COOPERATION TO FACILITATE AUTHORITY INCIDENT INVESTIGATIONS:

A. The authority will conduct incident investigations and periodic surveys of licensed health care facilities subject to these requirements. These reviews may be either announced or unannounced.

B. All licensed health care facilities shall facilitate immediate physical or in-person access to authority personnel investigating incidents or conducting surveys:

(1) all records, regardless of media, including but not limited to, financial records, all client records, individual service plans, personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys and agency policy /procedures manuals;

(2) all necessary employees with direct knowledge of the incident;

(3) all necessary clients currently receiving services, guardians, representatives and family members with direct knowledge of the incident; and

(4) all

administrative and service delivery sites.

C. All licensed health care facilities shall conduct a complete investigation and report the actions taken and conclusions reached by the facility within five days of discovery of the incident.

[8.370.9.10 NMAC - N, 07/01/2024]

8.370.9.11 CONSEQUENCES OF LICENSED HEALTH CARE FACILITY NONCOMPLIANCE:

A. The authority or other governmental agency having regulatory enforcement authority over a licensed health care facility may sanction a licensed health care facility or in accordance with applicable law if the licensed health care facility fails to report incidents of abuse, neglect or exploitation or fails to provide or fails to maintain evidence of an existing incident management system and employee training documentation as set forth by this rule, fails to take reasonable measures to protect consumers from abuse, neglect or exploitation, or any other violation of this rule.

B. Such sanctions may include revocation or suspension of license, directed plan of correction, intermediate sanctions or civil monetary penalty up to \$5,000 per instance.

C. All confirmed incident investigations conducted by the authority hold the licensed health care facility responsible for the actions of the employee in their employment with the following exception: any employee found to have caused the abuse, neglect or exploitation shall be held accountable independent of the licensed health care facility when the facility has complied with all requirements of this rule and the employee acts outside of the provider's system. The employee shall be subject to the Employee Abuse Registry Act or referred to the appropriate certification or licensing authority and reported to law enforcement agencies when appropriate.

[8.370.9.11 NMAC - N, 07/01/2024]

8.370.9.12
CONFIDENTIALITY: All consumer information reviewed or obtained in the course of a survey or investigation of a licensed health care facility is confidential in accordance with all applicable federal and state law and regulation. If a complaint is unsubstantiated, no information regarding the substance of the complaint or the alleged individual or provider perpetrator may be released publicly. If a complaint is substantiated, confidential information includes, but is not limited to: identity of the incident report form reporter if confidentiality has been requested, personnel records, dates of birth, drivers' license numbers, social security numbers, personal addresses and telephone numbers, the licensed health care facility's internal incident investigations, financial documents and proprietary business information. [8.370.9.12 NMAC - N, 07/01/2024]

8.370.9.13 SEVERABILITY: If any provision or application of 8.370.9 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected. [8.370.9.13 NMAC - N, 07/01/2024]

History of 8.370.9 NMAC:
[RESERVED]

**HUMAN SERVICES
 DEPARTMENT**

**TITLE 8 SOCIAL
 SERVICES
 CHAPTER 370 OVERSIGHT
 OF LICENSED HEALTHCARE
 FACILITIES AND COMMUNITY
 BASED WAIVER PROGRAMS
 PART 10 ABUSE,
 NEGLECT, EXPLOITATION,
 AND DEATH REPORTING,
 TRAINING AND RELATED
 REQUIREMENTS FOR
 COMMUNITY PROVIDERS**

8.370.10.1 ISSUING
AGENCY: New Mexico Health Care Authority. [8.370.10.1 NMAC - N, 07/01/2024]

8.370.10.2 SCOPE: This rule is applicable to persons, organizations or legal entities receiving developmental disability waiver funds and developmental disability medically fragile waiver funds acting as community-based service providers as defined in this rule. [8.370.10.2 NMAC - N, 07/01/2024]

8.370.10.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6, NMSA 1978, Subsection D of Section 24-1-2, Subsections I, L, O, T and U of Sections 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. [8.370.10.3 NMAC - N, 07/01/2024]

8.370.10.4 DURATION: Permanent. [8.370.10.4 NMAC - N, 07/01/2024]

8.370.10.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section. [8.370.10.5 NMAC - N, 07/01/2024]

8.370.10.6 OBJECTIVE: This rule establishes standards for community-based service providers to institute and maintain an incident management system and employee and volunteer training programs for the reporting of abuse, neglect, exploitation, suspicious injuries, environmentally hazardous conditions and death. [8.370.10.6 NMAC - N, 07/01/2024]

8.370.10.7 DEFINITIONS:
A. "Abuse" including verbal abuse, means:
(1) knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;
(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person; or

(3) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration.

B. "Abuse, neglect, exploitation, or report of death form" means the reporting format issued by the division for the reporting of incidents which may relate to abuse, neglect, or exploitation of a consumer, including suspicious injuries, or for reporting any death.

C. "Case manager" means the staff person designated to coordinate and monitor the individual service plan for persons receiving community-based services.

D. "Community-based service providers" means any person, organization, or legal entity, including mi via consultants, providing the following services, and having any provider agreement with the health care authority:

(1) "developmental disability waiver services" means a medicaid funded home or community-based services for persons with intellectual and developmental disabilities; and

(2) "medically fragile waiver services" means medicaid funded home or community-based services for persons with intellectual and developmental disabilities who are medically fragile.

E. "Consultant" means the person or entity supporting the mi via consumer to make informed choices among the services offered through the mi via waiver, develop service and support plans (SSP), and providing on-going assistance with SSP implementation.

F. "Consumer" means any recipient of services from a community-based service provider.

G. "Division" means the health care authority, division of health improvement, incident management bureau.

H. "Employee" means any person whose employment or contractual service with a community-based service provider, or with a consumer, which includes direct care or routine and unsupervised physical

or financial access to any care recipient served.

I. “Environmental hazard” means a condition in the physical environment which creates an immediate threat to health or safety of the individual.

J. “Exploitation” means an unjust or improper use of a person’s money or property for another person’s profit or advantage, financial, or otherwise.

K. “Immediate access” means physical or in-person direct and unobstructed access to electronic or other access needed by employees, consumers, family members, or legal guardians to the community-based service program’s incident management reporting procedures or access to the division’s abuse, neglect, exploitation or report of death form.

L. “Immediate jeopardy” means a provider’s non-compliance with one or more requirements of medicaid participation or the provider agreement which causes, or is likely to cause, serious injury, harm, impairment, or death to a consumer.

M. “Immediate reporting” means reporting that is done immediately. A report may only be delayed while the provider is taking immediate action to prevent harm to a consumer.

N. “Incident” means any known, alleged, or suspected event of abuse, neglect, exploitation, suspicious injury, or any death.

O. “Incident management system” means the written policies and procedures adopted or developed by the community-based service provider for reporting abuse, neglect, exploitation, suspicious injuries, or for making a report of death as required in Subsection A of 8.370.10.8 NMAC.

P. “Mental anguish” means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment, or embarrassment, although it may include all of these, and is objectively manifested by the recipient of care or services by

significant behavioral or emotional changes or physical symptoms.

Q. “Natural support” means an uncompensated person such as a family member, friend, or any person in a supportive relationship with the consumer.

R. “Neglect” means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision, and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.

S. “Non-responsible provider” means any reporter who is reporting an incident of abuse, neglect, exploitation, suspicious injury or death in which they are not the responsible community-based service provider during the time of the incident.

T. “Quality assurance” means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative, and clinical practices in meeting the needs of persons served as well as achieving the community-based service provider’s mission, values and goals.

U. “Quality improvement system” means the community-based service provider’s policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, suspicious injuries, and all deaths for the continuous study and improvement of the efficiency and efficacy of organizational, administrative, and preventative practices in employee training and reporting.

V. “Report” means any assertion or allegation of abuse, neglect, exploitation, suspicious injuries, or report of death made by a reporter to the incident management bureau and includes any incident that a community-based service provider is required to report under applicable law.

W. “Reporter” means any person who, or any entity that, reports possible abuse, neglect, exploitation, suspicious injury,

or makes a report of death to the authority’s incident management bureau.

X. “Restraints” means use of a mechanical device or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer’s freedom of movement, performance of physical activity, or normal access to his body.

Y. “Sanction” means a measure imposed by the authority on a provider, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

Z. “Sexual abuse” means the inappropriate touching of a recipient of care or services for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch another for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming, or depiction of acts considered pornographic. Sexual conduct engaged in by an employee with a person for whom they are providing care or services is sexual abuse per se.

AA. “Substantiated” means the verification of an allegation of abuse, neglect, or exploitation based upon a preponderance of reliable evidence obtained from an investigation of an allegation of abuse, neglect, or exploitation.

BB. “Training curriculum” means the instruction manual or pamphlet adopted or developed by the community-based service provider containing policies and procedures for reporting abuse, neglect, exploitation, suspicious injury, or any death.

CC. “Unsubstantiated” means that an allegation of abuse, neglect, and exploitation could not be verified based upon a preponderance of reliable evidence obtained from an investigation of a complaint of abuse, neglect, or exploitation.

DD. “Verbal abuse” means profane, threatening,

derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.

EE. “Volunteer” means any person who is not a natural support who works without compensation for a community-based service provider and whose services includes direct care or routine physical or financial access to any consumer serviced by that community-based service provider. [8.370.10.7 NMAC - N, 07/01/2024]

8.370.10.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR COMMUNITY-BASED SERVICE PROVIDERS:

A. Duty to report:
(1) All

community-based providers shall immediately report alleged crimes to law enforcement or call for emergency medical services as appropriate to ensure the safety of consumers.

(2) All community-based service providers, their employees and volunteers shall immediately call the division of health improvement (DHI) hotline at 1-800-445-6242 to report abuse, neglect, exploitation, suspicious injuries or any death and also to report an environmentally hazardous condition which creates an immediate threat to health or safety.

B. Reporter requirement. All community-based service providers shall ensure that the employee or volunteer with knowledge of the alleged abuse, neglect, exploitation, suspicious injury, or death calls the division’s hotline to report the incident.

C. Initial reports, form of report, immediate action and safety planning, evidence preservation, required initial notifications:

(1) Abuse, neglect, and exploitation, suspicious injury or death reporting: Any person may report an allegation of abuse, neglect, or exploitation, suspicious injury or a death by calling the division’s toll-free hotline number

1-800-445-6242. Any consumer, family member, or legal guardian may call the division’s hotline to report an allegation of abuse, neglect, or exploitation, suspicious injury or death directly, or may report through the community-based service provider who, in addition to calling the hotline, must also utilize the division’s abuse, neglect, and exploitation or report of death form. The abuse, neglect, and exploitation or report of death form and instructions for its completion and filing are available at the division’s website or may be obtained from the authority by calling the division’s toll free hotline number, 1-800-445-6242.

(2) Use of abuse, neglect, and exploitation or report of death form and notification by community-based service providers: In addition to calling the division’s hotline as required in Paragraph (2) of Subsection A of 8.370.10.8 NMAC, the community-based service provider shall also report the incident of abuse, neglect, exploitation, suspicious injury, or death utilizing the division’s abuse, neglect, and exploitation or report of death form consistent with the requirements of the division’s abuse, neglect, and exploitation reporting guide. The community-based service provider shall ensure all abuse, neglect, exploitation or death reports describing the alleged incident are completed on the division’s abuse, neglect, and exploitation or report of death form and received by the division within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division’s website; otherwise it may be submitted via fax to 1-800-584-6057. The community-based service provider shall ensure that the reporter with the most direct knowledge of the incident participates in the preparation of the report form.

(3) Limited provider investigation: No investigation beyond that necessary in order to be able to report the abuse, neglect, or exploitation and ensure the safety of consumers is permitted until the division has completed its investigation.

(4) Immediate action and safety planning: Upon discovery of any alleged incident of abuse, neglect, or exploitation, the community-based service provider shall:

(a) develop and implement an immediate action and safety plan for any potentially endangered consumers, if applicable;

(b) be immediately prepared to report that immediate action and safety plan verbally, and revise the plan according to the division’s direction, if necessary; and

(c) provide the accepted immediate action and safety plan in writing on the immediate action and safety plan form within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division’s website; otherwise it may be submitted by faxing it to the division at 1-800-584-6057.

(5) Evidence preservation: The community-based service provider shall preserve evidence related to an alleged incident of abuse, neglect, or exploitation, including records, and do nothing to disturb the evidence. If physical evidence must be removed or affected, the provider shall take photographs or do whatever is reasonable to document the location and type of evidence found which appears related to the incident.

(6) Legal guardian or parental notification: The responsible community-based service provider shall ensure that the consumer’s legal guardian or parent is notified of the alleged incident of abuse, neglect and exploitation within 24 hours of notice of the alleged incident unless the parent or legal guardian is suspected of committing the alleged abuse, neglect, or exploitation, in which case the community-based service provider shall leave notification to the division’s investigative representative.

(7) Case manager or consultant notification by community-based service

providers: The responsible community-based service provider shall notify the consumer’s case manager or consultant within 24 hours that an alleged incident involving abuse, neglect, or exploitation has been reported to the division. Names of other consumers and employees may be redacted before any documentation is forwarded to a case manager or consultant.

(8) Non-

responsible reporter: Providers who are reporting an incident in which they are not the responsible community-based service provider shall notify the responsible community-based service provider within 24 hours of an incident or allegation of an incident of abuse, neglect, and exploitation.

D. Incident policies:

All community-based service providers shall maintain policies and procedures which describe the community-based service provider’s immediate response, including development of an immediate action and safety plan acceptable to the division where appropriate, to all allegations of incidents involving abuse, neglect, or exploitation, suspicious injury as required in Paragraph (2) of Subsection A of 8.370.10.8 NMAC.

E. Retaliation:

Any person, including but not limited to an employee, volunteer, consultant, contractor, consumer, or their family members, guardian, and another provider who, without false intent, reports an incident or makes an allegation of abuse, neglect, or exploitation shall be free of any form of retaliation such as termination of contract or employment, nor may they be disciplined or discriminated against in any manner including, but not limited to, demotion, shift change, pay cuts, reduction in hours, room change, service reduction, or in any other manner without justifiable reason.

F. Quality assurance/ quality improvement program for community-based service providers: The community-based service provider shall establish and

implement a quality improvement program for reviewing alleged complaints and incidents of abuse, neglect, or exploitation against them as a provider after the division’s investigation is complete. The incident management program shall include written documentation of corrective actions taken. The community-based service provider shall take all reasonable steps to prevent further incidents. The community-based service provider shall provide the following internal monitoring and facilitating quality improvement program:

(1)

community-based service providers shall have current abuse, neglect, and exploitation management policy and procedures in place that comply with the authority’s requirements;

(2)

community-based service providers providing intellectual and developmental disabilities services must have a designated incident management coordinator in place; and

(3)

community-based service providers providing intellectual and developmental disabilities services must have an incident management committee to identify any deficiencies, trends, patterns, or concerns as well as opportunities for quality improvement, address internal and external incident reports for the purpose of examining internal root causes, and to take action on identified issues.

[8.370.10.8 NMAC - N, 07/01/2024]

8.370.10.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:

A. General:

All community-based service providers shall establish and maintain an incident management system, which emphasizes the principles of prevention and staff involvement. The community-based service provider shall ensure that the incident management system policies and procedures requires all employees and volunteers to be competently trained to respond to, report, and preserve

evidence related to incidents in a timely and accurate manner.

B. Training

curriculum: Prior to an employee or volunteer’s initial work with the community-based service provider, all employees and volunteers shall be trained on an applicable written training curriculum including incident policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, suspicious injury, and all deaths as required in Subsection A of 8.370.10.8 NMAC. The trainings shall be reviewed at annual, not to exceed 12-month intervals. The training curriculum as set forth in Subsection C of 8.370.10.9 NMAC may include computer-based training. Periodic reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the community-based service provider’s facility. Training shall be conducted in a language that is understood by the employee or volunteer.

C. Incident

management system training curriculum requirements:

(1)

The community-based service provider shall conduct training or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum provided electronically by the division that includes but is not limited to:

(a)

an overview of the potential risk of abuse, neglect, or exploitation;

(b)

informational procedures for properly filing the division’s abuse, neglect, and exploitation or report of death form;

(c)

specific instructions of the employees’ legal responsibility to report an incident of abuse, neglect and exploitation, suspicious injury, and all deaths;

(d)

specific instructions on how to respond to abuse, neglect, or exploitation;

(e)

emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, exploitation, or suspicious injury.

(2) All current employees and volunteers shall receive training within 90 days of the effective date of this rule.

(3) All new employees and volunteers shall receive training prior to providing services to consumers.

D. Training documentation: All community-based service providers shall prepare training documentation for each employee and volunteer to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The community-based service provider shall maintain documentation of an employee or volunteer’s training for a period of at least three years, or six months after termination of an employee’s employment or the volunteer’s work. Training curricula shall be kept on the provider premises and made available upon request by the authority. Training documentation shall be made available immediately upon a division representative’s request. Failure to provide employee and volunteer training documentation shall subject the community-based service provider to the penalties provided for in this rule.

E. Consumer and guardian orientation packet: Consumers, family members, and legal guardians shall be made aware of and have available immediate access to the community-based service provider incident reporting processes. The community-based service provider shall provide consumers, family members, or legal guardians an orientation packet to include incident management systems policies and procedural information concerning the reporting of abuse, neglect, exploitation, suspicious injury, or death. The community-based service provider shall include a signed statement indicating the date, time, and place they received their orientation packet to be contained in

the consumer’s file. The appropriate consumer, family member, or legal guardian shall sign this at the time of orientation.

F. Availability of incident management and abuse, neglect, exploitation, suspicious injury, or report of death reporting information: All community-based service providers shall provide written information to be furnished by the division at its website, which states all incident management reporting procedures, including contact numbers and internet addresses. The written information shall be on-site and available to staff.
[8.370.10.9 NMAC - N, 07/01/2024]

8.370.10.10 ACCESS AND COOPERATION TO FACILITATE AUTHORITY INCIDENT INVESTIGATIONS:

A. The authority will conduct incident investigations of community-based service providers subject to these requirements. These investigations may be either announced or unannounced.

B. All community-based service providers programs shall facilitate immediate physical or in-person access, and assist with scheduling of interviews, by authority personnel investigating incidents to all of the providers:

(1) formal and informal records, regardless of media, including but not limited to, financial records, all consumer records, individual service plans, volunteer and personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys, and agency policy and procedures manuals;

(2) employees and volunteers with knowledge of the incident;

(3) necessary clients currently receiving services, guardians, representatives, and family members with knowledge of the incident; and

(4) administrative and service delivery sites.
[8.370.10.10 NMAC - N, 07/01/2024]

8.370.10.11 CONSEQUENCES OF COMMUNITY-BASED SERVICE PROVIDER NON-COMPLIANCE:

A. The authority may sanction a community-based service provider in accordance with applicable law if the community-based service provider fails to report incidents of abuse, neglect, exploitation, suspicious injury, or any death; fails to provide or maintain evidence of an existing incident management system and employee and volunteer training documentation as set forth by this rule; for any failure to adequately protect consumers from abuse, neglect or exploitation; or for any other violation of this rule.

B. Such sanctions may include a directed plan of correction, intermediate sanctions, or civil monetary penalty up to \$5,000 per instance, or high level sanctions up to and including termination or non-renewal of any provider agreement with the authority or other governmental agency.

C. All substantiated incident investigations conducted by the authority hold the community-based service provider responsible for the actions of the employee, volunteer, or contractor with the following exception: any employee, volunteer, or contractor found to have caused the abuse, neglect, or exploitation of a consumer shall be found individually responsible independent of the community-based service provider when the community-based service provider has complied with all requirements of this rule, and the employee acts outside of the provider’s system. When this occurs, the individual shall be subject to the Employee Abuse Registry Act, Sections 29-27-1 through 29-27-8 NMSA 1978, or referred to the appropriate professional licensing board and law enforcement where appropriate.
[8.370.10.11 NMAC - N, 07/01/2024]

8.370.10.12 NOTIFICATION OF INVESTIGATION RESULTS: The division will inform the provider, the guardian, or alleged victim, the

case manager or consultant, the developmental disabilities supports division regional office, and the reporter of the conclusion reached by the investigator(s) when the report is final. The responsible provider must notify the alleged perpetrator. [8.370.10.12 NMAC - N, 07/01/2024]

8.370.10.13 INFORMAL RECONSIDERATION OF FINDINGS:

A. An aggrieved person or provider agency may request an informal reconsideration of findings (IRF) of a decision made by the division regarding a substantiation of abuse, neglect, or exploitation in accordance with the provisions set forth in this section.

B. A request for an IRF must be submitted in writing along with all relevant evidence to be considered by the bureau within 10 calendar days of the date of the letter of substantiation. The bureau may reverse the substantiation at any time at or before the IRF review.

C. Informal reconsideration of findings process.

(1) The person conducting the review shall be neutral and have no direct involvement with the investigation or substantiation.

(2) The person conducting the IRF shall issue a written decision within 30 days of the review, giving the reason why the substantiation, by preponderance of evidence, is modified, affirmed, or reversed. The written decision will be mailed to the aggrieved party and placed in the case record no later than the 30th day after receipt of the request for the IRF.

(3) The decision by the person conducting the IRF is final and non-appealable except as otherwise provided for by law. [8.370.10.13 NMAC - N, 07/01/2024]

8.370.10.14 CONFIDENTIALITY:

A. In the case of substantiated cases of abuse, neglect, or exploitation, the written report may be shared publicly upon request and subject to all other applicable

federal and state laws and regulations. Unsubstantiated incident investigation reports shall not be shared publicly in relation to any accused person or provider other than to confirm that an allegation of abuse, neglect, or exploitation was unsubstantiated.

B. All consumer information reviewed or obtained in the course of an investigation of a community-based service provider is confidential in accordance with all applicable federal and state laws and regulations and with all applicable contract provisions. If the consumer's identity may not be sufficiently de-identified even after redaction, then the report may not be released except upon the request of that consumer or their legally authorized representative. **C.** Other confidential information includes, but is not limited to: identity of the reporter of the alleged abuse, neglect, and exploitation if confidentiality is requested, personnel records, dates of birth, driver's license numbers, social security numbers, personal addresses, and telephone numbers, the community-based service provider's internal incident investigation, if any is received by the authority, financial documents, and proprietary business information. [8.370.10.14 NMAC - N, 07/01/2024]

8.370.10.15 SEVERABILITY:

If any provision or application of 8.370.10NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected. [8.370.10.15 NMAC - N, 07/01/2024]

HISTORY OF 8.370.10 NMAC: [RESERVED]

HUMAN SERVICES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS PART 11 LONG-TERM

CARE FACILITY DEMENTIA TRAINING

8.370.11.1 ISSUING

AGENCY: New Mexico Health Care Authority. [8.370.11.1 NMAC - N, 07/01/2024]

8.370.11.2 SCOPE: These regulations apply to any long-term care facility and long-term care facility contractor in the state of New Mexico or licensed by the New Mexico health care authority, division of health improvement. [8.370.11.2 NMAC - N, 07/01/2024]

8.370.11.3 STATUTORY

AUTHORITY: The regulations set forth herein are promulgated by the secretary of the health care authority by authority of Subsection E of Section 9-8-6 NMSA 1978, Section 24-17B-1 through Section 24-17B-4 NMSA 1978. The division of health improvement of the health care authority (authority) shall administer and enforce these regulations. 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 facility licensure and health care purchasing and regulation. [8.370.11.3 NMAC - N, 07/01/2024]

8.370.11.4 DURATION:

Permanent. [8.370.11.4 NMAC - N, 07/01/2024]

8.370.11.5 EFFECTIVE

DATE: July 1, 2024, unless a later date is cited at the end of a section. [8.370.11.5 NMAC - N, 07/01/2024]

8.370.11.6 OBJECTIVE:

The regulations establish policy, standards, and criteria relating to: the educational and certification requirements, issuing of certifications, and continuing education of persons who provide direct care service to long-term care facility residents in order to maintain or improve the health and quality of life of the residents. [8.370.11.6 NMAC - N, 07/01/2024]

8.370.11.7 DEFINITIONS:

A. “Act” shall mean the Long-Term Care Facility Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

B. “Certificate” shall mean the training certificate issued by the provider of training pursuant to 8.370.11 NMAC and the Long-Term Care Facility Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

C. “Continuing education” means participation in a formal learning experience of which the course topics have been approved by the authority as set forth in 8.370.11.9 NMAC.

D. “Direct care service” means services provided to long-term care facility residents that maintain or improve the health and quality of life of the residents.

E. “Direct care service staff member” means a person:

- (1) employed by or contracted with a long-term care facility, either directly or through a third-party agreement, to provide in-person direct care services to long-term care facility residents; or
- (2) contracted with a long-term care facility, either directly or through a third-party agreement, to provide at least 10 hours per week in direct care services by video, audio or telephonic means.

F. “DCSSM” means direct care service staff member.

G. “Division” means the division of health improvement of the health care authority.

H. “In-person instructor” means the in-person dementia training instructor who will conduct dementia training pursuant to the requirements of 8.370.11 NMAC.

I. “Long-term care facility” means every long-term care facility licensed by the state of New Mexico.

J. “Long-term care facility contractor” as used within this regulation means an entity that employs direct care service staff members.
[8.370.11.7 NMAC - N, 07/01/2024]

8.370.11.8 TRAINING REQUIREMENT:

A. Every direct care service staff member shall complete the requirements for and obtain certification as provided in 8.370.11.9 NMAC.

B. Every direct care service staff member is required to complete the training and written examination set forth in 8.370.11.9 NMAC pursuant to the following requirements:

- (1) if hired after January 1, 2022, shall complete the training required within 60 days of the start of employment;
- (2) if hired prior to January 1, 2022, shall complete the training required if the direct care service staff member has not received training in the past 24 months equivalent to the training set forth in 8.370.11.9 NMAC within 60 days of January 1, 2022;
- (3) if the direct care service staff member had successfully obtained a training certificate but has had a lapse of dementia-related direct care service employment for 24 consecutive months or more then the direct care service staff member shall complete the training and examination set forth in 8.370.11.9 NMAC within 60 days of the start of employment.

C. Exception to initial training: A direct care service staff member (DCSSM) hired prior to January 1, 2022, who received equivalent training within the past 24 months equivalent to the requirements set forth in Subsection A of 8.370.11.9 NMAC shall be issued a training certificate by the authority upon receipt from a facility of a written attestation that the DCSSM has received such training within the 24 months prior to January 1, 2022. A direct care service staff member (DCSSM) hired after January 1, 2022, who received equivalent training within the 24 months prior to the hiring date equivalent to the requirements set forth in Subsection A of 8.370.11.9 NMAC shall be issued a training certificate by the authority upon receipt from a facility of a

written attestation that the DCSSM has received such training within the 24 months prior to the date of hire. The facility attestation shall be provided to the authority’s train division email address for issuance of a training certificate by the authority.
[8.370.11.8 NMAC - N, 07/01/2024]

8.370.11.9 COURSE OF EDUCATION:

New Mexico requires a state training education process to become a certified direct care staff member. The education program shall provide knowledge on the skills and abilities necessary to perform as a competent direct care service staff member; this is established through training education, provided either on-line or in person, followed by successful completion of a division-approved written examination. The in-person instructor will conduct the course of education for the direct care staff member as set out below. Each long-term facility and long-term care facility contractor shall provide training either on-line or in-person as set forth in this section to each DCSSM that it employs.

A. Instruction:
Instruction by the on-line provider or in-person instructor must be at least four hours in length, either in-person or on-line, and include these authority-approved areas of study:

- (1) identify cognitive, functional, and behavioral changes of normal aging and those associated with mild cognitive impairment and dementia;
- (2) identify and understand the various types of dementia;
- (3) identify the prevalence, risk factors, signs and symptoms, and rate of progression of dementia;
- (4) identify and understand the stages of dementia;
- (5) describe and understand when to refer people living with dementia (PLwD) to a neurologist, geriatric psychiatrist, neuropsychologist, or a national Alzheimer’s disease center;

(6) diagnosing dementia & discussing dementia diagnosis;

(7) patient centered care;

(8) activities of daily living in people living with dementia and Alzheimer's disease;

(9) identify common components of an individualized primary care plan for persons with middle stage dementia;

(10) identify common components of an individualized primary care plan for persons with late stage dementia;

(11) identify and understand common medical issues related to early-stage dementia,

(12) identify and understand common medical issues related to middle-stage dementia;

(13) identify and understand common medical issues related to late-stage dementia;

(14) effective care transitions to and from acute care hospitals;

(15) interprofessional team roles and dementia;

(16) describe how responsibilities may evolve as the disease progresses;

(17) list legal and financial considerations to discuss with a patient and appropriate care partner(s) upon a diagnosis of dementia;

(18) identify domains that are included in a capacity assessment for a person living with dementia;

(19) ethics and capacity issues;

(20) responding to abuse, neglect & exploitation of people living with dementia and Alzheimer's disease.

(21) identify signs and symptoms of end-stage dementia;

(22) identify and understand barriers to optimal care among various ethnic groups;

(23) identify and understand techniques for

effective communications with diverse populations;

(24) pain assessment in people living with dementia;

(25) resident rights;

(26) palliative care & end of life care.

B. Trainer requirements: A person conducting training of the required topics set forth in 8.370.11.9 NMAC shall have:

(1) at least two years of work experience related to alzheimer's disease, dementia, health care, gerontology or other related field; and

(2) successfully completed training requirement to the requirements provided in Subsection A of 8.370.11.9 NMAC, including passage of the knowledge test required in Subsection D of 8.370.11.9 NMAC; and

C. Training on-line: Training on-line shall be provided by the authority through the train program at www.train.org/nm or through a authority -approved on-line curriculum and knowledge test which shall include the authority-approved areas of study set forth in Subsection A of 8.370.11.9 NMAC and shall be at least four hours in length. After completion of the on-line training and successful passage of a knowledge test, a certificate shall be issued to the DCSSM.

D. Evaluation of training topics: The authority shall review and evaluate the training areas of study in Subsection A of 8.370.11.9 NMAC every two years or as determined necessary by the authority based upon current research and best practices.

E. Testing: The in-person or on-line training must be followed by successful completion of a division-approved written examination which shall cover the areas of study set forth in Subsection A of 8.370.11.9 NMAC before a training certificate will be issued by the in-person or on-line training program.

F. Training certificates: The provider of on-line or in-person training conducted pursuant to 8.370.11.9 NMAC shall issue a certificate to the DCSSM upon completion of initial training, or the authority shall issue a certificate upon receipt of facility attestation of exemption from training as set forth in Subsection D of 8.370.11.8 NMAC. The certificate shall be valid so long as the certificate holder meets the continuing education requirement set forth in 8.370.11.9 NMAC and the certificate holder has not had a lapse of dementia-related direct care service employment for 24 consecutive months or more. The certificate shall be valid among long-term care facilities.

G. Continuing education: Proof must be maintained by the facility of four hours of training by the DCSSM every two years on topics set forth in 8.370.11.9 NMAC for treatment and care of persons with Alzheimer's disease or dementia, in order to maintain the certificate issued to the individual DCSSM.

H. Maintenance of certification records: Each long-term care facility and long-term care facility contractor subject to 8.370.11 NMAC shall be responsible for maintaining documentation regarding completed long-term care facility dementia training, evaluation and continuing education for each DCSSM. Each long-term care facility contractor subject to 8.370.11 NMAC shall provide a copy of each DCSSM'S dementia training certificate to every long-term care facility where the DCSSM provides direct care service, pursuant to Subsection F of Section 24-17B-3 NMSA 1978.

[8.370.11.9 NMAC - N, 07/01/2024]

8.370.11.10 SEVERABILITY: If any part or application of the long-term care facility dementia training regulation is held invalid, the remainder or its application to other situations or persons shall not be affected.

[8.370.11.10 NMAC - N, 07/01/2024]

**HISTORY OF 8.370.11 NMAC:
[RESERVED]**

**HUMAN SERVICES
DEPARTMENT**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 370 OVERSIGHT
OF LICENSED HEALTHCARE
FACILITIES AND COMMUNITY
BASED WAIVER PROGRAMS
PART 12 REQUIREMENTS
FOR ACUTE CARE, LIMITED
SERVICES AND SPECIAL
HOSPITALS**

8.370.12.1 ISSUING
AGENCY: New Mexico Health Care Authority.
[8.370.12.1 NMAC - N, 7/01/2024]

8.370.12.2 SCOPE: These requirements apply to public and private hospitals as defined in Section 8.370.12.7 of these requirements. Facilities that are specifically exempt under Subsection D of Section 24-1-2, NMSA 1978, from being treated as hospitals for purposes of regulation under Section 24-1-5, NMSA 1978, and these requirements, are physicians' clinics and offices, nursing homes, as well as health centers and correctional institutions that are operated by the state.
[8.370.12.2 NMAC - N, 7/01/2024]

8.370.12.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the health care authority, 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, 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 facility licensure and health care purchasing and regulation.

[8.370.12.3 NMAC - N, 7/01/2024]

8.370.12.4 DURATION:
Permanent.
[8.370.12.4 NMAC - N, 7/01/2024]

8.370.12.5 EFFECTIVE DATE: July 1, 2024, unless a later date is specified at the end of a section.
[8.370.12.5 NMAC - N, 7/01/2024]

8.370.12.6 OBJECTIVE:
A. Establish standards for licensing hospitals in order to ensure that hospital patients receive adequate care and treatment and that the health and safety of patients and hospital employees are protected.

B. Establish standards for the construction, maintenance and operation of hospitals.

C. Regulate such hospitals in providing the appropriate level of care for patients.

D. Provide for hospital compliance with these requirements through surveys to identify any areas that could be dangerous or harmful to the health, safety, or welfare of the patients and staff.
[8.370.12.6 NMAC - N, 7/01/2024]

8.370.12.7 DEFINITIONS.

A. "Abuse" means injury, sexual misuse, or neglect resulting in harm of an individual patient.

B. "Acute-care hospital" means a hospital providing emergency services, in-patient medical and nursing care for acute illness, injury, surgery or obstetrics; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care hospitals.

C. "Allied health personnel" means persons who are not physicians, podiatrists, psychologists or dentists who may be admitted to practice in the hospital through the medical staff credentialing process, and includes:

(1) "licensed independent practitioner" means an advanced practice professional registered nurse permitted by law

to provide care without direction or supervision within the scope of the individual's license and consistent with individually granted privileges; this includes certified nurse midwives, certified nurse practitioners and clinical nurse specialists;

(2) "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;

(3) "physician assistant" means a person licensed as a physician assistant by the New Mexico board of medical examiners, pursuant to Section 61-6-6, NMSA 1978.

D. "Amended license" means a change of administrator, name, location, capacity, classification of any units as listed in these requirements requires a new license:

(1) the application shall be on a form provided by the licensing authority;

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

(3) the application shall be submitted at least 10 working days prior to the change.

E. "Annual net revenue" means, as determined from the hospitals governing board's approved audited financial statement for an annual time period, the hospital's net patient services revenue; net patient services revenue does not include net operating revenue from other sources, such as medical office rental and cafeteria;

annual net revenue is determined after deductions for:

(1) contractual allowances;

(2) uncompensated care and bad debt;

(3) charity care; and

(4) annual net revenue excludes other non-operating revenues, including but not limited to, income from endowments, investments, gifts and bequests, and net gain on sale of fixed assets.

F. “Annual cost of care” means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), the billed charges of providing emergency services and general health care to nonpaying patients and low-income reimbursed patients.

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

H. “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 the authority to sign for the organization.

I. “Audiologist” means a person licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978, to practice audiology.

J. “Automated medication management system” means an automatic device that compounds, measures, counts, packages and delivers a specified quantity of dosage units for a designated product and which collects, controls and maintains all transaction information.

K. “CMS” means center for medicare & medicaid services.

L. “Consultant pharmacist” means a person licensed in New Mexico under the Pharmacy

Act, Subsection D of Section 61-11-2, NMSA 1978, as a consultant pharmacist.

M. “Critical access hospital” means a hospital with special characteristics, duly certified as such by centers for medicare and medicaid services (CMS) and is in compliance with the conditions of participation for such facilities; such critical access hospitals are deemed as meeting the intent of these requirements and may be licensed accordingly by the licensing authority.

N. “Dentist” means a person licensed to practice dentistry under the Dental Act, Sections 61-5-1 to 61-5-22, NMSA 1978.

O. “Dietician” means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association, or who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

P. “Dietetic service supervisor” means a person who:

(1) is a qualified dietitian with one year of supervisory experience in the dietetic service of a health care institution; or

(2) is a graduate of a dietetic technician or dietetic assistant training program, approved by the American dietetic association and has consultation from a qualified dietitian; or

(3) is a graduate of a state-approved course that provided 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian; if the supervisor is not a qualified dietitian then consultation from a qualified dietitian must be provided.

Q. “Distinct emergency service” means an emergency distinct department that provides a medical screening examination and treatment of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) that requires immediate medical attention.

R. “Drill” means the practice of a planned activity at full dress intensity.

S. “Emergency care for sexual assault survivors” means medical examinations, procedures and services provided by a hospital to a sexual assault survivor following an alleged sexual assault.

T. “Emergency contraception” means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse.

U. “Emotional abuse” means verbal behavior, harassment, or other actions that result in emotional or behavioral problems, physical manifestations, disordered or delayed development.

V. “Exercise” means the practice of a planned activity at less than full-dress intensity.

W. “Financial interest” means any equity, security, lease or debt interest in the hospital; financial interest also includes any equity, security, and lease or debt interest in any real property used by the hospital or in any entity that receives compensation arising from the use real property by the hospital.

X. “Health physicist” means a person holding a master’s degree or doctorate in an appropriate discipline of radiologic physics or who has equivalent education and experience.

Y. “Hospital” means a facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term “hospital” for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury, surgery, and obstetrics; any limited services hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury

and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.

Z. “Long term acute-care hospital” means a hospital providing long term, in-patient medical care for medically-complex patients whose length of stay averages greater than 25 days; ancillary support services such as pharmacy, clinical laboratory, radiology, and dietary are required for long-term acute-care hospitals.

AA. “Low-income patient” means a patient whose family or household income does not exceed two hundred percent of the most current federal poverty level.

BB. “Rehabilitation hospital” means a special hospital that primarily provides rehabilitative care to inpatients.

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

DD. “Licensed practical nurse” means a person licensed as a practical nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

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

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

GG. “Limited services hospital” means a hospital that limits admissions according to medical or surgical specialty, type of disease or medical condition, or a hospital that limits its inpatient hospital services to surgical services or invasive diagnostic treatment procedures; a limited services hospital must have emergency services, inpatient medical and nursing care for acute illness, injury, and surgery, and must offer

ancillary services including pharmacy, clinical laboratory, radiology, and dietary; a limited services hospital does not include:

(1) a hospital licensed by the authority as a special hospital;

(2) an eleemosynary hospital that does not bill patients for the services provided; and

(3) a hospital that has been granted a license prior to January 1, 2003.

HH. “Local community” means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), the New Mexico standard metropolitan statistical area or county in which a limited services hospital or an acute-care hospital applies to be licensed or becomes initially licensed by the authority at any time after January 1, 2003; if the applicant seeks licensure of a facility within the boundaries of a New Mexico standard metropolitan statistical area, the local community for purposes of that application is that standard metropolitan statistical area; if the applicant seeks licensure of a facility not within the boundaries of a New Mexico standard metropolitan statistical area, the local community for purposes of that application is the New Mexico county.

II. “Local emergency operations plan” means the all-hazard emergency operations plan maintained by a jurisdiction at the local level that coordinates local level functional plans, hazard specific plans, and response specific plans into an effective and efficient whole.

JJ. “Medically and factually accurate and objective” means verified or supported by the weight of research conducted in compliance with accepted scientific methods and standards; published in peer-reviewed journals; and recognized as accurate and objective by leading professional organizations and agencies with relevant expertise in the field of obstetrics and gynecology, such as the American college of obstetricians and gynecologists.

KK. “Medical staff” means the hospital’s organized component of physicians, podiatrists, psychologists, dentists and allied health personnel who have been appointed by the governing body of the hospital and granted specific privileges for the purpose of providing care for the patients of the hospital.

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

MM. “National incident management system” means the core set of doctrine, concepts, principles, terminology, and organizational processes, required by homeland security presidential directive 5, that will be used to manage domestic incidents to enable effective, efficient, and collaborative action at all levels.

NN. “National response plan” means the single all-hazard incident management plan, required by homeland security presidential directive 5, that addresses the five domains of disaster and emergency management: awareness, prevention, preparedness, response, and recovery and that will govern all disaster and emergency management planning beginning in federal fiscal year 2005 (October 1, 2004-September 30, 2005).

OO. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

PP. “New Mexico state all-hazard emergency operations plan” means the all-hazard emergency operations plan maintained by the state of New Mexico that coordinates state level functional plans, hazard specific plans, and response specific plans with local emergency operations plans into an effective an efficient whole.

QQ. “Nonpaying patients” means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), patients whose

care is substantially uncompensated, including patients classified as charity care or bad debt.

RR. “Nosocomial” means an infection pertaining to or originating in a hospital not present or incubating prior to admittance to a hospital.

SS. “Occupational therapist” means a person licensed as an occupational therapist under the Occupational Therapy Act, Sections 61-12A-1 to 61-12A-20, NMSA 1978.

TT. “Pharmacist” means a person licensed in New Mexico under the Pharmacy Act, 61-11-1 to 61-11-29, NMSA 1978.

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

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

WW. “Physical therapist” means a person licensed to practice physical therapy under the Physical Therapy Act, Sections 61-12-1 to 61-12-21, NMSA 1978.

XX. “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.

YY. “Physician owner” means a physician, podiatrist, dentist licensed by the New Mexico board of dental health care pursuant to Section 61-5A-12NMSA 1978, or any other person licensed in New Mexico as a health care practitioner permitted by the hospital to refer, admit or treat hospital patients, and who has a financial interest in the hospital.

ZZ. “Podiatrist” means a person licensed to practice podiatry or podiatric medicine and surgery under the Podiatry Act, Sections 61-8-1 to 61-8-16, NMSA 1978.

AAA. “Privileges” means the authorization of the medical staff members to provide care to hospital patients in the area in which the person has expertise as a result of

education, training and experience.

BBB. “Psychologist” means a person licensed to practice psychology under the Professional Psychologists’ Act, Sections 61-9-1 through 61-9-18, NMSA 1978.

CCC. “Psychiatric hospital” means a special hospital that primarily provides by or under the supervision of a physician, psychological or psychiatric services for the diagnosis and treatment of mentally ill persons.

DDD. “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.

EEE. “Reporting year” means with respect to the provision of financial, utilization, and services information for the hospital’s last full and audited annual accounting period.

FFF. “Respiratory care practitioner” means a person who is licensed under the Respiratory Care Act, Sections 61-12B-1 to 61-12B-16, NMSA 1978.

GGG. “Sexual assault” means the crime of criminal sexual penetration that may result in pregnancy.

HHH. “Sexual assault survivor” means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient to a hospital.

III. “Special hospital” means a hospital that treats patients that have a diagnosis-related group classifications for two-thirds of all its patients that fall into no more than two major diagnosis categories, or if at least two-thirds of its patients are classified in a specific diagnosis category; an example of a special hospital is a psychiatric or rehabilitation hospital.

JJJ. “Speech pathologist” means a person who is licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978 to practice speech language pathology.

KKK. “Variance” means an act on the part of the licensing authority to refrain from enforcing

compliance with a portion or portions of these requirements for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of parents or staff of a hospital and is at the sole discretion of the licensing authority.

LLL. “Waive/waiver” means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements for a limited period of time less than one year, 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. [8.370.12.7 NMAC - N, 7/01/2024]

8.370.12.8 REQUIRED LICENSURE BY THE

AUTHORITY: Procedures applicable after January 1, 2003: This section addresses the requirements of Section 24-1-5.8 NMSA 1978 (2003) and applies to local communities in which an acute-care hospital or a limited services hospital applies to be licensed or becomes initially licensed by the authority at any time after January 1, 2003.

A. No hospital may operate in New Mexico unless it is licensed in accordance with the requirements of the New Mexico health care authority.

B. The authority shall issue a license to an acute-care hospital or a limited services hospital that meets the requirements of this rule and agrees to:

(1) continuously maintain and operate an emergency department that provides emergency medical services as defined in Section 8.370.12.38 NMAC; and

(2) when applicable, participate in the medicare, medicaid and county indigent care programs; and

(3) require a physician owner to disclose and document in the patient’s medical record a financial interest in the hospital before referring a patient to the hospital.

C. Comply with the same quality standards applied to other hospitals.

D. Provide emergency services and general health care to a number of nonpaying patients and low-income reimbursed patients in the same proportion as the patients that are treated in acute-care hospitals in the local community, as determined by the authority provided that the annual cost of the care required to be provided pursuant to paragraph (5) shall not exceed an amount equal to five percent of the hospital's annual net revenue for the previous fiscal year from audited financial statements.

E. Require a health care provider to disclose a financial interest before referring a patient to the hospital.

F. Reporting requirements-general. The authority, in accordance with the requirements of Section 24-1-5.8 NMSA 1978 (2003) requires the provision of information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the hospital's last full and audited accounting period. This period is called the most recent reporting year.

G. Reporting hospitals. After January 1, 2003, an application to the authority for an initial license by an acute-care hospital or limited services hospital in a local community will require the provision of information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the most current reporting year. The following hospitals must report to the authority within 30 days of notice from the authority of application for an initial license by an acute-care hospital or limited services hospital:

(1) all limited services hospitals in the local community;

(2) all acute-care hospitals in the local community;

(3) the limited services hospital applying for the initial license or the acute-care hospital applying for the initial license must submit a business plan that provides information necessary to determine the projected annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients.

H. Reporting requirements-specific. The reporting requirement for information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the hospital's last full and audited accounting period, shall be satisfied by the provision of a certified statement by the hospital's chief executive officer and an independent certified public accountant attesting to the accuracy of the above required information, in the format determined by the authority. The authority shall conduct, as determined necessary, an independent audit to validate the information provided in the certified statement.

I. Determination of proportionality by the authority. Based upon the certified statements and business plan(s) submitted, the authority shall determine whether the application for licensure will provide emergency services and general health care to the number of nonpaying patients and low-income reimbursed patients in the same proportion as the proportion of nonpaying and low-income reimbursed patients that are treated in acute-care hospitals in the local community. Upon that determination by the authority that the proportional requirements are met by the applicant and the receipt of a certified statement by the applicant's chief executive officer that the proportions will be maintained, and other rule requirements are met by the applicant, the authority may

issue a license consistent with the requirements of Section 24-1.5.8 NMSA 1978 (2003).

J. Limitation on costs to achieve proportionality. The acute-care hospital or limited service hospital applying for licensure after January 1, 2003 shall submit to the authority on an annual basis a certified statement from an independent certified public accountant setting out for that reporting year the hospital's annual cost incurred in the provision of care to low-income reimbursed patients and to nonpaying patients, in order to satisfy the hospital's proportionality requirements. Submission to the authority of such certified statement from an independent certified public accountant shall be made by the hospital within 30 days of its acceptance by the hospital's board of directors of the annual audited financial statement. The cost incurred in the provision of care to low-income reimbursed patients and nonpaying patients to satisfy the hospital's proportionality requirements is limited to five percent of the hospital's annual net revenue.

K. Penalties for non-reporting. Failure to meet the reporting requirements set out in this rule within the proscribed timeliness may result in a civil monetary penalty not to exceed \$500,000, in the suspension or revocation of the hospital's license, the referral to CMS for sanctions under the medicare and medicaid program.

L. Penalties for failure to provide proportional services. Failure by an acute-care hospital or limited service hospital applying for licensure after January 1, 2003 to provide proportional services to nonpaying and low-income reimbursed patients, as required by this section, in any year following licensure, as determined from the information submitted annually by the hospital's chief executive officer and an independent certified public accountant may result in the authority's imposition of one or more of the following penalties:

(1)

a authority-directed or authority approved plan of correction in which the hospital's failure to provide proportional services to nonpaying and low-income reimbursed patients is remedied in subsequent years through the additional provision of services to nonpaying and low-income reimbursed patients beyond the proportion established by the authority for such years;

(2)

a civil monetary penalty not to exceed \$500,000;

(3)

suspension or revocation of the hospital's license; and

(4)

referral to CMS for sanctions under the medicare and medicaid programs.

M. Annual reporting.

Acute-care hospitals or limited services hospitals licensed after January 1, 2003, and all acute-care hospitals in the local community, shall submit to the authority on an annual basis a certified statement from an independent certified public accountant that sets out:

(1)

the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients;

(2)

the annual net patient service revenue;

(3)

the number of nonpaying and low-income reimbursed patients treated; and

(4)

the total number of patients treated.

N. Physician owner

disclosure of financial interest requirements, disclosure required.

The physician owner of a limited services hospital or an acute-care hospital initially licensed by the authority at any time after January 1, 2003, shall not make a referral of a patient for the provision of health care items or services to such limited services hospital or the acute-care hospital unless, in advance of any such referral, the referring physician owner discloses to the patient the existence and the nature of physician's ownership interest.

O. Disclosure of

financial interest by a physician

owner. The disclosure of financial interest by a physician owner, as required in this section, shall be made in writing, prior to or at the time of the referral, and shall be furnished to:

(1)

the patient, or the patient's authorized representative, and

(2)

the acute-care hospital or the limited services hospital licensed by the authority at any time after January 1, 2003, in which the referring physician owner has a financial interest, for inclusion in the hospital's permanent patient's medical record; the acute-care hospital or the limited services hospital licensed by the authority at any time after January 1, 2003, must permit inspection of the patient's medical record by authorized employees of the authority to determine the hospital's compliance with this requirement, regardless of the hospital's deemed status.

P. Written disclosure of financial interest by a physician

owner. The written disclosure of financial interest by a physician owner, as required in this section, shall include:

(1)

the physician's name, address, and telephone number;

(2)

the name and address of the limited services hospital or the acute-care hospital licensed by the authority at any time after January 1, 2003, to which the patient is being referred by the physician;

(3)

the nature of the items or services, which the patient is to receive from the hospital to which the patient is being referred;

(4)

the existence, nature and extent of the physician's financial interest in the hospital to which the patient is being referred; and

(5)

a signed acknowledgement by the patient or the patient's authorized representative that the required disclosure has been furnished.

Q. To be approved by the New Mexico health care

authority, a hospital shall comply with these requirements and with all other applicable state laws and local ordinances. Staff of the hospital shall be licensed or registered, as appropriate, in accordance with applicable laws.

R. An application for

licensure shall be submitted to the authority on a form prescribed by the authority. All applications must have the following information:

(1)

name of administrator or chief executive officer;

(2)

type of facility to be operated and types of services that will be offered;

(3)

location of the hospital; and

(4)

statement of ownership, which must include:

(a)

the name and principal business address of each officer and director for the corporation;

(b)

the name and business address of each stockholder owning ten percent or more of the stock;

(c)

copy of the current organizational chart; and

(d)

such other information or documents as may be required by the authority for the proper administration and enforcement of the licensing law and requirements.

S. The authority shall

review and make a determination on an application for licensure within 90 working days of receipt of the application.

T. Separate licenses

shall be required for hospitals that are maintained on separate premises even though they are under the same management. This does not apply to outpatient departments or clinics of hospitals designated as such which are maintained and operated on separate premises within the same county or, if in another county, not to exceed a one hour drive time from the parent facility. Separate licenses shall not be required for separate buildings on the same grounds or adjacent grounds.

U. Applications submitted for proposed construction of new hospitals or additions to licensed hospitals shall include architectural plans and specifications.

V. Information contained in such applications shall be on file in the authority and available to interested individuals and community agencies.
[8.370.12.8 NMAC - N, 7/01/2024]

8.370.12.9 TYPES OF LICENSE:

A. "Annual license": an annual license is issued for a one-year period to a hospital that has met all requirements of these requirements.

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

(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 any change of administrator, name, location, capacity, classification of any unit as listed in these requirements:

- (1) the application must be on a form provided by the licensing authority;
 - (2) application must be accompanied by the required fee for an amended license; and
 - (3) application must be submitted at least 10 working days prior to the change.
- [8.370.12.9 NMAC - N, 7/01/2024]

8.370.12.10 LICENSE RENEWAL:

A. The licensee must submit a renewal application on forms

provided by the licensing authority, along with the required fee prior to the expiration of the current license.

B. Upon receipt of the renewal application and the 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 requirements.
[8.370.12.10 NMAC - N, 7/01/2024]

8.370.12.11 POSTING: The license, or a copy thereof, shall be conspicuously posted in a location accessible to public view within the hospital.
[8.370.12.11 NMAC - N, 7/01/2024]

8.370.12.12 NON-TRANSFERABLE REGISTRATION OF 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 hospital changes;
- B. the facility changes location;
- C. the licensee of the hospital changes; or
- D. the hospital discontinues operation.

[8.370.12.12 NMAC - N, 7/01/2024]

8.370.12.13 EXPIRATION OF LICENSE: A license will 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 licensee; or
- C. on the day a facility changes location.

[8.370.12.13 NMAC - N, 7/01/2024]

8.370.12.14 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with

Subsection H of Section 24-1-5 NMSA 1978, if the licensing authority determines immediate action is required to protect human health and safety, the licensing authority may suspend a license. A hearing must be held in accordance with the regulations governing adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
[8.370.12.14 NMAC - N, 7/01/2024]

8.370.12.15 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 denied, 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 reasons:

- A. failure to comply with any provisions of these requirements;
 - B. failure to allow survey by authorized representatives of the licensing authority;
 - C. permitting any person while active in the operation of a facility licensed pursuant to these requirements to be impaired by the use of prescribed or non-prescribed drugs, including alcohol;
 - D. misrepresentation or falsification of any information provided to the licensing authority;
 - E. the discovery of repeat violations of these requirements during surveys; or
 - F. the failure to provide the required care and services as outlined by these requirements.
- [8.370.12.15 NMAC - N, 7/01/2024]

8.370.12.16 HEARING PROCEDURES:

- A. An applicant or licensee subject to an adverse action may request an administrative appeal.
- B. Hearing procedures for an administrative appeal of an adverse action taken by the licensing

authority against the hospital as outlined in Section 14 and 15 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

C. A copy of the adjudicatory hearing procedures will be furnished to the hospital at the time an adverse action is taken against the licensee by the licensing authority. A copy may be requested at any time by contacting the licensing authority. [8.370.12.16 NMAC - N, 7/01/2024]

8.370.12.17 WAIVERS AND VARIANCES:

A. Applications. All applications for the grant of a waiver or variance shall be made in writing to the licensing authority, specifying the following:

- (1) the rule from which the waiver or variance is requested;
- (2) the time period for which the waiver or variance is requested;
- (3) if the request is for a variance, the specific alternative action which the facility proposes;
- (4) the reasons for request; and
- (5) an explanation of why the health, safety, and welfare of the residents or staff are not endangered by the condition.

B. Requests for a waiver or variance may be made at any time.

C. The licensing authority may require additional information from the hospital prior to acting on the request.

(1) Grants and denials. The licensing authority shall grant or deny each request for waiver or variance in writing. Notice of a denial shall contain the reasons for denial. The decisions to grant, modify, or deny a request for a waiver or variance is subject to appeal one time only.

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

D. The licensing

authority may impose whatever conditions on the granting of a waiver or variance it considers necessary.

E. The licensing authority may limit the duration of any waiver. [8.370.12.17 NMAC - N, 7/01/2024]

8.370.12.18 GOVERNING BODY:

A. General requirements: The hospital shall have an effective governing body, which is legally responsible for the management and provision of all hospital services, maintenance of the hospital services and the quality thereof.

B. Responsibilities. by-laws: The governing body shall adopt by-laws. The by-laws shall be in writing and shall be available to all members of the governing body as well as the public. The by-laws shall:

- (1) stipulate the basis upon which members are selected, their terms of office and their duties and requirements;
- (2) specify to whom responsibilities for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated, and the methods established by the governing body for holding these individuals responsible;
- (3) require a physician owner or other provider to disclose to the patient or the patient's representative and document for the patient's medical record a financial interest in the hospital before referring a patient to the hospital;
- (4) provide for the designation of officers, if any, their terms of office and their duties, and for the organization of the governing body;
- (5) specify the frequency with which meetings shall be held;
- (6) allow for the organization of committees, either standing or ad hoc, to assist the board in carrying out their responsibilities;
- (7) provide for the appointment of members of the medical staff; during periods of

routine operation, and during disaster and emergency; and

(8) provide mechanisms for the formal approval of the organization, by-laws and rules of the medical staff.

C. Meetings:

(1) The governing body shall meet at regular intervals as stated in its by-laws.

(2) Meetings shall be held frequently enough for the governing body to carry on necessary planning for growth and development and to evaluate the performance of the hospital, including the care utilization of physical and financial assets and the delegation to the CEO/administrator for the hiring and direction of personnel.

(3) Minutes of meetings shall reflect pertinent business conducted.

D. Committees:

(1) The governing body shall appoint committees. There shall be an executive committee and others as allowed by bylaws.

(2) The number and types of committees shall be consistent with the size and scope of activities of the hospital

(3) The executive committee or the governing body as a whole shall establish operating guidelines for the activities and general policies of the various hospital services and committees established by the governing body.

(4) Written minutes, or reports, which reflect business conducted by the executive committee shall be maintained for review by the governing body.

(5) Other committees, which may include finance, joint conference, quality improvement and plant and safety management committees, shall function in a manner consistent with their duties assigned by the governing body and shall maintain written minutes or reports which reflect the performance of these duties. If the governing body does not appoint a committee for a particular area, a member or members of the governing

body shall assure the performance of the duties normally assigned to a committee for that area.

E. Medical staff liaison: The governing body shall establish a formal means of liaison with the medical staff by a joint conference committee or by other means as follows:

- (1) a direct and effective method of communication with the medical staff shall be established on a formal, regular basis, and shall be documented in written minutes or reports which are distributed to designated members of the governing body and the active medical staff; and
- (2) liaison shall be a responsibility of the joint conference committee or its equivalent and the executive committee for designated members of the governing body.

F. Medical staff appointments: The governing body shall appoint members of the medical staff in accordance with the approved medical staff by-laws.

- (1) A formal procedure shall be established, governed by written rules covering application for medical staff membership and the method of processing applications during periods of routine operation, and during disaster and emergency.

(2) The procedure related to the submission and processing of applications shall involve the chief executive officer/administrator, the credentials committee of the medical staff or its equivalent, and the governing body.

(3) Action taken by the governing body on applications for medical staff appointments shall be in writing; and available to the licensing authority during surveys or complaint investigations.

(4) Written notification of applicants shall be made by either the governing body or its designated representative.

(5) Applicants selected for medical staff appointment shall sign an agreement to abide by

the medical staff rules and by-laws.

(6) The governing body shall establish a procedure for appeal and hearing by the governing body or a designated committee if the applicant or the medical staff wishes to contest the decision on an application for medical staff appointments.

G. Appointment of chief executive officer/administrator: The governing body shall appoint an administrator or a chief executive officer/administrator for the hospital. The governing body shall review the performance of the chief executive officer/administrator at least annually.

H. Patient care: The governing body shall establish a policy, which requires that every patient be under the care of a licensed, independent practitioner as determined by the medical staff and governmental body.

I. Physical plant requirements: The governing body shall be responsible for providing a physical plant equipped and staffed to maintain the needed facilities and services for patients.

J. Risk management: The facility shall have a risk management program. State, county or city facilities must have a risk management plan in accordance with the general services department rules.

K. Discharge planning.
 (1) The governing body shall assure that the hospital maintains an effective, ongoing program coordinated with community resources to facilitate the provision of appropriate follow-up care to patients who are discharged.

(2) The hospital shall have current information on community resources available for continuing care of discharged patients.

(3) The discharge planning program shall:
 (a) have a mechanism to identify patients who require discharge planning to provide continuity of medical care to meet their identified needs;

(b) initiate discharge planning in a timely manner;

(c) identify the role of the patient's provider, nursing staff, social work staff, other appropriate staff, the patient, and the patient's family or representative in the initiation and implementation of the discharge planning process;

(d) assure documentation in the medical record of the discharge plan;

(e) allow for the timely and effective transmittal of all medical, social, economic information concerning the patient to persons responsible for subsequent care of the patient;

(f) provide that every patient, or their legal representatives, receive relevant information concerning their health needs and is involved in his or her own discharge planning; and

(g) be reviewed at least once a year to evaluate effectiveness.

[8.370.12.18 NMAC - N, 7/01/2024]

8.370.12.19 POLICIES: Every hospital shall have written policies approved by the governing board and shall include provisions for implementation, and for access by the patient, on:

A. Patient rights and responsibilities: a list of these patient rights and responsibilities shall be available in languages appropriate to the ethnic needs of the community;

(1) The policies on patient rights and responsibilities shall provide that:

(a) patients may not be denied appropriate hospital care because of the patient's race, creed, color, national origin, religion, sex, sexual orientation, marital status, age, disability or source of payment;

(b) patients shall be treated with consideration, respect, and recognition of their individuality, including the need for privacy in treatment;

(c) the individual patient's medical records, including all computerized medical information, shall be kept confidential in accordance with applicable federal, state and local laws;

(d) the patient or any person authorized by statute or in writing by the patient shall have access to the patient's medical record but access to patient's psychiatric records may be limited by treating professionals when specific hospital policies specify requirements for limiting access;

(e) every patient shall be entitled to know who has overall responsibility for the patient's care;

(f) every patient, legally authorized person or any person authorized in writing by the patient, shall receive, from the appropriate person within the facility, information about his illness, course of treatment and prognosis for recovery in terms the patient can understand;

(g) every patient, or his designate representative, where appropriate, shall have the opportunity to participate to the fullest extent possible in planning for his care and treatment;

(h) every patient, or his designated representative, shall be given, at the time of admission, a copy of the patient's rights and responsibilities;

(i) except in emergencies, the consent of the patient, or their legally authorized representative, shall be obtained before treatment is administered;

(j) any patient may refuse treatment to the extent permitted by law and shall be informed of the medical consequences of the refusal;

(k) the patient, the patient's legally authorized representative, or person granted the power to authorize medical treatment, shall be fully informed and give consent for the

patient's participation in any form of research or experimentation;

(l) except in emergencies, the patient may be transferred to another facility only with a full explanation of the reason for the transfer, provision for continuing care; and acceptance by the receiving institution;

(m) every patient may examine and receive an explanation of the patient's hospital bill regardless of source of payment, and may receive upon request, information relating to financial assistance available through the hospital;

(n) every patient shall be informed of his responsibility to comply with hospital rules, cooperate in the patient's own treatment, provide a complete and accurate medical history, be respectful of other patients, staff and property, and provide required information concerning payment of charges;

(o) every patient shall be informed in writing about the hospital's policies and procedures for initiation, review and resolution of patient complaints, including the address where complaints may be filed with the authority;

(p) every patient shall be allowed to designate who may be permitted to visit during the hospital stay in accordance with the hospital policy; and

(q) every patient shall have freedom from physical or verbal abuse, harassment and inappropriate physical and chemical restraints;

(r) hospitals must be in compliance with CMS's patient rights condition of participation.

(2) The policies on patient rights and responsibilities shall also provide that patients who receive treatment for mental illness, or developmental disability, in addition to the rights listed herein, have the rights provided in section 43-1-6 NMSA 1978.

(3) Hospital

staff assigned to provide direct patient care shall be informed of, and demonstrate their understanding of, the policies on patient rights and responsibilities through orientation and appropriate in-service training activities.

B. Movement of visitors: The hospital shall develop policies regarding the movement of visitors, which provide for infection control and patient privacy, but also allow the patient appropriate freedom as to the time, nature, and location of visit.

C. Use of Volunteers:
(1) the scope of volunteer activities shall be delineated in hospital policies and procedures and shall cover periods of routine operation and periods of disaster and emergency operation;

(2) volunteers may assist with patient care only under direct supervision of appropriate hospital personnel and after appropriate, documented in-service training; volunteers may not perform procedures permitted only by a licensed health care provider;

(3) no volunteer under 16 years of age may assist with or render direct patient care.

D. Identification: The hospital shall develop a method to identify employees, patients, personnel records and patient files.

E. Cancer reporting: every hospital shall report to the tumor registry all malignant neoplasms that are diagnosed by the hospital and all malignant neoplasm's diagnosed elsewhere if the individual is subsequently admitted to the hospital; the report of each malignant neoplasm shall be made on a form prescribed or approved by the authority and shall be submitted to the UNM tumor registry within six months after the diagnosis is made or within six months after the individual's first admission to the hospital if the neoplasm is diagnosed elsewhere, as appropriate; in this paragraph, "malignant neoplasm" means an in situ or invasive tumor of the human body, but does not include

a squamous cell carcinoma or basal cell carcinoma arising in the skin.

F. Post - mortem examinations:

(1) the hospital shall have policies for notifying all personnel of special handling needs during post-mortem procedures;

(2) the hospital shall have policies for the release of a deceased human body to a funeral director or other authorized person.

G. Tagging of bodies: all deceased human bodies to be removed from a hospital shall be tagged by staff of the hospital; a red tag shall be used to indicate the possibility of the presence of the communicable or infectious disease or radioactive materials. If the body is in a container, a tag shall also be applied to the outside of the container.

H. Autopsy: Reports are to be distributed to the primary provider and become part of the patient's clinical record.

I. Withholding of resuscitative services from patients.

(1) A policy shall be developed in consultation with the medical staff, nursing staff, and other appropriate bodies and shall be adopted by medical staff and approved by the governing body. The policy shall describe:

(a) a mechanism(s) for reaching decisions about the withholding of resuscitative services from individual patients;

(b) the mechanism(s) for resolving conflicts in decision making, should they arise;

(c) the roles of physicians and, when applicable, of nursing personnel, other appropriate staff, and family members in the decision to withhold resuscitative services;

(d) provisions designed to assure that patients' rights are respected when decisions are made to withhold resuscitative services;

(e) a requirement that patients, or their legal representative(s), and family

members must be afforded the opportunity to make their wishes known about decisions affecting the patient's end of life care;

(f) a requirement that appropriate orders be written by the physician or other licensed independent practitioners primarily responsible for the patient and that documentation be made in the patient's medical record.

(2) A decision to withhold resuscitative services does not absolve the hospital from providing basic patient care.

J. Anatomical gifts: A policy shall be adopted and implemented for organ and tissue donation in accordance with 370.12.42 NMAC; the policy shall include procedures to assist the medical, surgical and nursing staff in identifying, evaluating and reporting potential organ and tissue donors.

K. Reporting: A policy for compliance with all applicable state and federal reporting requirements must be adopted and updated as necessary; such federal requirements include but are not limited to the New Mexico health policy commission, the national practitioner data bank and the healthcare integrity and protection data bank.

[8.370.12.19 NMAC - N, 7/01/2024]

8.370.12.20 CHIEF EXECUTIVE OFFICER/ ADMINISTRATOR:

A. Appointment: The hospital shall be directed by a chief executive officer/administrator. The chief executive officer/administrator shall be appointed by the governing body, shall be responsible for the management of the hospital and shall provide liaison among the governing body, medical staff, nursing services and other services of the hospital.

B. QualificationZ: The chief executive officer/administrator shall:

(1) be a college or university graduate from an accredited college or university, with three years of experience in a health care facility; or

(2) possess a college or university graduate degree in hospital, health care administration, or an advanced degree such as an MPH or an MBA with a health concentration; or

(3) have been hired and be acting in the capacity of the facility's chief executive officer/administrator before the effective date of these requirements.

C. Responsibilities: The chief executive officer/administrator shall:

(1) keep the governing body fully informed about the quality of patient care, the management and financial status of the hospital, survey results and the adequacy of physical plant, equipment and personnel;

(2) organize the day-to-day functions of the hospital;

(3) establish formal means of staff evaluation and accountability on the part of subordinates to whom duties have been assigned;

(4) provide for the maintenance of an accurate, current and complete personnel record for each hospital employee;

(5) ensure that there is sufficient communication among the governing body, medical staff, nursing services and other services, hold interdepartmental and departmental meetings, where appropriate, attend or be represented at the meetings on a regular basis, and report to the governing body on the pertinent activities of the hospital;

(6) provide the authority with any information required to document compliance with the Public Health Act, Section 24-1-1 et seq., NMSA 1978, and provide reasonable means for examining records and gathering the information;

(7) be responsible for the preparation of policies and procedures on the withholding of resuscitative services from patients.

[8.370.12.20 NMAC - N, 7/01/2024]

8.370.12.21 EMPLOYEE

HEALTH: The hospital shall have an employee health program under the direction of a physician, an authorized licensed independent practitioner or professional registered nurse, which shall include.

A. Post hiring

health screen: A post hiring health screening shall be required for all employees and persons who will have frequent and direct contact with patients. The assessment shall be completed and the results known prior to the assumption of duties by persons who will have direct contact with patients. The screening shall include:

(1) a health history, including a history of communicable diseases and immunizations;

(2) a PPD tuberculin skin test and, if necessary, a chest roentgenogram to determine whether disease is present, unless medically contra-indicated.

B. Health history

for volunteers: A health history of communicable diseases and immunizations shall be obtained prior to any volunteer assuming duties that involve direct patient care.

C. Protection against

rubella: Vaccination or confirmed immunity against rubella shall be required for everyone who has direct contact with rubella patients, pediatric patients or female patients of childbearing age. No individual without documented vaccination against or immunity to rubella may be placed in a position in which he or she has direct contact with rubella patients, pediatric patients or female patients of childbearing age.

[8.370.12.21 NMAC - N, 7/01/2024]

8.370.12.22 INFECTION**CONTROL:**

A. Program. The hospital shall have an infection control program designed to reduce the number of infections, including nosocomial infections, within the hospital.

B. Program approval:

(1) Purpose:
The governing body or medical staff

shall approve an infection control program to carry out surveillance and investigation of infections in the hospital and to implement measures designed to reduce these infections to the extent possible.

(2)

Responsibilities: The infection control program shall:

(a)

establish techniques and systems for discovering and isolating infections occurring in the hospital;

(b)

establish written infection control policies and procedures, which govern the use of aseptic technique and procedures in all areas of the hospital;

(c)

establish a method of control used in relation to the sterilization of supplies and solutions; there shall be a written policy requiring identification of sterile items and specified time periods in which sterile items shall be reprocessed;

(d)

establish policies specifying when employees or persons providing contractual services with infections or contagious conditions, including carriers of infectious organisms, shall be relieved from, or reassigned duties, until there is evidence that the disease or condition poses no significant risk to others;

(e) at

least annually assess effectiveness of the infection control process; and

(f)

establish effective guidelines for the disposition of infectious materials in accordance with the local, state and federal guidelines.

C. Education: The hospital shall provide training to all appropriate hospital personnel on the epidemiology, etiology, transmission, prevention and elimination of infection, as follows:

(1) aseptic

technique: all appropriate personnel shall be educated in the practice of aseptic techniques such as hand-washing and scrubbing practices, standard precautions, personal hygiene, masking and dressing techniques, disinfecting and sterilizing

techniques and the handling and storage of patient care equipment and supplies, to include the handling of needles and sharp instruments; and

(2) orientation

and in-service: new employees shall receive appropriate orientation and on-the-job training, and all employees shall participate in a continuing in-service program; the participation shall be documented.

D. General infection control provisions:**(1) There shall**

be regular inspection and cleaning of air intake sources, screens and filters, with special attention given to high risk areas of the hospital as determined by the infection control committee.

(2) A sanitary

environment shall be maintained to avoid sources and transmission of infection.

(3) Proper

facilities shall be maintained, and techniques used, for disposal of infectious wastes, as well as sanitary disposal of all other wastes.

(4) Hand-

washing facilities shall be provided in patient care areas for the use of hospital personnel.

(5) Sterilizing

services shall be available at all times.

(6) Soiled

linen shall be contained and secured at the point generated. It can be transported to a designated area or cleaning facilities. No special precautions beyond the standard precautions are necessary. Soiled bed linen shall be placed immediately in a container available for this purpose and sent to the laundry promptly.

(7)

Tuberculosis exposure control plan.

(a)

A program to minimize the risk of infectious tuberculosis among or between health care workers, patients, or visitors and others shall be developed.

(b)

This program shall include: a comprehensive facility-wide risk assessment, early identification, isolation, and treatment of potentially

infectious tuberculosis patients, effective engineering controls to prevent the spread, and reduce the concentration of, infectious droplet nuclei, a written, respiratory protection program to protect health care workers from exposure, education, counseling, and screening processes for health care workers.

E. Reporting

disease: Hospitals shall report cases and suspected cases of notifiable conditions as listed in 7.4.3.13 NMAC to the New Mexico health care authority pursuant to New Mexico regulations governing the control of disease and conditions of public health significance, New Mexico health care authority, 7.4.3 NMAC or any superceding regulation.

F. Policies and

procedures: There shall be written policies and procedures pertinent to care of patients with communicable diseases that shall include standard precautions.

(1) These policies and procedures shall be developed by administrative, medical, and nursing staff.

(2) The policies and procedures shall be applicable within the hospital, designed to ensure safe and adequate care to patients, safety to hospital employees, and consistent with applicable laws and regulations.

(3) Policies shall be made known to, and readily available to all hospital employees as well as the medical and nursing staff, and shall be followed in the care of patients, and shall be kept current by periodic review and revision. [8.370.12.22 NMAC - N, 7/01/2024]

8.370.12.23 QUALITY IMPROVEMENT:

A. Responsibility of the governing body: The governing body shall ensure that the hospital has a written quality improvement program for monitoring, evaluating and improving the quality of patient care and the ancillary services in the hospital on an on-going basis. The program shall promote the most effective and efficient use of

available health facilities and services consistent with patient needs and professionally recognized standards of health care.

B. Responsibilities of the chief executive officer/administrator and the chief of the medical Staff. As part of the quality improvement program, the chief executive officer/administrator and chief of the medical staff shall ensure that:

(1) the hospital's quality improvement program is implemented and evaluated for effectiveness for all patient care and all services;

(2) the findings of the program are incorporated into a well defined method of assessing staff performance in relation to patient care and the provision of services; and

(3) program findings, actions and results of the hospital's quality improvement program are reported to the chief executive officer/administrator, chief of medical staff and governing body not less than annually.

C. Evaluation of Care to be Problem-Focused.

(1) Monitoring and evaluation of the quality of care given patients and services provided shall focus on identifying patient care problems and opportunities for improving patient care.

(2) Evaluation of care and services shall be problem-focused whenever serious events occur which have a major impact on patient care and services, or when the hospital receives a quality-of-care concern or complaint.

D. Evaluation of care and services to use variety of sources. The quality of care given patients shall be evaluated using a variety of data sources, including, but not limited to, medical records, hospital information systems, published research, literature comparison, peer review organization data, patient satisfaction findings, and when available, third party information.

E. Activities.

Hospitals shall document how each of the monitoring and evaluation activities has produced data used to institute changes to improve quality of care or services and promote more efficient use of facilities and services. Quality improvement activities shall:

(1) emphasize identification and analysis of patterns of patient care and suggest possible changes for maintaining consistently high quality care and effective and efficient use of services;

(2) identify and analyze factors related to the patient care rendered in the facility and, where indicated, make recommendations to the governing body, chief executive officer/administrator and chief of the medical staff for changes that are beneficial to patients, staff, the facility and the community; and

(3) document the monitoring and evaluation activities performed and indicate how the results of these activities have been used to institute changes to improve the quality and a appropriateness of the care provided.

F. Evaluation of the program. The chief executive officer/administrator and chief of medical staff shall be involved in evaluation of the effectiveness of the quality improvement program which is evaluated by clinical and administrative staff at least once a year and that the results are communicated to the governing body. [8.370.12.23 NMAC - N, 7/01/2024]

8.370.12.24 UTILIZATION MANAGEMENT:

A. Plan: Every hospital shall have in operation a written utilization management plan designed to ensure that quality patient care is provided in the most appropriate manner. The plan should address potential over and under utilization as well as the efficient use of resources for patients.

(1) Description of plan. The written utilization management plan shall

include at a minimum at least the following:

(a) a delineation of the responsibilities and authority of those involved in the performance of utilization management activities, including utilization management personnel, administrative personnel, and, when applicable, any qualified outside organization contracting to perform review activities specified in the plan;

(b) a conflict of interest statement stating that reviews may not be conducted by any person who has a proprietary interest in any hospital or by any person who was professionally involved in the care of the patient whose case is being reviewed;

(c) a confidentiality policy applicable to all utilization management activities, including any findings and recommendations;

(d) a description of the process by which the hospital identifies and resolves utilization related problems, including the appropriateness and medical necessity of admissions, continued stays, and supportive services, as well as delays in the provision of supportive services; and

(e) the following activities shall be incorporated into the process: analysis of profiles and patterns of care, feedback of results of profile analysis to the medical staff, documentation of specific actions taken to correct aberrant practice patterns or other utilization management problems, and evaluation of the effectiveness of action taken.

(2) The plan must include the procedures for conducting review, including the time period within which the review is to be performed following admission and in assigning continued stay review dates.

(3) A mechanism for the provision of discharge planning as set forth under these requirements must be included.

(4) Responsibility for performance. The

plan shall be approved by the medical staff, administration and governing body. Hospital administration shall assure the effective implementation of the plan.

B. Conduct of review.

(1) Written measurable criteria that have been approved by the medical staff shall be utilized when performing reviews.

(2) Non-physician health care professionals may participate in the development of review criteria and conduct of review relative to services provided by their peers.

(3) Determinations regarding the medical necessity and appropriateness of care provided shall be based upon information documented in the medical record. The medical staff member primarily responsible for the patient's care shall be notified whenever it is determined that an admission or continued stay is not medically necessary, and shall be afforded the opportunity to present his or her own views before a final determination is made. At least two medical staff members shall make a determination when the medical staff member primarily responsible for the patient's care disagrees.

(4) Different rules may apply to beneficiaries of, or enrollees in, plans which provide medicare or medicaid services. If the hospital is a member of, or has a contractual relationship with, a risk bearing entity, and such risk bearing entity has a contract with CMS or with the New Mexico medicaid authority (single state agency), then the applicable federal or state requirements shall apply to enrollees under such a plan.

(5) Written notice of any decision that an admission or continued stay is not medically necessary shall be given to the appropriate hospital department, the medical staff member primarily responsible for care of the patient and the patient no later than 72 hours after the determination.

C. Records and reporting. Records shall be kept

of hospital utilization management recommendations made to the medical staff and to the governing body as necessary. Recommendations relevant to hospital operations or administration shall be reported to administration.

[8.370.12.24 NMAC - N, 7/01/2024]

8.370.12.25 DISASTER AND EMERGENCY MANAGEMENT:

A. Plan: Each hospital shall have in operation a written plan for disaster and emergency management developed with the involvement of the hospital's executive, medical, and nursing staff and designed to ensure that each hospital is prepared to provide effective and efficient response to disasters and emergencies occurring in the community directly served by each hospital and in neighboring communities in New Mexico and adjacent states.

(1) Description of plan: The written plan for disaster and emergency management shall:

(a) identify the responsibilities and authorities of those involved in the conduct of disaster and emergency management activities within the hospital, including the responsibility and authority of chief executive officer of the hospital for the activation of the plan;

(b) be consistent with the concepts, principles, standards, guidelines, and terminology of the national response plan and the national incident management system;

(c) be coordinated with the local emergency operations plan, or the metropolitan medical response system plan, of the community directly served and with the New Mexico state all-hazard emergency operations plan;

(d) address the natural, accidental, negligent, and intentional hazards, identified through a hazard vulnerability analysis, to which the hospitals may be expected to respond;

(e) provide for direction, planning, education, training, exercise, drill, staff qualification and certification, equipment acquisition and certification, resource management, communications and information management, and ongoing management, improvement and maintenance;

(f) describe the direct responses of the hospital to disaster and emergency occurring in the community directly served by the hospital, the overflow and back-up responses of the hospital to disaster and emergency occurring in neighboring communities not directly served, and the efforts of the hospital in support organized and sponsored health professional disaster and emergency volunteer teams.

(2) Exercise and drill of plan: Exercises and drills of the plan, both internally, and in conjunction with local and state disaster and emergency exercises and drills, shall be conducted at least twice a year to practice response and to serve as a basis for plan improvement.

(3) Evaluation and revision of plan: The appropriateness and adequacy of the plan shall be evaluated on an annual basis, and the plan shall be revised as necessary.

B. Communications systems: With the assistance of the New Mexico health care authority each hospital shall establish and maintain connections with the various disaster and emergency management communications systems in New Mexico.

C. Bed polling: Each hospital shall participate in the electronic bed polling system operated by the New Mexico health care authority.

D. Mutual aid agreements and regional response plans: Coordination of hospital disaster and emergency management plans with local emergency operations plans and with the New Mexico state all-hazard emergency operations plan shall be recognized to serve the

purposes of individual mutual aid agreements and of regional response plans.

E. Public health emergency response: In the event that a public health emergency is declared pursuant to the Public Health Response Act, Sections 12-10A- to 12-10A-19, NMSA 1978, the secretary of the health care authority, in coordination with the secretary of public safety and the director of homeland security, may:

- (1) utilize, secure or evacuate health care facilities for public use; and
- (2) inspect, regulate the allocation, sale, dispensing, or distribution of, or ration health care supplies in short supply within New Mexico. [8.370.12.25 NMAC - N, 7/01/2024]

8.370.12.26 MEDICAL STAFF:

A. General requirements:

(1) Organization and Accountability: The hospital shall have a medical staff organized under by-laws approved by the governing body. The medical staff shall be responsible to the governing body of the hospital for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members.

(2) Responsibility of members: Members of the medical staff shall comply with medical staff and hospital policies. The medical staff by-laws shall prescribe disciplinary procedures for infraction of hospital and medical staff policies by members of the medical staff. There shall be evidence that the disciplinary procedures are applied where appropriate.

B. Membership:
(1) Active staff: A hospital shall have an active medical staff, which performs all the organizational duties pertaining to the medical staff. Active staff membership shall be limited to individuals, as defined in Subsection LL of 8.370.12.7 NMAC of these requirements, who are currently

licensed. Individuals may be granted membership in accordance with the medical staff by-laws and rules, and in accordance with the by-laws of the hospital.

(2) Other staff: The medical staff may include one or more categories defined in the medical staff by-laws in addition to the active staff including a category to cover appointment during periods of disaster and emergency.

C. Appointment:
(1) Governing body responsibilities:

(a) medical staff appointments shall be made by the governing body, taking into account recommendations made by the active medical staff;

(b) the governing body shall biennially ensure that members of the medical staff are qualified legally and professionally for the position to which they are appointed;

(c) the hospital, through its medical staff, shall require applicants for medical staff membership to provide, in addition to other medical staff requirements, a complete list of all hospital medical staff memberships held within five years prior to application; and

(d) hospital medical staff applications shall require reporting any malpractice action, any previously successful and currently pending challenges to licensure in this or another state, and any loss or pending action affecting medical staff membership or privileges at another hospital.

(2) Medical staff responsibilities:

(a) to select its members and delineate their privileges, the hospital medical staff shall have a system, based on specific standards for evaluation of each applicant by a credentials committee, which makes recommendations to the medical staff and to the governing body; and

(b) the medical staff may include one

or more categories of medical staff defined in the medical staff by-laws in addition to the active medical staff, including a category to cover appointment during periods of disaster and emergency, but this in no way modifies the duties and responsibilities of the active staff.

D. Criteria for appointment:

(1) Criteria for selection shall include the individual's current licensure, health status, professional performance, judgment and clinical and technical skills.

(2) All qualified candidates shall be considered by the credentials committee or during periods of disaster and emergency by a member of the medical staff or administration who represents the credentials committee.

(3) Re-appointments shall be made at least biennially and recorded in the minutes or files of the governing body. Reappointment policies shall provide for a periodic appraisal of each member of the staff, including consideration at the time of reappointment of information concerning the individual's current licensure, health status, professional performance, judgment and clinical and technical skills. Recommendations for re-appointments shall be noted in the minutes of the meetings of the appropriate committee.

(4) Temporary staff privileges may be granted for a limited period if the individual is qualified for membership on the medical staff.

(5) Disaster and emergency privileges may be granted to qualified individuals during disasters and emergencies.

(6) A copy of the scope of privileges to be accorded the individual shall be distributed to appropriate hospital staff. The privileges of each staff member shall be specifically stated or the medical staff shall define a classification system. If a system involving classifications is used, the scope of the

categories shall be well defined, and the standards that must be met by the applicant, shall be clearly stated for each category.

(7) If other categories of staff membership are to be established for allied health personnel, the necessary qualifications, privileges and rights shall be delineated in accordance with the medical staff by-laws.

E. Consultations:

(1) The medical staff must have established policies concerning the holding of consultations.

(2) Except in an emergency, consultations are required when:

(a) the patient is not a good medical or surgical risk;

(b) the diagnosis is obscure;

(c) there is doubt as to the best therapeutic measures to be utilized; or

(d) when the patient, or legally authorized person, requests such consultation.

(3) Consultations must be included in the medical record. When operative procedures are involved, the consultation note, except in an emergency, shall be recorded prior to the operation.

(4) The patient's physician or authorized licensed independent practitioner is responsible for requesting consultations when indicated. It is the duty of the medical staff to make certain that members of the medical staff contact consultants as needed.

F. By-laws:

(1) Adoption and purpose: By-laws shall be adopted by the medical staff and approved by the governing body to govern and enable the medical staff to carry out its responsibilities. The by-laws of the medical staff shall be a precise and clear statement of the policies under which the medical staff regulates itself.

(2) Content: medical staff by-laws and rules shall include:

(a) a descriptive outline of the medical staff organization;

(b) a statement of the necessary qualifications which each member must possess to be privileged to work in the hospital, during periods of routine operation, as well as during periods of disaster and emergency, and of the duties and privileges of each category of medical staff;

(c) a procedure for granting or withdrawing privileges to each member; and an appeal process for privilege withdrawal or refusal;

(d) a mechanism for appeal of decisions regarding medical staff membership and privileges;

(e) provision for regular meetings of the medical staff;

(f) provision for keeping timely, accurate and complete records;

(g) provisions for routine examination of all patients upon admission and recording of the preoperative diagnosis prior to surgery;

(h) a stipulation that a surgical operation is permitted only with the consent of the patient or legally authorized person except in emergencies;

(i) statements concerning the request for the performance of consultations, and instances where consultations are require; and

(j) a statement specifying categories of personnel duly authorized to accept and implement medical staff orders.

G. Governance:

(1) The medical staff shall have the numbers and kinds of officers necessary for the governance of the staff.

(2) Officers shall be members of the active staff and shall be elected by the active medical staff.

H. Meetings:

(1) Number and frequency: The number and

frequency of medical staff meetings shall be determined by the active medical staff and clearly stated in the by-laws of the medical staff. At a minimum the executive committee of the medical staff shall meet at least quarterly.

(2)

Attendance: Attendance records shall be kept of medical staff meetings. Attendance requirements for each individual member shall be clearly stated in the by-laws of the medical staff.

(3) Purpose:

Full medical staff meetings shall be held to conduct the general business of the medical staff and to review the significant findings identified through the quality improvement program.

(4) Minutes:

Minutes of all meetings shall be kept.

I. Committees.

(1)

Establishment: The medical staff shall establish committees of the medical staff and is responsible for their performance.

(2) Executive committee:

The medical staff shall have an executive committee to coordinate the activities and general policies of the various departments, act for the staff as a whole under limitations that may be imposed by the medical staff bylaws, and receive and act upon the reports of all other medical staff committees.

J. Administrative structure:

Hospitals may create services to fulfill medical staff responsibilities. Services are responsible for the quality of care rendered to patients under their care. [8.370.12.26 NMAC - N, 7/01/2024]

8.370.12.27 NURSING SERVICES:

A. Requirement:

The hospital shall provide a 24-hour nursing service, supervised by a professional registered nurse, and have a licensed practical nurse or professional registered nurse on duty at all times.

B. Administration:

(1) The

nursing services shall be directed by

a professional registered nurse with appropriate education and experience to direct the service. A professional registered nurse with administrative authority shall be designated to act in the absence of the director of the nursing services. Appropriate administrative staffing shall be provided on all shifts.

(2) There

shall be a written plan showing the flow of authority throughout the nursing service, with delineation of the responsibilities and duties of each category of nursing staff.

(3) The

delineation of responsibilities and duties for each category of the nursing staff shall be in the form of a written job description for each category.

C. Staffing:

(1) An

adequate number of professional registered nurses shall be on duty at all times to meet the nursing care needs of the patients. There shall be qualified supervisory personnel for each service or unit to ensure adequate patient care management.

(2) The

number of nursing personnel for all patient care services of the hospital shall be consistent with the nursing care needs of the hospital's patients.

(3) The

staffing pattern shall ensure the availability of professional registered nurses to assess, plan, implement and direct the nursing care for all patients on a 24-hour basis.

D. Patient Care:

(1) Care

planning:

(a)

All nursing care shall be planned and directed by professional registered nurses. A professional registered nurse shall be on duty and immediately available to give direct patient care when needed.

(b) A

professional registered nurse shall be available at all times to render direct care in the facility.

(2) Care

determinants:

(a)

A professional registered nurse

shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and competence of the available nursing staff.

(b)

The ratio of licensed nursing personnel to patients shall be determined by the acuity of patients, the patient census, and complexity of care that must be provided.

(c)

A professional registered nurse shall plan, supervise and evaluate the care of all patients, including the care assigned to licensed practical/vocational nurses and non-licensed care givers.

(d)

There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the services of a professional registered nurse.

(3)

Special care units: Areas providing specialized nursing care shall be well defined by policies and procedures specific to the nursing services provided. These areas may include, but shall not be limited to, intensive care, coronary care, obstetrics, nursery, renal units, burn units, and emergency rooms.

(a)

Specific policies and procedures shall supplement basic hospital nursing policies and procedures. Nursing policies and procedures of special care units shall keep pace with best practice and new knowledge and shall include but not be limited to: protocols for resuscitation and disaster situations, immediate availability of emergency equipment and drugs, appropriate and safe storage of pharmaceuticals and biologicals, programs for maintenance and safe operation of all equipment, appropriate infection-control measures, control of visitors and non-essential personnel, and documentation of quality improvement.

(b)

Special-care unit nursing services shall be integrated with other hospital departments and services.

(c)

Supervision of nursing care in the unit shall be provided by a professional registered nurse with relevant education, training, experience, and demonstrated current competence.

(d)

All nursing personnel shall be prepared for their responsibilities in the special-care unit through appropriate orientation, ongoing in-service training, and continuing education programs. Each hospital shall have a planned, formal training program for all nurses and shall be of sufficient duration and substance to cover all patient-care responsibilities in the special care unit.

E. Staff**qualifications:**

(1) Individuals

selected for the nursing staff shall be qualified by education, experience, and current competence for the positions to which they are appointed.

(2)

The education and experience qualifications of the director of nursing supervisors, and other medical professionals shall be commensurate with the scope and complexity of the services of the hospital.

(3) The

functions and qualifications of nursing personnel shall be clearly defined in relation to the duties and responsibilities delegated to them.

(4) Personnel

records, including application forms and verifications of current licensure and credentials, shall be on file.

(5) Nursing

management shall make decisions about the selection and promotion of nursing personnel based on their qualifications and capabilities and shall recommend the termination of employment when necessary.

(6) Approval:

There shall be a policy and procedure to ensure that hospital nursing personnel for whom registration, a license or other approval is required by law shall have valid and current registration, licensure or other approval.

(7) There shall

be a policy and procedure governing the qualifications and selection of nursing personnel during periods of disaster and emergency.

F. Evaluation and review of nursing care: There shall be a review and evaluation of the nursing care provided for patients. There shall be written nursing care procedures and plans of care.

(1)

Responsible staff: A licensed professional registered nurse shall plan, supervise, and evaluate the nursing care for each patient.

(2) The

director of nursing is responsible for the effective use of care plans by the nursing staff.

(3) Nursing

care plan: Nursing care plans shall be kept current. Plans shall indicate nursing care needed, how it is to be accomplished, and methods, approaches, and modifications necessary to obtain best results for patients.

(4) Nursing

notes: Nursing notes shall be legible, informative and descriptive of the nursing care given and include information and observations of significance so that they contribute to the continuity of patient care.

G. Orientation and in-service:

(1) There shall

be a comprehensive and thorough employee orientation program for all nursing services personnel.

(2) The

facility shall provide orientation to nursing services personnel before they provide care to patients.

H. Hospital relationships:

(1) General:

The nursing service shall have well-established working relationships with the medical staff and with other hospital staff that provide and contribute to patient care.

(2) Policies:

Written policies and procedures affecting nursing services shall be developed and reviewed with the participation of the director of nursing

or designee, in consultation with other appropriate health professionals and administration. The governing body shall approve the policies. The nursing service shall be represented on hospital committees that affect patient care policies and practices.

I. Documentation, staff meetings and evaluation:

(1) Nursing

care policies and procedures that reflect optimal standards of nursing practice shall be written and approved, and shall be reviewed and revised as necessary to keep pace with current knowledge. Written nursing care policies and procedures shall be available on each nursing unit.

(2) There

shall be a written nursing care plan for each patient, which shall include the elements of assessment, planning, intervention and evaluation.

(3)

Documentation of nursing care shall be pertinent and concise and shall describe patient status needs, problems, capabilities and limitations. Nursing intervention and patient response shall be noted.

(4) Meetings

of the nursing staff shall be held at least once every two months to discuss patient care, nursing services problems and administrative policies. Minutes of all meetings shall be kept and shall be available to all staff members.

(5) The

nursing services director shall ensure that there is ongoing review and evaluation of the nursing care provided for patients and shall assure that nursing care standards and objectives are established and met. If the nursing department is decentralized into clinical departmental services or clinical programs are established, there shall be one administrator to whom the nursing directors shall be accountable and who has the responsibility to assure one standard of nursing practice within the organization.

J. Additional patient care requirements:

(1) In this

subsection, "circulating nurse" means

a professional registered nurse who is present during an operation to provide emotional support to the patient, assist with the anesthesia induction, and throughout the surgical procedure or delivery, coordinate the activities of the room, monitor the traffic in the room, maintain an accurate account of urine and blood loss, and who, before the surgical procedure or delivery is completed, informs the recovery rooms of special needs and ensures that the sponge, needle and instrument counts have been done according to hospital policy.

(2)

Obstetrical: Every patient admitted in labor shall be assessed initially by a professional registered nurse or physician.

(3) Surgical:

(a)

A professional registered nurse shall supervise the operating room(s).

(b)

A qualified professional registered nurse shall function as the circulating nurse in the surgical and obstetrical room whenever general anesthesia is used and on all local anesthesia cases involving a high degree of patient risk. Individual surgical technologists and licensed practical nurses may function as assistants under the direct supervision of a qualified professional registered nurse.

(4) Temporary

nursing personnel:

(a)

When contract nursing personnel from outside registries or agencies are used by the hospital, the nursing services shall have a means for evaluating the credentials and competence of these personnel. Contract nursing personnel shall function under the direction and supervision of a qualified professional registered nurse from the hospital nursing staff. The temporary nursing personnel shall have an orientation to the facility.

(b)

If private duty nursing personnel are employed by the patients, the nursing department shall ensure the private duty nursing agency has a means for evaluating the credentials and competence of these personnel. The

hospital shall have policies regarding use of these personnel in the facility.

(5)

Medications: Only the following shall be permitted in accordance with the Nurse Practice Act and the requirements of the board of nursing:

(a)

a professional registered nurse may pass medications;

(b)

a licensed practical nurse or a student nurse in an approved school of nursing under the supervision of a licensed professional registered nurse may pass medications;

(c)

medications may not be prepared by nursing personnel on one shift for administration during succeeding shifts;

(d)

medication administration may not be delegated to unlicensed personnel.;

(6) Reporting:

The hospital shall have effective policies and procedures for reporting transfusion reactions, adverse drug reactions, accidents and medication errors. The medical staff shall review summary reports of these reactions, accidents and errors at least quarterly. [8.370.12.27 NMAC - N, 7/01/2024]

8.370.12.28 DIETARY

SERVICES: The hospital shall provide a 24-hour dietary service or contract for a 24-hour dietary services which meets the requirements of this section, and which shall provide meals and other nutritional care to its patients. The dietary service shall be integrated with other services of the hospital.

A. Administrative.

(1) There shall

be written policies and procedures for food storage, preparation and service and clinical aspects developed by the dietitian.

(2) There

shall be a qualified person serving as full-time director of the service who shall be responsible for the daily management aspects of the service.

(3) The

dietitian shall participate in the nutritional aspects of patient care

by means that include assessing the nutritional status of patients, instructing patients, recording diet histories, interpreting and integrating therapeutic principles, participating appropriately in patient rounds and conferences, and recording in medical records and sharing specialized knowledge with others on the medical team.

(4) There shall

be written job descriptions for all dietary employees.

(5) The

dietitian shall be responsible for maintaining a current diet manual for therapeutic diets, approved jointly by the dietitian and a qualified member of the medical staff. The dietetic manual shall be developed on recognized current therapeutic practices. The dietitian shall recommend this manual to a qualified member of the medical staff for approval for use in the facility. All changes must be submitted to a qualified member of the medical staff for approval prior to inclusion in the manual.

(6) There shall

be an in service training program for dietary employees which shall include instruction in proper storage, preparation and serving food, safety, appropriate personal hygiene and infection control.

(7) A menu

cycle shall be available and posted. Substitutions of equal nutritional value are acceptable and shall be noted. The hospital must keep for 30 days a record of each menu as served.

(8) A hospital

that contracts for its dietary services shall be in compliance with this section if the contracted services meets all applicable rules of this section.

B. Facilities:

(1) Adequate

facilities shall be provided to meet the dietary needs of the patients.

(2) Sanitary

conditions shall be maintained for the storage, preparation and distribution of food.

(3) All dietary

areas shall be appropriately located,

adequate in size, well-lighted, ventilated and maintained in a clean and orderly condition.

(4) Equipment and work areas shall be clean and orderly. Effective procedures for cleaning and sanitizing all equipment and work areas shall be followed consistently to safeguard the health of the patients, staff and visitors.

(5) Lavatories specifically for hand-washing shall include hot and cold running water, soap, and disposable towels or air dryers, and shall be conveniently located throughout the service area for use by dietary staff.

(6) The dietary service shall have written reports of the most recent environmental or licensing inspection on file at the hospital with notation made by the hospital of action taken to comply with recommendations or citations.

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

(8) All perishable foods shall be refrigerated and the temperature maintained at, or below, 40 degrees fahrenheit.

(9) Hot food shall be maintained at 140 degrees fahrenheit, or higher.

(10) Foods being displayed or transported shall be protected from environmental contamination and maintained at proper temperatures in clean containers, cabinets or serving carts.

(11) Dishwashing procedures and techniques shall be well-developed and understood by the responsible staff, with periodic monitoring of the operation of the detergent dispenser, washing, rinsing, and sanitizing temperatures and the cleanliness of machine and jets, and thermostatic controls.

(12) A daily log of recorded temperatures for all refrigerators, freezers, steam tables and dishwashers must be maintained

and available for inspection for 30 days.

(13) All garbage and kitchen refuse 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.

(14) Food and non-food supplies shall be clearly labeled and dated and shall be stored in separate areas.

(15) No hazardous non-food items shall be stored in the proximity of materials that could compromise the safety of the food supply.

(16) The dietitian shall be responsible for, and active in, the hospital's quality improvement program.

C. Records:

(1) A systematic record shall be maintained of all diets.

(2) Therapeutic diets shall be prescribed by an authorized individual in written orders on the medical record.

(3) Nutritional needs shall be in accordance with physicians' orders and, to the extent medically possible, in accordance with the "recommended daily dietary allowance" of the food and nutrition board of the national research council, national academy of sciences. A current edition of these standards shall be available in the dietary service.

(4) The qualified staff person who instructs the patient in home diet shall document this in the medical record.

D. Sanitation: All practices shall be in accordance with the standards of the New Mexico environment department.

(1) Kitchen sanitation:

(a) Equipment and work areas shall be clean and orderly. Surfaces with which food or beverages come into contact shall be of smooth, impervious material free of open seams, not readily corrosible 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 in which food or drink is stored, prepared or served shall be kept clean and in good repair.

(2) Washing and sanitizing of kitchenware:

(a) All reusable tableware and kitchenware shall be cleaned in accordance with procedures as outlined by the New Mexico environment department, which shall include separate steps for pre-washing, washing, rinsing and sanitizing.

(b) Dishwashing procedures and techniques shall be well-developed, understood by dishwashing staff and carried out according to policy. To make sure that service ware is sanitized and to prevent recontamination, correct temperature maintenance shall be monitored during cleaning cycles.

(3) Canned or preserved foods:

(a) All processed food 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.

(b) The hospital may not use home-canned foods.

(4) Cooks and food handlers: Cooks and food handlers shall wear clean outer garments and hair nets or caps and gloves as needed and shall keep their hands clean at all times when engaged in handling food, drink, utensils or equipment. Food handlers must obtain a tuberculosis test, prior to employment and as often as required thereafter according to hospital policy.

(5) Milk:

(a) Raw milk shall not be used.

(b) Milk for drinking shall be grade A pasteurized whole milk (three and one-quarter percent milk fat or greater

and not less than eight and one-quarter milk solids, not fat) or any other grade A fluid milk product as defined in the New Mexico Restaurant Act (includes skim milk, low-fat milk, and cream products) unless otherwise requested by the patient or as a part of a therapeutic diet.

(c)

Condensed, evaporated, or dried milk products which are recognized nationally, may be employed as “additives” in cooked food preparation but shall not be substituted or served to patients (adult, child, or infant) in place of milk as approved for drinking purposes. These products shall be handled and stored in accordance with the requirements of the current dietary practices.

[8.370.12.28 NMAC - N, 7/01/2024]

8.370.12.29 PHARMACY SERVICES:

A. Organization:

(1) Pharmacy:

The hospital pharmacy including pharmaceuticals contained in disaster and emergency caches held by the hospital, shall be supervised by a designated pharmacist-in-charge who is employed part-time or full-time. If employed part-time, the pharmacist shall visit the facility at least every 72 hours.

(2) Other

storage: If there is no pharmacy, pre-labeled, prepackaged medications shall be stored in, and distributed from, an automated medication management system, which is under the supervision of the pharmacist-in-charge.

(3) Pharmacist

accountability: The pharmacist-in-charge shall have appropriate administrative oversight and shall prepare a pharmacy policy and procedure manual that shall be reviewed and updated at least annually.

B. Facility:

(1) Space and

Equipment: The pharmacy shall meet the space and equipment requirements specified by the New Mexico board of pharmacy.

(2) Security:

The pharmacist shall control access to the pharmacy and any automated medication system devices. Established procedures shall assure accountability for all doses of drugs removed when the pharmacist is not present. Only a designated licensed nurse may remove drugs from the pharmacy when the pharmacist is not present.

(3) Drug

preparation areas: All drug storage and preparation areas within the facility shall be the responsibility of the pharmacist and inspected at least monthly.

(4) Pharmacy

policies and procedures should address practices to be followed when compounding, reconstituting, and repackaging medications to assure adherence to professional standards of practice for cleanliness and infection control.

(5) Schedule

II controlled substance storage: Schedule II controlled substances that are stored in the pharmacy shall be stored in a separate locked storage.

C. Personnel:

(1) The

pharmacist shall be assisted by an adequate number of competent and qualified personnel. Job descriptions for all categories shall be prepared and revised as necessary.

(2) A

pharmacist shall be on call during all absences of the designated pharmacist from the facility.

D. Records:

Hospital pharmacies shall maintain all dangerous drug distribution records that are required by applicable state and federal laws and regulations, including:

(1) floor stock

dangerous drug description records; and

(2) inpatient

dangerous drug description records:

(a)

schedule II controlled substance distribution records must be kept separate;

(b)

schedule III-V controlled substance

distribution records must be readily retrievable;

(c)

an annual inventory of schedule II-V controlled substances shall be conducted and a record maintained along with the procurement records for these drugs;

(d)

when automated drug distribution systems are utilized, they shall produce transaction records that meet the above records keeping requirement;

(e)

the pharmacist shall maintain records of quality improvement monitoring of automated drug distribution systems.

E. Other

responsibilities of the pharmacist:

(1) When

limited doses of a drug are removed from the pharmacy when the pharmacist is not present:

(a)

the pharmacist shall verify the withdrawal within 72 hours of the withdrawal;

(b)

a drug regimen review, pursuant to a new medication order, will be conducted by a pharmacist, either on-site or by electronic transmission, within 24 hours of the new order.

(2) The

pharmacist also shall:

(a)

provide drug information to staff and patients of the facility;

(b)

maintain current drug use reference manuals;

(c)

provide and document in-service education to the facility’s professional staff;

(d)

in conjunction with the practitioners, nurses, and other professional staff, review significant adverse drug reactions; and

(e)

review each medication order for safety and appropriateness and communicate with the prescribers when indicated.

[8.370.12.29 NMAC - N, 7/01/2024]

8.370.12.30 MEDICAL RECORDS SERVICES:

A. Medical Record:

A medical record shall be maintained for every patient admitted for care in the hospital. The record shall be kept confidential and released only in accordance with the Sections 14-6-1, 14-6-2 NMSA 1978 and, where appropriate, Section 43-1-19 NMSA 1978.

B. Service:

The hospital shall have a medical records service with administrative responsibility for all medical records maintained by the hospital.

(1)

Confidentiality:

(a)

Written consent of the patient or legally authorized person shall be required for release of medical information to persons not otherwise authorized to receive this information.

(b)

Original medical records may not be removed from the hospital except by authorized persons who are acting in accordance with a court order, and where measures are taken to protect the record from loss, defacement, tampering and unauthorized access.

(2)

Preservation: There shall be a written policy for the preservation of medical records. The retention period shall be for 10 years following the last treatment date of the patient, except in the case of minor children whose records shall be retained to the age of majority, plus one year.

(a)

Laboratory test records and reports may be destroyed one year after the date of the test recorded or reported therein provided that one copy is placed in the patient's record, or stored electronically in the hospital's information system. The hospital is responsible for electronic storage.

(b)

X-ray films may be destroyed four years after the date of exposure, if there are in the hospital record written findings of a radiologist who has read such x-ray films. At anytime after the third year after the date of exposure, and upon proper identification, the

patient may recover his own x-ray films as may be retained pursuant to this section. The written radiological findings shall be retained as provided by these requirements.

(3) Personnel:

(a)

Adequate numbers of personnel who are qualified to supervise and operate the service shall be provided.

(b)

A registered medical records administrator or an accredited records technician shall head the services, except that if such a professionally qualified person is not in charge of medical records, a consultant who is a registered records administrator or an accredited records technician shall organize the service, train the medical records personnel and make at least quarterly visits to the hospital to evaluate the records and the operation of the service, and prepare written reports of findings within 30 days.

(c)

In this subdivision, "a registered record administrator" or an "accredited record technician" is an individual who has successfully completed the examination requirements of the American medical record association.

(4)

Availability:

(a)

The system for identifying and filing records shall permit prompt retrieval of each patient's medical records.

(b)

A master patient index shall include at least the patient's full name, sex, birth date and medical record number or reference to treatment dates.

(c)

Filing equipment and space shall be adequate to maintain the records and facilitate retrieval.

(d)

The inpatient, ambulatory care and emergency records of patients shall be kept in such a way that all patient care information can be provided for patient care when the patient is admitted to the hospital, when the patient appears for a pre-scheduled outpatient visit, or as needed for emergency services.

(e)

Pertinent medical record information obtained from other providers including patient tracking information for patients admitted during disaster and emergency shall be available to facilitate continuity of the patient's care.

(f)

The original or legally reproduced form of all clinical information pertaining to a patient's stay shall be filed in the medical record folder as a unit record. When this is not feasible a system must be in place to provide prompt retrieval of all medical records when a patient is admitted.

(5) Coding

and indexing:

(a)

Records shall be coded and indexed according to diagnosis, operation and physician Indexing shall be kept current within six months from the discharge of the patient.

(b)

Any recognized system may be used for coding diagnoses, operations and procedures.

(c)

The indices shall list all diagnoses for which the patient was treated during the hospitalization and the operations and procedures, which were performed during the hospitalization.

C. Medical record

contents: The medical record staff shall ensure that each patient's medical records contain:

(1) accurate

and adequate patient identification data;

(2) a concise

statement of complaints, including the chief complaint, which led the patient to seek medical care and the date of onset and duration of each;

(3) a health

history, containing a description of present illness, past history of illness and pertinent family and social history to be made part of the record within the first 24 hours after admission;

(4) a statement

about the results of the physical examination, including all positive and negative findings resulting from an inventory of systems;

(5) the provisional diagnosis;

(6) all diagnostic and therapeutic orders;

(7) all clinical laboratory, x-ray reports and other diagnostic reports;

(8) consultation reports containing a written opinion by the consultant that reflects, when appropriate, an actual examination of the patient and the patient's medical records;

(9) except in an emergency, a current, thorough history and physical work-up shall be recorded in the medical record of every patient prior to surgery;

(10) an operative report describing techniques and findings written or dictated immediately after surgery; the completed operative report is authenticated by the surgeon and filed in the medical record as soon as possible after surgery or available electronically in the hospital information system; when the operative report is not placed in the medical record immediately after surgery, a progress note is entered immediately;

(11) a post operative documentation record of the patient's discharge from the post anesthesia care area;

(12) tissue reports, including a report of microscopic findings if hospital policies require that microscopic examination be done; if only microscopic examination is warranted, a statement that the tissue has been received and a microscopic description of the findings shall be provided by the laboratory and filed in the medical record;

(13) progress notes providing a chronological picture of the patient's progress sufficient to delineate the course and the results of treatment;

(14) a definitive final diagnosis including all relevant treatment and operative procedures performed expressed in the terminology of a recognized system of disease nomenclature;

(15) a discharge summary including the final diagnosis, the reason for hospitalization, the significant findings, the procedures performed, the condition of the patient on discharge and any specific instructions given the patient or family. A final progress note is acceptable when stay is less than 48 hours and in case of normal newborn infants and uncomplicated obstetrical deliveries;

(16) autopsy findings when an autopsy is performed; and

(17) for comprehensive inpatient programs the following information shall be present as well: rehabilitation evaluation including medical, psycho-social history and physical exam; rehabilitation plans including goals for treatment; documentation of patient care conferences held minimally every two weeks, or as indicated, by appropriate disciplines involved in the care and treatment of the patient, in which the patient's treatment and response to rehabilitation services shall be evaluated and modified as indicated.

D. Authentication:
Only members of the hospital staff or other professional personnel authorized by the hospital shall record and authenticate entries in the medical record. Documentation of medical staff participation in the care of the patient shall be evidenced by at least:

(1) the signature on the patient's health history as the required by medical staff by-laws and results of his or her physical examination;

(2) periodic progress notes or countersignatures as defined by the hospital rules and regulations;

(3) the surgeon's signature on the operative report; and

(4) the signature as required by medical staff by-laws on the face sheet and discharge summary.

E. Completion:
(1) Current records and those on discharged

patients shall be completed promptly.

(2) If a patient is readmitted within 30 days for the same or related condition, there shall be a reference to the previous history with an interval note, and any pertinent changes in physical findings shall be recorded.

(3) All records of discharged patients shall be completed within a reasonable period of time specified in the medical staff by-laws, but not to exceed 30 days after discharge, excepting autopsy reports.

F. Maternity patient records:

(1) Prenatal findings: Except in an emergency, before a maternity patient may be admitted to a hospital, a legible copy of the prenatal history shall be submitted to the hospital's obstetrical staff. The prenatal history shall note complication, Rh determination and other matters essential to adequate care.

(2) Maternal medical record: Each obstetric patient shall have a complete hospital record, which shall include:

(a) patient identification, prenatal history and findings;

(b) the labor and delivery record, including anesthesia;

(c) medicine and treatment sheet, including nursing notes;

(d) any laboratory and x-rays reports;

(e) any medical consultant's notes; and

(f) an estimate of blood loss.

G. Newborn medical records: Each newborn patient shall have a complete hospital record which shall include:

(1) a record of pertinent material data, type of labor and delivery, and the condition of the infant at birth;

(2) a record of physical examinations;

(3) progress sheets to include medicine, treatment,

weights, feeding and temperatures; and

(4) the notes of any medical consultant.

H. Fetal death: In the case of a fetal death, the weight and length of the fetus shall be recorded on the delivery record.

I. Authentication of all entries:

(1) Documentation:

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

(b) All orders shall be recorded and authenticated. All verbal and telephone orders shall be authenticated by the prescribing practitioner, or a practitioner authorized to sign on behalf of the prescribing physician, in writing within 72 hours.

(c) A rubber stamp reproduction of a person's signature or an electronic signature may be used instead of a handwritten signature, if: the stamp is used only by the person whose signature the stamp replicates, the facility possesses a statement signed by the person, certifying that only that person(s) shall possess and use the stamp.

(2) Symbols and abbreviations: Symbols and abbreviations may be used in medical records if approved by a written facility policy, which defines the symbols and abbreviations and controls their use. There shall be only one meaning per symbol.

[8.370.12.30 NMAC - N, 7/01/2024]

8.370.12.31 LABORATORY SERVICES:

A. Services and facilities:

(1) The extent and complexity of laboratory services shall be commensurate with the size, scope, and nature of the hospital and the needs of the medical staff.

(2) Necessary space, facilities and equipment to perform both the basic minimum and all other services shall be provided by the hospital either on-site or by contracts and services.

(3) All equipment shall be made to carry out adequate clinical laboratory examinations and services, as appropriate for the care of the patients. In the case of work performed, the original report or a legally reproduced copy of the report from the laboratory shall be contained in the medical record.

B. Availability:

(1) Laboratory services shall be available at all times, and there shall be a sufficient number of qualified laboratory testing personnel and support staff to perform promptly and efficiently the tests required of the pathology and medical laboratory services.

(2) Adequate provision shall be made for ensuring the availability of emergency laboratory services, either in the hospital or under arrangements with another laboratory. These services shall be available 24 hours a day, seven days a week, including holidays, and shall include the referral of specimens potentially related to disaster and emergency to the scientific laboratory division of the New Mexico health care authority for confirmation, or rejection, of that relationship, and the reporting of notifiable conditions to the office of epidemiology of the New Mexico health care authority and to the local public health office.

(3) A hospital that has contracted for laboratory services is in compliance with this paragraph if the contracted services have a current CLIA certificate at the appropriate level of testing.

C. Personnel:

(1) A qualified medical technologist shall be a graduate of a medical technology program approved by a nationally recognized body or has documented equivalent education, training, or experience; a qualified medical lab technician shall be a graduate of a

program approved by the federal health care authority and human services.

(2) The laboratory may not perform procedures and tests that are outside the scope of training of laboratory personnel.

D. Records:

(1) Laboratory test records and reports may be destroyed four years after the date of the test with the exception of minor children whose records must be maintained until the age of majority plus one year.

(2) The laboratory director shall be responsible for the laboratory report.

(3) A mechanism by which the clinical laboratory report shall be authenticated by testing personnel shall be delineated in the laboratory services' policies and procedures.

(4) The laboratory shall have procedures for ensuring that all requests for tests are ordered in writing by individuals authorized by the medical staff.

(5) The hospital shall have available a copy of their current CLIA certificate or a verification of current CLIA certificate by contractor.

E. Anatomical Pathology:

(1) Pathologist: (a) Anatomical pathology services shall be under the direct supervision of a pathologist. If it is on a consultative basis, the hospital shall provide for, at minimum, monthly consultative visits by the pathologist. The pathologist must be available in person or electronically at all times.

(b) The pathologist shall participate in lab quality improvement and department conferences.

(c) The pathologist shall be responsible for establishing qualifications of pathology laboratory staff.

(d) An autopsy may be performed only

by a pathologist, other qualified individuals qualified by the office of medical investigator or another qualified physician.

(2) Tissue examination:

(a) The medical staff and a pathologist shall determine which tissue specimens require macroscopic examination and which require both macroscopic and microscopic examinations.

(b) The hospital shall maintain an ongoing file of tissue slides and blocks, for a minimum of ten (10) years. Use of outside laboratory facilities for storage and maintenance of records, slides and blocks is permitted.

(c) If the hospital does not have a pathologist or otherwise qualified physician, there shall be a written plan for sending all tissues requiring examination to a pathologist outside the hospital.

(d) A log of all tissues sent outside the hospital for examination shall be maintained. Arrangements for tissue examinations done outside the hospital shall be made with a certified laboratory, or a laboratory approved for the federal CLIA program.

(e) Specimens shall be considered hazardous waste and shall be disposed of in a safe manner.

(3) Records: (a) All reports of macroscopic and microscopic tissue examination must be authenticated by the pathologist or other qualified physician.

(b) Provisions shall be made for the prompt filing of examination results in the patient's medical record and for notification of the provider who requested the examination.

(c) The autopsy report shall be distributed to the provider and shall be made a part of the patient's record.

(d) Duplicate records of the examination

reports shall be kept in the laboratory and maintained in a manner, which permits ready identification and accessibility for a minimum of two years.

(4) Blood bank:

(a) The blood bank shall be operated according to standards set by the accrediting agency; either the FDA or CLIA, whichever is more stringent.

(b) Records shall be kept on file in the laboratory service and in the patient medical records according to CLIA guidelines to indicate the receipt and disposition of all blood and blood products provided to patients in the hospital.

(5) Laboratory certification: The hospital laboratory shall successfully participate in proficiency testing programs that are offered or approved by CMS in those specialties for which the laboratory offers services. Provisions shall be made for an acceptable quality control program covering all types of analysis performed by the laboratory and any other department performing any other laboratory tests. [8.370.12.31 NMAC - N, 7/01/2024]

8.370.12.32 RADIOLOGICAL SERVICES:

A. Diagnostic X-Ray services.

(1) Requirement: The hospital shall make diagnostic x-ray services available. These services shall meet professionally approved standards for safety and the qualifications of personnel in addition to the requirements set out in this subsection.

(2) Location: The hospital shall have diagnostic x-ray facilities available in the hospital building proper or clinic or medical facility that is readily accessible to the hospital's patients, physicians and staff.

(3) Policies: Written policies and procedures shall be developed and maintained by the person responsible for the

service in consultation with other appropriate health professionals and administration. The governing body shall approve the policies. The administrative and medical staff shall approve the procedures where appropriate.

(4) Safety: (a) The radiological service shall be free of hazards for patients and personnel.

(b) Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(c) Hospital x-ray facilities shall be inspected by a qualified radiation physicist or by the New Mexico environment department radiation consultant at least once every two years. Hazards identified by inspections shall be properly and promptly corrected.

(d) Radiological equipment and radiation services shall conform with the requirements of the Radiation Protection Act, Sections 74-3-1 through 74-3-16, NMSA 1978.

(e) Attention shall be paid to current safety design and good operating procedures for use of fluoroscopes. Records shall be maintained of the output of all fluoroscopes.

(f) Policies based on medical staff recommendations shall be established for the administration of the application and removal of radium element, its disintegration products and other radioactive isotopes.

(5) Personnel: (a)

A physician shall have overall responsibility for the radiological service. This physician shall be certified or eligible for certification by the American board of radiology. If such a radiologist is not available on a full-time or regular part-time basis, a physician, with training and experience in radiology, may administer the service. In this circumstance, a radiologist, qualified as above, shall provide consultation

services at suitable intervals to assure high quality service.

(b)

A sufficient number of personnel capable of supervising and carrying out the radiological services shall be provided. Their training must conform to the requirements set out in the Medical Radiation Health and Safety Act, Sections 61-14E-1 through 61-15E-12, NMSA 1978 and regulations promulgated by the New Mexico environment department titled radiologic technology certification, 20.3.20 NMAC.

(c)

The interpretation of radiological examinations shall be made by physicians qualified in the field.

(d)

The hospital shall have a board-certified radiologist, full-time, part-time or on a consulting basis, who is qualified to interpret films that require specialized knowledge for accurate reading.

(e)

A technologist shall be on duty or on call at all times.

(f)

Only personnel designated as qualified by the state radiology technologist licensing body may use the x-ray apparatus, and only similarly designated personnel may apply and remove the radium element, its disintegration products and radioactive isotopes. Only properly trained persons authorized by the medical director of the radiological service may operate fluoroscopic equipment.

(6) Records:

(a)

Authenticated radiological reports shall be filed in the patient's medical record.

(b)

Written orders by the attending physician or other individual authorized by medical staff for an x-ray examination shall contain a concise statement of the reason for the examination.

(c)

Interpretations of x-rays shall be written or dictated and signed by a qualified physician or other individual authorized by the medical staff.

(d)

Copies of interpretive findings shall be retained in the medical record for at least 10 years. Scans and other image records shall be retained for at least four years.

B. Therapeutic

X-Rays Services: If therapeutic x-ray services are provided, they shall meet professionally approved standards for safety and for qualifications of personnel. The physician in charge shall be appropriately qualified. Only a physician qualified by training and experience may prescribe radiotherapy treatments.

[8.370.12.32 NMAC N, 7/01/2024]

8.370.12.33 NUCLEAR MEDICINE SERVICES:

A. Nuclear medicine service:

(1)

Requirement: If a hospital provides nuclear medicine services, the services shall meet the needs of the hospital's patients in accordance with acceptable standards of professional practice.

(2)

Organization and staffing:

(a)

the organization of the nuclear medicine services shall be appropriate for the scope and complexity of the services offered;

(b)

there shall be a physician director who is qualified in nuclear medicine to be responsible for the nuclear medicine service;

(c)

the qualifications, education, training, functions and legal responsibilities of nuclear medicine personnel shall be specified by the director of the service and approved by the medical staff and chief executive officer/administrator based upon the assurance that personnel are appropriately licensed by the state radiology technologist licensing body; and

(d)

all persons who administer radiopharmaceuticals shall be approved by the medical staff and in accordance with applicable federal, state and local laws; the numbers and

types of personnel assigned to nuclear medicine shall be appropriate for the scope and complexity of the services offered.

(3) Location:

Nuclear medicine services shall be provided in an area of the hospital that is adequately shielded.

(4)

Radioactive: Radioactive materials shall be prepared, labeled, used, transported, stored and disposed of in accordance with applicable regulations, i.e. the Radiation Protection Act 74-1-9, 74-3-5, 74-3-9, NMSA 1974, and all regulations promulgated thereunder.

(5) Equipment

and supplies:

(a)

Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance.

(b)

All equipment shall be maintained in safe operating condition and shall be inspected, tested and calibrated at least annually by a radiation or health physicist.

(6) Records:

(a)

Authenticated and dated reports of nuclear medicine interpretations, consultations and therapy shall be made part of the patient's medical record and copies shall be retained by the service.

(b)

Records shall note the amount of radiopharmaceuticals administered, the identity of the recipient, the supplier and lot number and the date of therapy.

(c)

The hospital shall provide for monitoring the staff's exposure to radiation. The cumulative radiation exposure for each staff member shall be recorded in the service's records at least monthly.

(d)

Records of the receipt and disposition of radiopharmaceuticals shall be maintained. Documentation of instrument performance and records of inspection shall be retained in the

service.

B. Mobile nuclear medicine services: The use of mobile nuclear medicine services by a facility to meet the diagnostic needs of its patients shall be subject to approval of the medical staff and the chief executive officer/administrator. The services offered by the mobile nuclear medicine unit shall comply with all applicable rules of this section.

[8.370.12.33 NMAC - N, 7/01/2024]

8.370.12.34 CLINICAL SERVICES:

A. Policies and procedures: Hospitals which have surgery, anesthesia, dental, maternity, and other services which may be optional services shall have effective written policies and procedures, in addition to those set forth under these requirements, relating to the staffing and functions of each services in order to protect the health and safety of the patients.

B. Surgery:

(1) Policies:
(a)

Surgical privileges shall be delineated for each of the medical staff performing surgery in accordance with the individual's competencies and a copy shall be available to operating room supervisor.

(b)

The surgical service shall have a written policy to ensure patient safety if a member of the surgical team becomes non-functional.

(c)

The surgical service shall have the ability to retrieve information needed for infection surveillance, identification of personnel who assisted at operative procedures, and the compiling of needed data.

(d)

There shall be adequate provision for immediate post-operative care. A patient may be directly discharged from post-anesthetic recovery status, upon direction by an anesthesiologist, another qualified physician or a certified registered nurse anesthetist.

(e)

A procedure for the identification,

investigation, and elimination of nosocomial infection associated with surgical services. There shall be a written procedure for investigating unusual levels of infection.

(f)

Rules and policies relating to the operating rooms shall be available and posted in appropriate locations inside and outside the operating rooms.

(g)

The hospital shall have policies which clearly identify the patient, the site, or side of the procedure.

(h)

Prior to commencing surgery the person responsible for administering anesthesia, or the surgeon must verify the patient's identity, the site or side of the body to be operated on, and ascertain that a record of the following appears in the patient's medical record: an interval medical history and physical examination performed and recorded according to hospital policy, appropriate screening tests, based on the needs of the patient, accomplished and recorded according to hospital policy, a properly executed informed consent, in writing for the contemplated surgical procedure, except in emergencies.

(2)

Supervision: A professional registered nurse who is qualified by training and experience to supervise the operating rooms shall supervise the operating rooms.

(3)

Environment: If explosive gases are used, the services shall have appropriate policies, in writing, for safe use of these gases.

C. Anesthesia:

(1) Policies:
(a)

The anesthesia service shall have effective written policies and procedures to protect the health and safety of all patients.

(b) If

explosive gases are used, the service shall have appropriate policies, in writing, for safe use of these gases.

(2) Anesthesia

use requirements:

(a)

Every surgical patient shall have

a pre-anesthetic assessment, intra-operative monitoring, and post-anesthesia assessment prior to discharge from a post-anesthesia level of care, according to hospital policy.

(b) In

hospitals where there is no organized anesthesia service, the surgical service shall assume the responsibility for establishing general policies and supervising the administration of anesthetics.

(c)

Anesthesia shall be administered only by a licensed practitioner permitted by the state to administer anesthetics.

(d)

If a general or regional anesthetic is used and an MD or DO is not a member of the operating team, an MD or DO shall be immediately available on the hospital premises.

D. Dental service:

All dental services shall meet the following requirements.

(1) Dentists

performing surgical procedures at the hospital shall be members of the medical staff.

(2) Surgical

procedures performed by dentists shall be under the overall supervision of an M.D. or D.O., unless the dentist is a licensed oral surgeon.

(3) There shall

be policies for referral of patients in need of dental services. These policies will be readily available to all emergency care staff.

E. Maternity:

(1)

Definitions: In this subsection.

(a)

"Neonatal" means pertaining to the first 27 days following birth.

(b)

"Oxytocics" means any of several drugs that stimulate the smooth muscle of the uterus to contract and that are used to initiate labor at term.

(c)

"Perinatal" means pertaining to the mother, fetus or infant, in anticipation of and during delivery, and in the first post partum week.

(d)

"Perinatal care center" means an organized hospital-based health

care service which includes a high-risk maternity service and a neonatal intensive care unit capable of providing case management for the most serious types of maternal, fetal and neonatal illness and abnormalities.

(2) Reporting numbers of beds and bassinets. The number of beds and bassinets for maternity patients and newborn infants, shall be designated by the hospital and reported to the licensing authority.

(3) Maternity admission requirements. The hospital shall have written policies regarding standards of practice for maternity and non-maternity patients who may be admitted to the maternity unit.

(4) High risk infants. Each maternity service shall have adequate facilities, personnel, equipment and support services for the care of high-risk infants, including premature infants, or a written plan for prompt transfer of these infants to a recognized intensive infant care or perinatal care center.

(5) Institutional transfer of infants.

(a) Written policies and procedures for inter-hospital transfer of perinatal and neonatal patients shall be established by hospitals which are involved in the transfer of these patients.

(b) A perinatal care center or high-risk maternity service and the sending hospital shall jointly develop policies and procedures for the transport of high-risk maternity patients.

(c) Policies, personnel and equipment for the transfer of infants from one hospital to another shall be available to each hospital's maternity service. The proper execution of transfer is a joint responsibility of the sending and receiving hospitals.

(6) Personnel:
(a) The labor, delivery, postpartum and nursery areas of maternity units shall have available the continuous services and supervision of a professional registered nurse for whom there shall

be documentation of qualifications to care for women and infants during labor, delivery and in the postpartum period.

(b) When a maternity unit requires additional staff on an emergency basis, the needed personnel may be transferred from another service if they meet the infection control criteria.

(c) The service shall have written policies that state which emergency procedures may be initiated by the professional registered nurse in the maternity service.

(7) Infection control:

(a) The infection surveillance and control program in the maternity service shall be integrated with that of the entire hospital.

(b) Surgery on non-maternity patients may not be performed in the delivery suite, except in emergencies.

(c) Hospitals unable to effectively isolate and care for infants shall have an approved written plan for transferring the infants to hospitals where the necessary isolation and care can be provided.

(8) Labor and delivery:

(a) The hospital shall have written policies and procedures that specify who is responsible for, and what is to be documented for, the care of the patient in labor and delivery, including alternative birthing rooms.

(b) Equipment that is needed for normal delivery and the management of complications and emergencies occurring with either the mother or infant shall be provided and maintained in the labor and delivery unit. The medical staff and the nursing staff shall determine the items needed.

(c) The facility shall have policies for the performing of newborn genetic screening.

(d) Written standing orders shall exist allowing nurses qualified by documented training and experience to discontinue the oxytocic drip should circumstances warrant discontinuance.

(e) The hospital shall be responsible for proper identification of newborns in its care.

(9) Postpartum careZ: The hospital shall have written policies and procedures for nursing assessments of the postpartum patient during the entire postpartum course.

(10) Newborn nursery and the care of newborns.

(a) Oxygen, medical air and suction shall be readily available to every nursery.

(b) Hospitals that may require special formula preparation shall develop appropriate written policies and procedures.

(c) Newborn infants shall be screened for hearing sensitivity prior to being discharged.

(d) In the event that a newborn infant is brought to the hospital after birth and has not received a hearing sensitivity screening, the attending physician, nurse, audiologist or authorized staff shall arrange for a hearing sensitivity screening to be performed by a program approved by children's medical services of the health care authority.

(e) The hospital shall have effective written policies and procedures to assure that newborn infants, who are brought to the hospital for emergency services, receive a hearing sensitivity screening.

(f) Documentation of the hearing sensitivity screening shall be entered into the infant's medical record as subject to Subsection G of 8.370.12.29 NMAC.

(g) Parents or the legally authorized person may waive the requirements for the newborn hearing sensitivity

screening in writing if they object to the screening on the grounds that it conflicts with their religious beliefs. The waiver for the hearing screening shall be after the parents or legally authorized person have been provided with both written and oral explanations by the infant's physician so that they may make an informed decision. The document of waiver shall be placed in the newborn infant's medical record.

(h)

Parent(s) who have lawful custody of the infant screened for hearing sensitivity shall be notified of the test results.

(i)

Hospitals that permit minor siblings to visit the maternity unit shall have written policies and procedures detailing this practice.

(11) Discharge

of infants:

(a)

An infant may be discharged only to a parent who has lawful custody of the infant or to an individual who is legally authorized to receive the infant. If the infant is discharged to a legally authorized individual, that individual shall provide identification and, if applicable, the identification of the agency the individual represents.

(b)

The hospital shall record the identity of the parent or legally authorized individual who received the infant in the infant's medical record.

[8.370.12.34 NMAC - N, 7/01/2024]

8.370.12.35

REHABILITATION SERVICES:

A. Organization:

(1) A

hospital may have either inclusive rehabilitation services or separate services for physical therapy, occupational therapy, speech language pathology, recreational therapy or audiology.

(2)

Rehabilitation services shall have written policies and procedures governing the management and care of patients.

(3) The

services provided on each service

shall be given by or provided under the supervision of a qualified professional therapist.

(4) Facility

space and equipment for rehabilitation services shall be adequate to meet the needs of patients receiving care.

B. Orders: Physical therapy, occupational therapy, speech language pathology, Recreational therapy, or audiology services shall be provided in accordance with orders of practitioners who are authorized.

C. Additional requirements for separate rehabilitation services:

(1) Definition:

A rehabilitation unit or facility is defined as a designated unit, or hospital that primarily provides physiological rehabilitation services to inpatients or outpatients.

(2) If

the facility maintains a separate rehabilitation unit, or hospital, there shall be medical directorship by an individual who has the necessary knowledge, experience and capabilities to direct the rehabilitation services. The medical director shall be a qualified professional physician.

(3)

Additional treatment plan and staffing requirements:

(a)

The rehabilitation unit, or hospital, shall have sufficient staff to provide an optimal program for those who require rehabilitation services. Periodic evaluations of staffing requirements based on patients serviced shall be undertaken to assure rehabilitation needs can be met.

(b)

The rehabilitation staff shall plan, implement and modify written individualized treatment plans for patients based on their intake assessment.

(c)

Nursing services shall be provided under the direction of a professional registered nurse with background or training in rehabilitation nursing. Professional registered nurses who are qualified in the care of rehabilitation nursing services shall supervise nursing care.

(d)

Psychological services shall be provided by or given under the supervision of, an appropriately licensed psychologist or psychiatrist. There shall be a sufficient number of psychologists, consultants and or support personnel to provide optimal patient or family evaluations and treatment.

(e)

Social work services shall be provided by a sufficient number of qualified social work staff to provide optimal patient and family consultation related to social work rehabilitation services and indicated community resource planning.

(f)

Therapy services staff shall be sufficient in number and have sufficient support personnel to provide optimal assessments and treatment(s) to patients served.

[8.370.12.35 NMAC - N, 7/01/2024]

8.370.12.36 RESPIRATORY CARE SERVICES:

A. Direction: If

respiratory care services are offered by the hospital, the service shall be under the medical direction of a qualified physician.

B. Policies and

procedures. Respiratory care services shall be provided in accordance with written policies and procedures that shall be approved by the medical staff. The policies and procedures shall address at a minimum:

(1) assembly

and operation of mechanical aids to ventilation;

(2)

management of adverse reactions to respiratory care services;

(3)

administration of medications in accordance with physicians' orders;

(4) personnel

who may perform specific procedures, under what circumstances and under what degree of supervision; and

(5)

procurement, handling, storage and dispensing of therapeutic gases.

C. Personnel.

Respiratory care services shall be provided by personnel qualified by education, training, experience and demonstrated competence.

D. Physicians'

orders: Respiratory care services shall be provided in accordance with the orders of a physician. The staff person authorized to take orders shall transcribe oral orders given by a physician into the medical record.

E. Oxygen: Oxygen monitoring equipment, including oxygen analyzers, shall be available and shall be checked for proper function prior to use but at least daily. Oxygen concentrations shall be documented. There shall be a written policy, which states how frequently oxygen humidifiers are to be cleaned. [8.370.12.36 NMAC - N, 7/01/2024]

8.370.12.37 OUTPATIENT SERVICES:

A. Medical direction:

If outpatient services are offered by the hospital, the services shall be under the direction of a qualified member of the medical staff.

B. Administration:

(1) The outpatient service shall be organized into sections or clinics, the number of which shall depend on the size and the degree of departmentalization of the medical staff, the available facilities and the needs of the patients for whom it accepts responsibility.

(2) Outpatient clinics shall be coordinated with corresponding inpatient services.

(3) On their initial visit to the service, patients shall receive an appropriate health assessment with follow-up as indicated.

C. Personnel:

(1) The outpatient services shall have adequate numbers of qualified personnel.

(2) A professional registered nurse shall be responsible for the nursing care of the outpatient service.

D. Facilities:

(1) Facilities shall be provided to ensure that

the outpatient service is operated efficiently and to protect the health and safety of the patients.

(2) The number of examination and treatment rooms shall be adequate in relation to the volume and nature of work performed.

(3) Suitable facilities for necessary laboratory and other diagnostic tests shall be available either through the hospital or by arrangement with an independent CLIA certified laboratory.

[8.370.12.37 NMAC - N, 7/01/2024]

8.370.12.38 EMERGENCY SERVICES:

A. Minimum care requirements: Acute-care or limited services hospitals must provide an area in the facility with adequate space and emergency equipment needed to treat emergency patients. Written policies for the care of such patients must be readily available to all patient care staff.

B. Distinct emergency service: If the hospital has a distinct emergency service:

(1) the emergency service shall be directed by personnel who are qualified by training and experience to direct the emergency service and shall be integrated with other services of the hospital;

(2) the policies and procedures governing medical care provided by the emergency service shall be established by, and are a continuing responsibility of, the medical staff;

(3) emergency services shall be supervised by a member of the medical staff, and nursing functions shall be the responsibility of a professional registered nurse;

(4) the hospital's emergency services shall be coordinated with local / state / federal mass casualty plans and

(5) written policies and procedures shall be established prescribing a course of action, including policies for

transferring a patient to an appropriate facility when the patient's medical status indicates the need for emergency care which the hospital cannot provide, to be followed in the care of persons who:

(a) manifest severe emotional disturbances;

(b) are under the influence of alcohol or other drugs;

(c) are victims of suspected abuse or are victims of other suspected criminal acts;

(d) have a contagious disease;

(e) have been contaminated by hazardous, chemical, biological or radioactive materials;

(f) are diagnosed dead on arrival; or

(g) present other conditions requiring special directions regarding action to be taken.

(6) A hospital that provides emergency care for sexual assault survivors shall:

(a) provide each sexual assault survivor with medically and factually accurate and

(b) objective written and oral information about emergency contraception as described in their policies and procedures;

(c) orally and in writing inform each sexual assault survivor for her option to be provided emergency contraception at the hospital; and

(d) provide emergency contraception at the hospital to each sexual assault survivor who requests it and document it in the patient's medical record.

(7) The provision of emergency contraception pills shall include the initial dose that the sexual assault survivor can take at the hospital as well as the subsequent dose that the sexual assault survivor may self-administer

12 hours following the initial dose or in accordance with accepted standards of practice for the administration of emergency contraception.

(8) A communications system employing telephone, radiotelephone or similar means shall be in use to establish and maintain contact with the police department, emergency medical services, rescue squads and other emergency services of the community.

(9) A list of emergency referral services shall be available in the basic emergency service. This list shall include the name, address and telephone number of such services as:

- (a) police department;
- (b) rape or domestic crisis center;
- (c) burn center;
- (d) drug abuse center;
- (e) New Mexico poison center;
- (f) suicide prevention center;
- (g) the office of epidemiology of the New Mexico health care authority;
- (h) local public health office;
- (i) clergy;
- (j) emergency psychiatric service;
- (k) chronic dialysis service;
- (l) renal transplant center;
- (m) intensive care newborn nursery;
- (n) radiation accident management service;
- (o) ambulance transport and rescue service, including military resources;
- (p) county coroner or medical examiner;
- (q) hazardous materials management service;
- (r) anti-venom service;

(s) emergency and dental service;

(t) local emergency operations center.

(10) The hospital shall have the following service capabilities:

- (a) adequate monitoring and therapeutic equipment;
- (b) laboratory service shall be capable of providing the necessary support for the emergency service;
- (c) radiological service shall be capable of providing the necessary support of the emergency service;
- (d) services shall be available for life threatening situations adequate for the size and scope of the facility and staff;
- (e) the hospital shall have readily available the services of a blood bank containing common types of blood and blood derivatives.

C. Physical environment:

- (1) The emergency service shall be provided with the facilities, equipment, drugs, supplies and space needed for prompt diagnosis and emergency treatment.
- (2) Facilities for the emergency service shall be separate and independent of the operating room.
- (3) The location of the emergency service shall be in close proximity to an exterior entrance of the hospital.

D. Personnel:

- (1) There shall be sufficient medical and nursing personnel available for the emergency service at all times. All medical and nursing personnel assigned to emergency services shall be trained in cardiopulmonary resuscitation.
- (2) The medical staff shall ensure that qualified members of the medical staff are available at all times for the emergency service, either on duty or on call, and that an authorized medical staff member is responsible for all patients who arrive for treatment in the emergency service.

(3) If unable to reach the patient within 15 minutes, the physician or a licensed independent practitioner shall provide specific instructions to the emergency staff on duty if emergency measures are necessary. These instructions may take the form of written protocols approved by the medical staff.

E. A sufficient number of professional registered nurses qualified by training or experience to work in emergency services shall be available to deal with the number and severity of emergency service cases.

F. The hospital shall ensure that all personnel who provide care to sexual assault survivors have documented training in the provision of medically and factually accurate and objective information about emergency contraception within 60 days of employment.

G. Complaints:

- (1) Complaints of failure to provide services required by the Sexual Assault Survivors Emergency Care Act may be filed with the authority.
- (2) The authority shall investigate every complaint it receives regarding failure of a hospital to provide services required by the Sexual Assault Survivors Emergency Care Act to determine the action to be taken to satisfy the complaint.
- (3) If the authority determines that a hospital has failed to provide the services required in the Sexual Assault Survivors Emergency Care Act, the authority shall:

- (a) issue a written warning to the hospital upon receipt of a complaint that the hospital is not providing the services required by the Sexual Assault Survivors Emergency Care Act; and
- (b) based on the authority's investigation of the first complaint, require the hospital to correct the deficiency leading to the complaint.
- (4) If after the issuance of a written warning to the hospital pursuant to Subsection D of this section, the authority finds

that the hospital has failed to provide services required by the Sexual Assault Survivors Emergency Care Act, the authority shall, for a second through fifth complaint, impose on the hospital a fine of \$1,000:

- (a) per sexual assault survivor who is found by the authority to have been denied medically and factually accurate and objective information about emergency contraception or who is not offered or provided emergency contraception; or
 - (b) per month from the date of the complaint alleging noncompliance until the hospital provides training pursuant to the rules of the authority.
- (5) For the sixth and subsequent complaint against the same hospital if the authority finds the hospital has failed to provide services required by the Sexual Assault Survivors Emergency Care Act, the authority shall impose an intermediate sanction pursuant to Section 24-1-5.2 NMSA 1978 or suspend or revoke the license of the hospital issued pursuant to the Public Health Act.

H. Medical records:

- (1) Adequate medical records to permit continuity or care after provision of emergency services shall be maintained on all patients. The emergency room patient record shall contain:
 - (a) patient identification;
 - (b) history of disease or injury;
 - (c) physical findings;
 - (d) laboratory and x-ray reports, if any;
 - (e) diagnosis;
 - (f) record of treatment;
 - (g) disposition of the case;
 - (h) appropriate time notations, including time of the patient's arrival, time of physician notification, time of treatment, including administration of medications, time of patient discharge

or transfer from the service or time of death.

(2) Where appropriate, medical records of emergency services shall be integrated with those of the inpatient and outpatient services.

I. Emergency committee: An emergency services committee composed of physician, professional registered nurses and other appropriate hospital staff shall review emergency services and medical records for appropriateness of patient care on at least a quarterly basis. The committee shall make appropriate recommendations to the medical staff and hospital administrative staff based on its findings. This review may be part of a hospital's overall quality improvement program. Minutes of these meetings shall be maintained for a one year period.

J. Equipment and supplies: All equipment and supplies necessary for life support shall be available, including but not limited to, airway control and ventilation equipment, suction devices, cardiac monitor, defibrillator, pacemaker capability, apparatus to establish central venous pressure monitoring, intravenous fluids and administration devices.

[8.370.12.38 NMAC - N, 7/01/2024]

8.370.12.39 SOCIAL WORK SERVICES:

A. Organized service. If the healthcare system provides social work services there should be corresponding written policies and procedures governing the scope and provision of services. If the system does not have employed providers for social work services, then they must be obtained via consultation with outside sources.

B. Personnel.
(1) Direction: Social work services shall be directed by personnel who have:

- (a) a master's degree in social work from a graduate school of social work accredited by the council on social work education, and has one year of

social work experience in a health care setting; or

(b) a bachelor's degree in social work, sociology or psychology; meets the national association of social workers standards of membership; and has one year of social work experience in a health care setting.

(2) Staff: The social work services staff, in addition to the service director, may include social workers, caseworkers and social work assistants at various levels of social work training and experience.

(3) Number of staff: There shall be a sufficient number of social work services staff to carry out the purpose and functions of the service.

C. Service: The social work services shall be integrated with other services of the hospital. Staff shall participate, as appropriate, in patient rounds, medical staff seminars, nursing staff conferences, and in conferences with individual physicians, nurses, and other personnel concerned with the care of a patient and the patient's family.

D. Functions: Social work services shall address the psychosocial needs of the patients, their families and others designated by the patient as these relate to health care. Services shall be clearly documented in the record.

E. Environment: The facilities or social work services staff shall provide privacy interviews with patients, their family members and others designated by the patients.

F. Quality improvement: The service shall be part of the hospital's performance improvement program.

[8.370.12.39 NMAC - N, 7/01/2024]

8.370.12.40 ADDITIONAL REQUIREMENTS FOR PSYCHIATRIC HOSPITALS:

A. Additional medical record requirements: The medical records maintained by a psychiatric hospital shall document the degree and intensity of the treatment provided to individuals who are

furnished services by the facility. A patient's medical record shall contain:

- (1) identification data, including the patient's legal status;
- (2) the reason for treatment or chief complaint in the words of the patient, when possible, as well as observations or concerns expressed by others;
- (3) the psychiatric evaluation, including medical history containing a record of mental status and noting the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functions, memory functioning, orientation and an inventory of the patient's personality assets recorded in descriptive fashion;
- (4) social services records, including reports of interviews with patients, family members and others and an assessment of home plans, family attitudes and community resource contacts as well as social history;
- (5) a comprehensive treatment plan based on an inventory of the patient's strengths and disabilities, which shall include:
 - (a) at least one diagnosis;
 - (b) short-term and long-range goals;
 - (c) the specific treatment modalities used; and
 - (d) the responsibilities of each member of the treatment team.
- (6) staff shall plan, implement and revise, as indicated, a written, individualized treatment program for each patient based on:
 - (a) the degree of psychological impairment and appropriate measures to be taken to relieve treatable distress and to compensate for nonreversible impairments;
 - (b) the patient's capacity for social interaction;
 - (c) environmental and physical

- limitations such as seclusion room or restraints, required to safeguard the individual's health and safety with an appropriate plan of care; and
 - (d) the individual's potential for discharge and successful care management on an outpatient basis.
 - (7) the documentation of all active therapeutic efforts and interventions;
 - (8) progress notes related to treatment needs and the treatment plan are reviewed, revised and recorded at least weekly as the status of the patient requires by the physician, nurse, social worker and staff from other appropriate disciplines involved in active treatment modalities, as indicated by the patient's condition; and
 - (9) discharge information, including:
 - (a) recommendations from appropriate services concerning follow-up care; and
 - (b) at least one diagnosis.
- B. Additional treatment plan and staffing requirements:**
- (1) The hospital shall have enough staff with appropriate qualifications to carry out an active plan of psychiatric treatment for individuals who are furnished services in the facility.
 - (2) The treatment of psychiatric inpatients shall be under the supervision of a qualified physician who shall provide for taking an active role in an intensive treatment program.
 - (3) If non-psychiatric medical and surgical diagnostic and treatment services are not available within the facility, qualified consultants or attending physicians shall be immediately available if a patient should need this attention, or an adequate arrangement shall be in place for immediate transfer of the patient to an acute-care hospital.
 - (4) Nursing services shall be under the supervision of a professional registered nurse

- qualified to care for psychiatric patients and, by demonstrated competence, to participate in interdisciplinary formulation of individual treatment plans, to give skilled nursing care and therapy, and to direct, supervise and educate others who assist in implementing the nursing component of each patient's treatment plan.
- (5) Professional registered nurses and other nursing personnel shall participate in inter-disciplinary meetings affecting the planning and implementation of treatment plans for patients, including diagnostic conferences, treatment planning sessions and meetings held to consider alternative facilities and community resources.
- (6) Psychological services shall be under the supervision of a psychologist licensed under the Professional Psychologists Act, Section 61-9-1 through 61-9-18 NMSA 1978. There shall be enough psychologists, consultants and support personnel qualified to carry out their duties to:
 - (a) assist in essential diagnostic formulations;
 - (b) participate in program development and evaluation;
 - (c) participate in therapeutic interventions and in interdisciplinary conferences and meetings held to establish diagnoses, goals and treatment programs.
- (7) The number of social work staff qualified to carry out their duties shall be adequate for the hospital to meet the specific needs of individuals patients and their families and develop community resources and for consultation to other staff and community agencies. The social work staff shall:
 - (a) provide psychosocial data for diagnosis and treatment planning;
 - (b) provide direct therapeutic services; and

(c) participate in interdisciplinary conferences and meetings on diagnostic formulation and treatment planning, including identification and use of alternative facilities and community resources.

(8) The number of qualified therapists and therapist assistants shall be sufficient to provide needed therapeutic activities, including, when appropriate, occupational, recreational, and physical therapy, to ensure that appropriate treatment is provided to each patient.

(9) The total number of rehabilitation personnel, including consultants, shall be sufficient to permit appropriate representation and participation in inter-disciplinary conferences and meetings, including diagnostic conferences, which affect the planning and implementation of activity and rehabilitation programs.

[8.370.12.40 NMAC - N, 7/01/2024]

8.370.12.41 PHYSICAL ENVIRONMENT:

A. General: The buildings of the hospital shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery of the hospital services appropriate to the needs of the community and with due regard for protecting the life, health and safety of the patients and staff. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted.

B. Definitions in 8.370.12.41 NMAC.

(1) “Building, existing” means a building erected prior to the adoption of this requirement, or one for which a legal building permit has been issued.

(2) “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.

(3) “Full-term nursery” means an area in the hospital designated for the care of infants who are born following a full-term

pregnancy and without complications, until discharged to a parent or other legally authorized person.

(4) “Intermediate nursery” means an area in the hospital designated for the care of infants immediately following birth who require observation due to complications, and for the care of infants who require observation following placement in the critical care nursery, until discharged to a parent or other legally authorized person.

(5) “Life safety code” means the standard adopted by the national fire protection association (NFPA) known as NFPA 101 life safety code.

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

(7) “Remodeling” means to make over or rebuild any portion of an existing building or structure and thereby modify its structure, structural strength, fire hazard character, exits, heating and ventilation systems, 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 or structure.

(8) “Special care unit” means an organized health care service that combines specialized facilities and staff for the intensive care and management of patients in a crisis or potential crisis state. “Special care units” include psychiatric special care, coronary care, surgical intensive care, medical intensive care and burn units, but do not include post-obstetrical or post-surgical recovery units or neonatal intensive care units.

C. Approvals: The hospital shall keep all documentation of inspections on file in the hospital

following any inspections by state and local authorities for a period of five years.

D. Fire Protection:

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

(2) **New construction:** Any new construction or remodeling shall meet the applicable provisions of the current edition of the building code, fire code, life safety code, and AIA guidelines for hospitals and health care facilities.

(3) **Existing facilities:** Any existing hospital shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the hospital complied with and continues to comply with the applicable provisions of the 1967, 1973 or the current edition of the life safety code, with or without waivers.

(4) **Equivalent compliance:** Any existing facility that does not meet all requirements of the applicable life safety code may be considered in compliance with life safety code if the facility achieves a passing score on the fire safety evaluation system (FSES) developed by the U.S. department of commerce, national bureau of standards, to establish safety equivalencies under the life safety code.

E. General construction:

(1) Prior to any construction, one copy of schematic plans shall be submitted to the licensing authority for review and preliminary approval.

(2) Before construction is started, one copy of final plans and specifications which, are used for bidding purposes shall be submitted to the licensing authority for review and approval. Plans must

be prepared, sealed, signed and dated 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 requirements shall be void and the plans and specifications must be resubmitted for reconsideration of approval.

(4) Before any construction change(s) is undertaken affecting the approved final plans, modified plans shall be submitted to the licensing authority for review and approval. The licensing authority shall notify the hospital 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 comply with all codes and 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 Subsection G of 8.370.12.41 NMAC new construction, relating to new construction projects, are applicable to renovation projects involving additions or alterations. When existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted with the approval of the licensing authority if the intent of the requirements is met and if the care and safety of patients will not be jeopardized.

(7) Nonconforming condition: When doing renovation work, if it is found to be infeasible to correct all of the non-conforming 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.

(a) Plan approval and building permit by the construction industries division or local building department, are also required for any new construction or remodeling.

(b) Copies of the life safety codes and related codes can be obtained from the national fire protection association, 11 Tracy Drive, Avon, MA 02322.

F. Construction and inspections. Construction shall not commence until plan-review deficiencies have been satisfactorily resolved.

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

(2) A final inspection of the facility will be scheduled for the purpose of verifying compliance with the licensing standards, and approved plans and specifications.

(3) The facility shall not occupy any new structure or major addition or renovation space until the appropriate permission has been received from the local building and fire authorities and the licensing authority.

G. New Construction:

(1) General: Every hospital building hereafter constructed, every building hereafter converted for use as a hospital, and every addition or alteration hereafter made to a hospital shall comply with the requirements of these standards.

(a) Compliance with these standards does not constitute release from the requirements of other applicable state and local codes and ordinances. These standards must be followed where they exceed other codes and ordinances.

(b) No building may be converted for use

as a licensed hospital, which because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patients who would be housed in such a building. Any hospital or related institution that has been vacated in excess of one year or used for occupancy other than health care will be classified as a new facility.

(c) All new construction, remodeling and additions must meet requirements set forth by these standards, the building and fire codes and by the Americans with Disabilities Act (ADA), for accessibility for persons with disabilities.

(2) Codes and standards: 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.

(a) Compliance with local codes shall be pre-requisite for licensing. In areas not subject to local building codes, the state building codes shall be pre-requisite for licensing, as adopted.

(b) New construction for acute-care hospitals, limited services hospitals and special hospitals are governed by the current editions of the following codes and standards: uniform building code (UBC), uniform plumbing code (UPC), uniform mechanical code (UMC), national electric code (NEC), national fire protection association standards (NFPA), American national standards institute (ANSI), American society of heating, refrigerating, and air conditioning engineers (ASHREA), American institute of architects (AIA), academy of architecture for health guidelines for design and construction of hospital and health care facilities, NFPA101, and New Mexico building code (NMBC).

H. Patient rooms-general:

(1) Bed capacity: Each hospital's bed capacity may not exceed the capacity

approved by the licensing authority.

(2) Privacy: Visual privacy shall be provided for each patient in multi-bed patient rooms. In new or remodeled construction, cubicle curtains shall be provided.

(3) Toilet room:

(a) In new construction, each patient room shall have access to one toilet without entering the general corridor area. One toilet room shall serve no more than four beds and no more than two patient rooms. Where the toilet room serves more than two beds an additional hand washing shall be placed in the patient room.

(b) In new and remodeled construction, the door to the patient toilet room shall swing into the patient room, or two-way hardware shall be provided.

(c) The minimum door width to the patient toilet room shall be 36 inches (91.4 cm) for new construction. The door shall swing outward or be double acting.

(4) Minimum floor area: The minimum floor area per bed shall be 100 square feet of clear floor area in multi-bed patient rooms, and 120 square feet of clear floor area in single-bed patient rooms, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves or vestibules.

(5) Minimum furnishing:

(a) A hospital-type bed with suitable mattress, pillow and the necessary coverings shall be provided for each patient.

(b) There shall be a bedside table or stand and chair for each patient.

(c) Each patient shall have within their room adequate storage space suitable for hanging full-length garments and for storing personal effects.

I. Isolation room(s)

Z: Rooms shall be provided for isolation of patients whose condition require isolation for physical health reasons.

(1) Each isolation room shall have a separate toilet, bathtub (or shower), and a hand washing sink. These shall be arranged to permit access from the bed area without passing through the work area of the vestibule or anteroom.

(2) Each room shall have an area for hand washing, gowning, and storage of soiled materials located directly outside or immediately inside the entry door to the room.

(3) Each room shall have self-closing devices on all room exit doors. All wall, ceiling and floor penetrations in the room shall be sealed tightly.

J. Patient care:

(1) Nursing station or administrative center: Nursing stations or administrative centers in patient care areas of the hospital may be located to serve more than one nursing unit, but at least one of these service areas shall be provided on each nursing floor or wing. The station or center shall contain:

(a) storage for records, manuals and administrative supplies;

(b) an area for charting when the charts of patients are not maintained at patient rooms;

(c) hand washing sink conveniently accessible to the nurse station;

(d) staff toilet room: in new construction, a staff toilet room and hand washing sink shall be provided on each nursing unit; and

(e) securable closet or cabinet for the personal articles of nursing personnel, located in or near the nursing station.

(2) Utility areas: A utility area room for soiled linen and other clean articles shall be readily accessible to each nursing utility area. Each room shall have:

(a) storage facilities for supplies;

(b) a hand washing sink;

(c) work counters; and

(d) a waste receptacle.

(3) Bathing facilities: Showers and bathtubs. When individual bathing facilities are not provided in patient rooms, there shall be at least one shower or one bathtub for each 12 beds without such facilities. Each bathtub or shower shall be in an individual room or enclosure that provides privacy for bathing, drying, and dressing. One special bathing facility, including space for attendants, shall be provided for patients on stretchers, carts and wheelchairs for each 100 beds or fraction thereof.

(4) Equipment and supply storage: An equipment and supply storage room or alcove shall be provided for storage of equipment necessary for patient care. Its location shall not interfere with the flow of traffic.

(5) Corridors and passageways: Corridors and passageways in patient care areas shall be free of obstacles.

(6) Housekeeping closet: A housekeeping closet shall be provided on the nursing unit or sufficient cleaning supplies and equipment shall be readily accessible to the nursing unit.

(7) Patient call system: A reliable call mechanism shall be provided in locations where patients may be left unattended, including patients' rooms, toilet and bathing areas and designed high risk treatment areas where individuals may need to summon assistance.

K. Additional requirements for particular patient care areas:

(1) Special care units:

(a) In new construction, sufficient viewing panels shall be provided in doors and walls for observation of patients. Curtains or other means shall be provided to cover the viewing panels when privacy is desired.

(b) In new construction, a sink equipped

for hand-washing and a toilet shall be provided in each private patient room. In multi-bed rooms at least one sink and one toilet for each six beds shall be provided. Individual wall-hung toilet facilities with private curtains or another means of safeguarding privacy may be substituted for a toilet room.

(c) In new construction, all beds shall be arranged to permit visual observation of the patient by the nursing staff from the nursing station. In existing facilities, if visual observation is not possible from the nursing station, sufficient staffing or television monitoring shall permit continuous visual observation of the patient.

(d) In new construction, the dimensions and clearances in special care unit patient rooms shall be as follows: single bed rooms shall have minimum dimensions of 10 feet by 12 feet, multi-bed rooms shall have minimum side clearances between beds of at least seven feet, and in all rooms the clearance at each side of each bed shall be not less than three feet six inches and the clearance at the foot of each bed shall be not less than four feet.

(2) Psychiatric units: The requirements for patient room under Paragraph (8) of Subsection B of 8.370.12.41 NMAC apply to patient rooms in psychiatric nursing units and psychiatric hospital except as follows:

(a) in new construction or remodeling, a staff emergency call system shall be included. When justified by psychiatric program requirements and with the approval of the licensing authority, call cords from wall-mounted stations of individual patients rooms may be removed;

(b) doors to patient rooms and patient toilet room doors may not be lockable from the inside;

(c) patients' clothing and personal items may be stored in a separate designated area which is locked;

(d) moveable hospital beds are not required for ambulatory patients.

(3) Surgical and recovery facilities must:

(a) have at least one room equipped for surgery and used exclusively for this purpose;

(b) have a scrub room or scrub area adjacent to the surgery room used exclusively for this purpose;

(c) have a clean-up or utility room;

(d) have a storage space for sterile supplies;

(e) have means for calling for assistance in an emergency in each operating room;

(f) have housekeeping facilities adequate to maintain the operating room or rooms;

(g) have a flash sterilizer, unless sterilization facilities are accessible from the surgery area;

(h) be located and arranged to prevent unrelated traffic through the suite;

(i) ensure the room or rooms for post-anesthesia recovery of surgical patients shall at a minimum contain a medications storage area, hand-washing facilities and sufficient storage space for needed supplies and equipment; and

(j) have available oxygen and suctioning equipment in the operating suite and recovery rooms.

(4) Labor and delivery:

(a) The labor and delivery unit shall be located and arranged to prevent unrelated traffic through the unit.

(b) Facilities within the labor and delivery unit shall include: at least one room equipped as a delivery room and used exclusively for obstetrical purposes, a scrub-up room adjacent to the operative delivery unit if operative

deliveries are performed, a clean-up or utility room with a flush-rim clinical sink, and a separate janitor's closet with room for housekeeping supplies for the unit.

(c) In new construction, in addition to lightning for general room illumination, adjustable examination and treatment lights shall be provided for each labor bed.

(d) The following equipment shall be available: sleeping unit for each infant, and a clock.

(e) Space for necessary housekeeping equipment in or near the nursery is required.

(f) An examination area and workspace for each nursery shall be provided.

(5) Isolation nursery:

(a) If an isolation nursery is provided in new construction: the isolation nursery shall be within the general nursery area and may not open directly to another nursery, and access to the isolation nursery shall be through an anteroom which shall have at least a sink equipped for hand-washing, gowning facilities, an enclosed storage space for clean linen and equipment and a closed hamper for disposal of refuse.

(b) A private patient room with hand-washing facilities may be used as an isolation nursery.

(6) Postpartum lounge area: The lounge and dining room when provided for maternity patients shall be separate from other areas.

L. Other physical environment:

(1) Thresholds and expansion joint: Thresholds and expansion joint covers shall be flush with the floor surface to facilitate the use of wheelchairs and carts, and as may be required by OSHA. Expansion and seismic joints shall be constructed to restrict the passage of smoke.

(2) Emergency

fuel and water: The hospital shall make provisions for obtaining emergency fuel and water supplies.

(3) Emergency lighting system: The emergency lighting system and equipment shall be tested at least monthly.

(4) Diagnostic and therapeutic facilities, supplies and equipment: Diagnostic and therapeutic facilities supplies and equipment shall be sufficient in number and in good repair to permit medical and nursing staffs to provide an acceptable level of patient care.

(5) Walls and ceilings: The walls and ceilings shall be kept in good repair. Loose, cracked or peeling wallpaper and paint of walls and ceilings shall be replaced or repaired. Washable ceilings shall be provided in surgery rooms, delivery rooms, janitor closets and utility rooms.

(6) Floors: All floor materials shall be easy to clean and have wear and moisture resistance appropriate for the location. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof and shall be kept clean and in good repair.

(7) Cords: Electrical cords shall be maintained in good repair.

(8) Carpeting:

(a) Carpeting may not be installed in rooms used primarily for food preparation and storage, dish and utensil washing, cleaning of linen and utensils, storage of janitor supplies, laundry processing, hydrotherapy, toiling and bathing, patient isolation or patient examination.

(b) Carpeting, including any underlying padding, shall have a flame spread rating permitted by the national fire protection association's national fire codes. Certified proof by the manufacturer of this 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

may not in any case be applied to walls except where flame spread rating can be shown to be 25 or less.

(9) Acoustical tile: Acoustical tile shall be non-combustible and non-asbestos.

(10) Wastebaskets: Wastebaskets shall be made of non-combustible materials.

(11) Fire report: All incidents of fire in a facility shall be reported in writing to the licensing authority within 72 hours of the incident.

M. Maintenance:
The hospital must maintain written evidence of routine maintenance performed for the facility, supplies and equipment to ensure an acceptable level of safety and quality. [8.370.12.41 NMAC - N, 7/01/2024]

8.370.12.42 OTHER REQUIREMENTS:

A. Anatomical Gifts: The hospital will adopt and implement organ and tissue donation policies and procedures to assist the medical, surgical and nursing staff in identifying and evaluating potential organ or tissue donors.

(1) Organ bank: Means a facility certified by CMS for storage of human body parts.

(2) Decedent: Means a deceased individual who made a gift of all or part of his body.

(3) Donor: Means an individual who makes a gift of all or part of his body.

(4) Eye bank: Means any non-profit agency which is organized to procure eye tissue for the purpose of transplantation or research and which meets the medical standards set by the eye bank association of America.

(5) Organ procurement agency: Means any non-profit agency designated by the health care financing administration to procure and place human organs and tissues for transplantation, therapy, or research.

(6) Part: Includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of human body.

(7) Person: Means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(8) State: Includes any state, district, commonwealth territory, insular possession and any other area subject to the legislative authority of the United States of America.

B. Procedures:

(1) The organ and tissue donation policy and procedure shall conform to the CMS conditions of participation for organ and tissue donations.

(2) All physician and hospital personnel shall make every reasonable effort to carry out the organ and tissue donation policy and procedure adopted by the hospital so that the wishes of a donor may be conveyed to an appropriate local organ procurement agency or eye bank and the necessary donation documents may be properly executed.

(3) Consent from next of kin. Persons authorized to donate anatomical gifts on behalf of the decedent shall conform with the Uniform Anatomical Gift Act, N.M. Laws 2000, Chapter 54, or applicable subsequent statutes.

(4) Every hospital shall develop and implement a policy and procedure for the determination of brain death pursuant to Section 12-2.4 NMSA 1978.

(5) Laws pertaining to notification of the office of the medical investigator shall be complied with in all cases of reportable deaths.

(6) The requirements of this section apply only to acute-care hospitals and limited services hospitals in New Mexico. [8.370.12.42 NMAC - N, 7/01/2024]

8.370.12.43 RELATED REGULATIONS AND CODES:
Hospitals subject to these requirements 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. Building, fire, electrical, plumbing and mechanical codes; the most current edition, adaptation by the state of New Mexico.

E. The current edition of the AIA *guidelines for construction and design of hospitals and healthcare facilities*, adopted in the state of New Mexico. [8.370.12.43 NMAC - N, 7/01/2024]

History of 8.370.12 NMAC:
[RESERVED]

**HUMAN SERVICES
DEPARTMENT**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 370 OVERSIGHT
OF LICENSED HEALTHCARE
FACILITIES AND COMMUNITY
BASED WAIVER PROGRAMS
PART 13 REQUIREMENTS
FOR RURAL EMERGENCY
HOSPITALS**

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

8.370.13.2 SCOPE: These requirements apply to private and public hospitals that as of December 27, 2020 was designated as a critical access hospital (CAH) by the centers for medicare and medicaid services (CMS), or was licensed as a hospital with not more than 50 licensed beds and located in a county in a rural area as defined in Section 1886(d)(2)(D) or Section 1886 (d)(8)(E) of the federal Social Security Act, and

provides rural emergency hospital (REH) services in the facility 24 hours per day seven days a week by a physician, nurse practitioner, clinical nurse specialist or physician assistant with a transfer agreement in effect with a level I or II trauma center, which does not have an annual average patient length of stay over 24 hours and satisfies all CMS requirements for reimbursement as a rural emergency hospital (REH). Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020, and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in medicare and meet all the conditions of participation (COP) and requirements for REH. [8.370.13.2 NMAC - N, 7/1/2024]

8.370.13.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the health care authority pursuant to the authority granted under Subsection E of Section 9-8-6 NMSA 1978, Subsection D of Section 24-1-2, Subsection J of Section 24-1-3 NMSA, and Section 24-1-5 NMSA of the Public Health Act as amended, and S.B. 245, 56th Leg., 1st Sess. (N.M.2023). 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. [8.370.13.3 NMAC - N, 7/1/2024]

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

8.370.13.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section. [8.370.13.5 NMAC - N, 7/1/2024]

8.370.13.6 OBJECTIVE: Establish standards for licensing REHs in order to ensure the provision of emergency department services, observation care, and additional outpatient medical and health services, if elected by the REH, that

promote equity in health care for those living in rural communities by facilitating access to needed services. [8.370.13.6 NMAC - N, 7/1/2024]

8.370.13.7 DEFINITIONS:

A. Definitions beginning with “A”:

(1) “Action plan” means the eligible facility’s plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH, submitted to the authority for recommended approval or denial pursuant to CMS COPs.

(2) “Amended license” means a change of administrator, name, location, capacity, classification of any units as listed in these requirements requires a new license:

(a) the application shall be on a form provided by the licensing authority;

(b) the application shall be accompanied by the required fee for an amended license; and

(c) the application shall be submitted at least 10 working days prior to the change.

(3) “Annual license” means a license issued for a one-year period to a hospital that has met all license prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

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

C. Definitions beginning with “C”: **“Critical access hospital”** means a hospital with special characteristics, duly certified as such by centers for medicare and medicaid services (CMS) and is in compliance with the conditions of participation for such facilities; such critical access hospitals are deemed as meeting the intent of these requirements and may be licensed accordingly by the licensing authority.

D. Definitions

beginning with “D”: [RESERVED]
E. Definitions
beginning with “E”: [RESERVED]
F. Definitions
beginning with “F”:
 (1) “Facility” means:
 (a) was a critical access hospital; or
 (b) was a hospital as defined in 42 U.S.C. 1395ww(d)(1)(B) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in 42 U.S.C. 1395ww(d)(2)(D) or was a hospital as so defined in 42 U.S.C. 1395ww(d)(8) (E) with not more than 50 beds that was treated as being located in a rural area.
 (2) “Financial interest” means any equity, security, lease or debt interest in the hospital; financial interest also includes any equity, security, and lease or debt interest in any real property used by the hospital or in any entity that receives compensation arising from the use real property by the hospital.
G. Definitions
beginning with “G”: [RESERVED]
H. Definitions
beginning with “H”: “Hospital” means a facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term “hospital” for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury, surgery, and obstetrics; any limited services hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.
I. Definitions
beginning with “I”: [RESERVED]

J. Definitions
beginning with “J”: [RESERVED]
K. Definitions
beginning with “K”: [RESERVED]
L. Definitions
beginning with “L”:
 (1) “Licensee” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospital and in whose name a license has been issued and who is legally responsible for compliance with these requirements.
 (2) “Licensing authority” means the agency within the authority vested with the authority to enforce these requirements.
M. Definitions
beginning with “M”: [RESERVED]
N. Definitions
beginning with “N”: [RESERVED]
O. Definitions
beginning with “O”: [RESERVED]
P. Definitions
beginning with “P”: [RESERVED]
Q. Definitions
beginning with “Q”: [RESERVED]
R. Definitions
beginning with “R”:
 (1) “Rural emergency hospital” or “REH” means a facility, as defined above, that:
 (a) is enrolled under as defined in 42 U.S.C. 1395cc(j), which relates to the enrollment process for providers of services and suppliers, submits the additional information described in paragraph as defined in 42 U.S.C. 1395x(kkk)(4)(A) related to providing an action plan, describing any outpatient services offered and the proposed use of the additional facility payment to REHs, for purposes of such enrollment, and makes the detailed transition plan described in clause (i) of such paragraph available to the public, in a form and manner determined appropriate by the U.S. secretary of health & human services (“secretary”);
 (b) does not provide any acute care inpatient services, other than those as defined in 42 U. S. C. 1395x(kkk)

(6)(A), related to a skilled nursing facility to furnish post-hospital extended care services;
 (c) has in effect a transfer agreement with a level I or level II trauma center;
 (d) meets:
 (i) licensure requirements as described in 42 U.S.C. 1395x(kkk)(5);
 (ii) the requirements of a staffed emergency department as described in 42 U.S.C. 1395x(kkk)(1)(B);
 (iii) such staff training and certification requirements as the secretary may require;
 (iv) conditions of participation applicable to critical access hospitals, with respect to emergency services under section as defined in 42 CFR 485.618 (or any successor regulation) and hospital emergency departments under this subchapter, as determined applicable by the secretary; as defined in 42 U.S.C. 1395x(kkk).
 (e) is an entity that operates for the purpose of providing emergency department services, observation care, and other outpatient medical and health services specified by the Secretary in which the annual per patient average length of stay does not exceed 24 hours. 42 CFR Part 485, 485.502.
 (2) “Rural emergency hospital services” means the following services furnished by a rural emergency hospital that do not exceed an annual per patient average of 24 hours in such rural emergency hospital:
 (a) emergency department services and observation care; and
 (b) At the election of the rural emergency hospital, with respect to services furnished on an outpatient basis, other medical and health services as specified by the secretary through rulemaking. 42 U.S.C. 1395x (kkk) (1).
S. Definitions
beginning with “S”: “Secretary”

means the secretary of the New Mexico health care authority.

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

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

V. Definitions
beginning with “V”: “Variance” means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements 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 hospital and is at the sole discretion of the licensing authority.

W. Definitions
beginning with “W”: “Waive/waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time where the granting of a waiver 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.

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

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

Z. Definitions
beginning with “Z”: [RESERVED]
[8.370.13.7 NMAC - N, 7/1/2024]

8.370.13.8 GENERAL REQUIREMENTS:

A. Eligibility: The following facilities that were enrolled and certified to participate in Medicare as of December 27, 2020 are eligible to be an REH:

- (1) CAHs;
- (2) A

subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (the Act) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D) of the Act) (referred to as rural hospital);

(3) A subsection (d) hospital (as so defined) with not more than 50 beds that was treated as being located in a rural area

pursuant to section 1886(d)(8)(E) of the Act (referred to as rural hospital);

(4) Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020 and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in Medicare and meet all the COPs and requirements for REHs.

B. Action plan: An action plan must be submitted to the authority by the applicant facility to initiate REH services. The action plan outlines the facility’s plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH. This should include details regarding staffing provisions and the number and type of qualified staff for the provision of REH services, as set forth in the CMS COPs.

(1) The action plan must include a detailed transition plan that lists the following:

- (a) specific services the facility will retain;
- (b) specific services the facility will modify;
- (c) specific services the facility will add; and
- (d) specific services the facility will discontinue.

(2) The facility must include a description of services that the facility intends to furnish on an outpatient basis if elected by the REH.

(3) The facility must also include information regarding how the facility intends to use the additional facility payment. This includes a description of the services that the additional facility payment would be supporting such as the operation and maintenance of the facility and furnishing of services (i.e., telehealth services, ambulance services etc.).

(4) Eligible facilities may submit the action plan and additional information on letterhead or use the model template available on the CMS website. The submission should be signed by the facility’s legal representative/administrator.

(5) The authority will forward the action plan and information along with its recommendation for approval or denial to the designated CMS location for review and approval of the action plan components. The CMS location will make a final determination and notify the MAC once the enrollment package is complete and has been reviewed and approved.

(6) The action plan and information must include all the required elements as specified in Paragraph (1)-(3) of Subsection B of Section 8.370.13.9 NMAC. Missing or incomplete information may delay the conversion and enrollment process for eligible facilities applying to become an REH.

(7) In accordance with section 1861(kkk)(2)(A) of the Act, action plans will be available to the public and will eventually be posted on the CMS website.

C. Transfer Agreement: Pursuant to section 1861(kkk)(2) of the Act and 42 CFR 485.538 Condition of participation: Agreements, the REH is required to have a transfer agreement with at least one medicare-certified hospital that is designated as a level I or level II trauma center. The agreement is intended to ensure an appropriate referral and transfer process is in place for patients requiring emergency care and continued care services beyond the capabilities of the REH. In order to document compliance, a copy of the transfer agreement should be submitted to the authority along with the action plan.

D. Attestation:
(1) An REH is required to meet the COPs for rural emergency hospitals set forth at Subpart E of 42 CFR Part 485 (485.500 - 485.546). Other than the

requirement that the REH submit its agreement with a nearby trauma center, eligible facilities converting to an REH may self-attest to meeting the REH COPs and will not require an automatic on-site initial survey as eligible facilities are expected to be in full compliance with the existing CAH and hospital requirements at the time of the request for conversion.

(2) Facilities may submit the attestation for compliance with the REH COPs along with the action plan and copy of the transfer agreement to the SA. The attestation may be completed on facility letterhead or the model template provided on the CMS website may be used. The attestation should be signed by the facility's legal representative or administrator.

(3) The authority will review the additional information for completeness and confirm compliance with any applicable state licensure requirements. Once complete, the authority will forward the additional information to the CMS location, along with a recommendation for certification or denial.

(4) The CMS location is responsible for making the final determination for certification of the REH. The effective date will be based upon the date the application package was determined to be complete and approved by the CMS location for meeting all REH requirements. For facilities that require an on-site initial survey, the effective date will be based on current CMS policy, which is the exit day of survey if no deficiencies are cited, or in the alternative, if deficiencies are noted, the date an acceptable plan of correction was approved (see 42 CFR 489.13).

E. Types of licenses:

(1) **“Annual license”**: an annual license is issued for a one-year period to a hospital that has met all requirements of these requirements.

(2) **“Temporary license”**: the licensing authority may, at its sole discretion, issue a temporary license prior to

the initial state survey, or when the licensing authority finds partial compliance with these requirements.

Facilities that were eligible as of December 27, 2020, which subsequently closed and re-enrolled in Medicare would require an initial on-site survey by the authority. These facilities do not have to submit an attestation, as required in Subsection D of 8.370.13.9 NMAC, as an on-site initial survey will be performed to determine the facility is operational and in compliance with the REH requirements.

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

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

(3) **“Amended license”**: a licensee must apply to the licensing authority for an amended license when there is any change of administrator, name, location, capacity, classification of any unit as listed in these requirements:

(a) the application must be on a form provided by the licensing authority;

(b) application must be accompanied by the required fee for an amended license; and

(c) application must be submitted at least 30 calendar days prior to the change.

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

8.370.13.9 LICENSE RENEWAL:

A. The licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee prior to the expiration of the current license.

B. Upon receipt of the renewal application and the 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 requirements.

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

8.370.13.10 POSTING: The license, or a copy thereof, shall be conspicuously posted in a location accessible to public view within the hospital.

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

8.370.13.11 NON-TRANSFERABLE REGISTRATION OF 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 hospital changes;
- B.** the facility changes location;
- C.** the licensee of the hospital changes; or
- D.** the hospital discontinues operation.

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

8.370.13.12 EXPIRATION OF LICENSE:

A license will 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, otherwise changes ownership or licensee; or
- C.** on the day a facility changes location.

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

8.370.13.13 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING:

In accordance with Subsection H of Section 24-1-5 NMSA 1978, if the licensing authority determines immediate action is required to protect human health and safety, the licensing authority may suspend a license. A hearing must be held in accordance with the regulations governing adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

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

8.370.13.14 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. A license may be denied, 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 reasons:

- (1) failure to comply with any provisions of these requirements;
- (2) failure to allow survey by authorized representatives of the licensing authority;
- (3) permitting any person while active in the operation of a facility licensed pursuant to these requirements to be impaired by the use of prescribed or non-prescribed drugs, including alcohol;
- (4) misrepresentation or falsification of any information provided to the licensing authority;
- (5) the discovery of repeat violations of these requirements during surveys; or
- (6) the failure to provide the required care and services as outlined by these requirements.

B. for the purposes of calculating civil monetary penalties, penalty rates will be applied as set forth in Subparagraph (d) of Paragraph (3) of Subsection B of 8.370.4 NMAC.
[8.370.13.14 NMAC - N, 7/1/2024]

8.370.13.15 HEARING PROCEDURES:

A. An applicant or licensee subject to an adverse action may request an administrative appeal.
B. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the hospital as

outlined in Section 14 and 15 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
C. A copy of the adjudicatory hearing procedures will be furnished to the hospital at the time an adverse action is taken against the licensee by the licensing authority. A copy may be requested at any time by contacting the licensing authority.
[8.370.13.15 NMAC – N, 7/1/2024]

8.370.13.16 WAIVERS AND VARIANCES:

A. Applications: All applications for the grant of a waiver or variance shall be made in writing to the licensing authority, specifying the following:

- (1) the rule, regulation, or code from which the waiver or variance is requested;
- (2) the time period for which the waiver or variance is requested;
- (3) if the request is for a variance, the specific alternative action which the facility proposes;
- (4) the reasons for request; and
- (5) an explanation of why the health, safety, and welfare of the residents or staff are not endangered by the condition.

B. Requests for a waiver or variance may be made at any time.
C. The licensing authority may require additional information from the hospital prior to acting on the request.

- (1) Grants and denials. The licensing authority shall grant or deny each request for waiver or variance in writing.
- (a) Notice of a denial shall contain the reasons for denial.
- (b) The decisions to grant, modify, or deny a request for a waiver or variance is subject to appeal one time only.
- (2) The terms of a requested waiver or variance may be modified upon agreement

between the licensing authority and the hospital.
D. The licensing authority may impose whatever conditions on the granting of a waiver or variance it considers necessary.
E. The licensing authority may limit the duration of any waiver.
[8.370.13.16 NMAC – N, 7/1/2024]

8.370.13.17 Compliance with existing requirements: An REH shall comply with the following:

A. 42 CFR Part 485, Subpart E (relating to conditions of participation: Rural Emergency Hospitals (REHs));
B. In addition to the conditions of participation at 42 CFR Part 485, Subpart E, the hospital shall comply with 8.370.12 NMAC to the extent it does not conflict with the conditions of participation.
[8.370.13.17 NMAC - N, 7/1/2024]

8.370.13.18 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.

[8.370.13.18 NMAC – N, 7/1/2024]

8.370.13 NMAC History:
[RESERVED]

**HUMAN SERVICES
DEPARTMENT**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 370 OVERSIGHT
OF LICENSED HEALTHCARE
FACILITIES AND COMMUNITY
BASED WAIVER PROGRAMS
PART 14 ASSISTED
LIVING FACILITIES FOR
ADULTS**

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

8.370.14.2 SCOPE: This rule applies to all assisted living facilities, any facility which is operated for the maintenance or care of two or more adults who need or desire assistance with one or more activities of daily living. This rule does not apply to the residence of an individual who maintains or cares for a maximum of two relatives.
[8.370.14.2 NMAC - N, 7/1/2024]

8.370.14.3 STATUTORY AUTHORITY: The requirements forth herein are promulgated by the secretary of the health care authority by authority of Subsection E of Section 9-8-6 NMSA 1978, and Sections 24-1-2, 24-1-3, 24-1-5 and 24-1-5.2 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 health care purchasing and regulation.
[8.370.14.3 NMAC - N, 7/1/2024]

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

8.370.14.5 EFFECTIVE DATE: July 1, 2024, unless a later

date is cited at the end of a section.
[8.370.14.5 NMAC - N, 7/1/2024]

8.370.14.6 OBJECTIVE:
A. Establish standards for licensing assisted living facilities in order to ensure that residents receive appropriate care and services, and regulate to ensure that the health, safety, and welfare of individuals residing and working in such facilities are protected.

B. Establish requirements for the construction, maintenance and operation of licensed assisted living facilities that will provide a safe, humane and homelike environment for adults who need assistance or supervision with activities of daily living but who do not need acute care, continuous nursing care, skilled nursing care or care in an intermediate care facility for the mentally retarded.

C. Regulate facilities in providing care for residents and utilizing available supportive services in the community to meet the needs of the residents.

D. Ensure facility compliance with these rules through established protocols to identify circumstances which could be harmful or dangerous to the health, safety, or welfare of the resident.
[8.370.14.6 NMAC - N, 7/1/2024]

8.370.14.7 DEFINITIONS:

A. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.

B. "Activities of daily living" (ADLs) means the personal functional activities required by a resident for continued well-being, which include, but are not limited to:

- (1) eating;
- (2) dressing;
- (3) oral hygiene;
- (4) bathing;

(5) grooming;
(6) mobility;
and
(7) toileting.
C. "Adult" means a person who has a chronological age of 18 years or older.

D. "Assisted living facility" means any licensed facility that meets the requirements and provides services defined by this rule.

E. "Administrator, director, or operator" means the individual who is in charge of the day-to-day operation of the facility and who has the responsibility to ensure facility compliance with this rule.

F. "Advance directives" means the written document signed by a competent person granting someone authority in a power of attorney to make health care decisions for the resident when they are unable to.
G. "Agent" means the resident's surrogate decision maker as applicable to individual resident needs.

H. "Ambulatory" means able to walk without assistance.

I. "Administration of medication" means delivery of medication by a licensed or certified healthcare professional.

J. "Assistance" means prompting, encouragement, or hands-on help with the activities of daily living by another person.

K. "Assistance with medication" means support provided to residents to assist them with medication delivery by non-licensed or non-certified paid staff and does not allow for the assessment of the effects of the medication.

L. "Bathing unit" means a tub and shower or combination unit.

M. "Bed hold" means the facility's policy for retaining a bed or room for a resident during the time that the resident is temporarily absent from the facility; the policy shall include time frames for the bed hold, acceptable conditions for the bed hold and any associated charges.

N. “**Capacity**” means the maximum number of persons that a facility has been licensed to accommodate.

O. “**Census**” means the total number of individual residents residing in the facility each day, including relatives who are residents. The facility census shall never exceed the licensed capacity.

P. “**Certified medication aide**” (**CMA**) means a person who receives specialized training by the New Mexico board of nursing pursuant to “the Nursing Practice Act,” Section 61-3-1 through 61-3-30 NMSA 1978.

Q. “**Chemical restraint**” means any drug administered for discipline or the convenience of the facility and not required to treat the resident’s medical symptoms.

R. “**Choice of hospice provider**” means a resident and their family or the resident’s surrogate decision maker shall be given a list of hospice providers and have the right to choose a hospice provider; the referring party shall disclose any ownership interest in a recommended or listed hospice provider if applicable.

S. “**Cognitive status**” means the thinking and reasoning ability of the resident to manage his or her own affairs and direct his or her own care.

T. “**Consulting pharmacist**” means an independent pharmacist hired by a facility to review medications in use, patient records and possible medication errors on a quarterly basis.

U. “**Continuous nursing care**” means services which are provided to a resident whose medical needs are of such complexity that the services of a nurse are required to assess, regularly reevaluate, care plan and intervene as ordered by a physician.

(1) This includes services which are provided to a resident whose condition requires 24 hour monitoring of vital signs and the assessment of cognitive or physical status on a daily basis.

(2) These services are provided by health care professionals, as ordered by a physician or physician extender.

(3) The required services shall be medically complex enough to require ongoing assessment, planning and intervention by licensed personnel for safe and effective care on a daily basis and consistent with the nature and the severity of the resident’s condition.

V. “**Convenience**” means any action taken by a facility to control resident behavior or maintain residents with less effort by the facility and that is not in the resident’s best interest or wishes.

W. “**Current written consent**” means an informed, written consent which identifies the type of medication delivery and the assistance or administration that the resident requires and is signed by the resident or surrogate decision maker or other legally appointed decision maker. All informed consents shall be signed annually or when there is any change in either the resident’s functional ability or the designation of a new surrogate decision maker.

X. “**Crisis prevention/intervention plan**” means a documented procedure that provides guidance to staff when a resident has a medical condition or challenging behavior that has the potential to escalate to a severity level which poses great risk of harm to the resident or others (e.g., diabetic, seizure disorder, aggression, or combativeness).

Y. “**Decision making capacity**” means the ability of the resident to understand and comprehend the nature and consequences of a proposed decision, including the benefits and risks of and alternatives to any such proposed decision and to reach an informed decision.

Z. “**Designee**” means an individual appointed to assume responsibility for specific assigned duties.

AA. “**Direct care staff**” means any and all employees or volunteers who work directly with the

residents in daily living activities at the facility.

AB. “**Discipline**” means any action taken by the facility for the purpose of punishing or penalizing any resident.

AC. “**Facility**” means an assisted living facility.

AD. “**Facility license**” means the document issued by the licensing authority which authorizes the operation of a facility.

AE. “**General supervision**” means the availability of direct care staff in the facility, on a 24 hour basis, to respond to the needs of the residents and to perform periodic checks on the residents.

AF. “**Health care professional**” means a New Mexico licensed health care professional such as a physician, chiropractor, pharmacist, nurse practitioner, physician assistant, registered nurse, licensed practical nurse, physical therapist, speech therapist, occupational therapist, psychologist, social worker, dietitian or dentist.

AG. “**Independent**” means the ability to perform activities of daily living without assistance.

AH. “**Individual service plan**” or “**ISP**” means a comprehensive plan, developed by the interdisciplinary team that identifies all treatment, habilitation and services for a resident.

AI. “**Intramuscular injection**” or “**IM**” means the insertion of a needle into a muscle to administer medication.

AJ. “**Intravenous**” or “**IV**” means the insertion of a needle into a vein to administer medication.

AK. “**Licensee**” means the person who, or the organization that has ownership, leasehold or similar interest in the facility and in whose name a license for an assisted living facility has been issued and who is legally responsible for compliance with this rule.

AL. “**Licensing authority**” means the New Mexico health care authority, health facility licensing and certification bureau.

AM. “**Licensed or certified personnel**” means New

Mexico licensed registered nurses (RNs), licensed practical nurses (LPNs) and certified medication aides (CMAs), licensed or certified by the New Mexico board of nursing pursuant to “the Nursing Practice Act”, 61-3-1 through 61-3-31 NMSA 1978.

AN. “Licensed practical nurse (LPN)” means a person who has specialized training and is licensed by the New Mexico board of nursing pursuant to the “Nursing Practice Act,” 61-3-1 through 61-3-31 NMSA 1978.

AO. “Medication assistance record” (MAR) means the document that is used to record the details of medication. The MAR shall include all of the information pursuant to Subsection G of 8.370.14.35 NMAC of this rule.

AP. “Medication delivery method” means the method by which a resident takes or receives medication (i.e., pills, eye drops, intramuscular injection, other).

AQ. “Medication error” means the administration of any medication incorrectly (i.e., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication or the administration of a medication without a valid order).

AR. “Medication route” means the method of medication entry into a resident’s body (e.g., oral, ocular, rectal, topical, nasal, injection and intravenous).

AS. “Misappropriation /exploitation” means the deliberate misplacement of a resident’s property, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.

AT. “Mobile” means able to walk with assistance, or the ability to move from place to place with the use of a device such as a walker, cane, crutches, or a wheelchair and the capability of making independent bed-to-chair transfers.

AU. “Nebulizer” means

an atomizer equipped to produce a fine mist for deep inhalation into the lungs.

AV. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.

AW. “New facility” means any building not previously or currently licensed as an assisted living facility.

AX. “Non-mobile” means a person who is capable of achieving mobility only with the assistance of another person plus devices such as a wheel chair.

AY. “Nurse monitoring” means a higher level of monitoring by a registered nurse (RN) for a specified length of time based on the resident’s need(s) related to a specific condition.

AZ. “Physician extender” means the term used to refer to physician assistants (working in conjunction with a physician) and nurse practitioners.

BA. “Physical restraint” means any manual, physical or mechanical device, any material or equipment attached to or adjacent to the resident’s body that the resident cannot easily remove which restricts freedom of movement or is used for discipline or for the convenience of the facility (e.g., full bed rails).

BB. “Primary care practitioner” (PCP) means a physician, nurse practitioner or physician’s assistant (licensed in the state of New Mexico) who oversees the health care of the resident.

BC. “Private duty attendant” means an individual that provides direct care under the definitions of the nm caregivers criminal history screening program, 8.370.5 NMAC. The individual is hired by the resident or family through a licensed agency, hired directly or works through a separate arrangement with the family.

BD. “Pro re nada

medication (PRN)” means prescribed or over-the-counter medications, including comfort medications, that are administered or taken only on an as needed basis when symptoms warrant or as directed by the primary care practitioner (PCP).

BE. “Policy” means a statement of principle that guides and determines present and future decisions and actions.

BF. “Procedure” means the action(s) that shall be taken in order to implement a policy.

BG. “Protocols” are the specific means by which a procedure or treatment is to take place.

BH. “Programmatic services” means services provided to residents as defined by the facilities program narrative.

BI. “Program narrative” is a written statement identifying the primary population to be served and the services that will be provided to meet these needs.

BJ. “Registered nurse” (RN) means a person that has specialized training and is licensed by the New Mexico board of nursing pursuant to the “Nursing Practice Act,” 61-3-1 through 61-3-31 NMSA 1978.

BK. “Relative” means husband, wife, significant other, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, grandfather, grandmother, half-brother or half-sister.

BL. “Resident” means an individual receiving services and residing in the licensed facility; including the relatives of a licensee.

BM. “Resident evaluation form” means a written document of the information acquired during the assessment of a resident’s functional capacities and limitations. This form is to be utilized for pre-admission and ongoing evaluation of a resident.

BN. “Resident preference” means the resident’s choice or preferred choice among the available options.

BO. “Restraints” means anything which restricts freedom of

movement or is used for discipline or for the convenience of the facility. This includes both chemical and physical restraints (e.g., full bed rails, over medicated, etc.).

BP. “Room and board” means living/sleeping space, meals and snacks appropriate to meet the needs of the residents.

BQ. “Sanctions” means a measure imposed on a licensee for a violation(s) of applicable licensing requirements other than license revocation, suspension, or denial of renewal of license as provided for by health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

BR. “Self care” means the performance of ADLs, activities or tasks by the residents themselves rather than performed by or assisted with the facility staff.

BS. “Self medication” means administration of PCP prescribed medication by the resident to whom it was prescribed.

BT. “Side effect” means a result of a drug or other form of therapy in addition to or in extension of the desired therapeutic effect.

BU. “Significant change in health status” means the resident has experienced one or more of the following:

- (1) a decline or improvement in physical ability;
- (2) a decline or improvement in cognitive or functional ability;
- (3) a new diagnosis or event that requires a change in medication, or treatment or that requires a revision to an individual service plan; or
- (4) a change in medication or the medication route that would permanently alter the level of assistance with medication delivery.

BV. “Surrogate decision maker” means the resident’s agent, guardian or surrogate as defined in the “Uniform Health-Care Decisions Act,” 24-7A-1 through 24-7A-186 NMSA 1978 or other legally appointed decision maker.

BW. “Survey” means a monitoring visit by the licensing

authority to examine the facility premises and records and to interview the residents and staff.

BX. “Stable” means the resident’s condition is unchanged; signs or symptoms are within established ranges, frequencies or patterns. The resident’s condition does not require frequent monitoring by a licensed nurse to determine the resident’s status or the resident’s response to medication or treatment.

BY. “Staff or employee” means the individuals hired or subcontracted by the facility to implement the individual service plan for the residents.

BZ. “Subcutaneous injection” means the insertion of a needle under the skin but above the muscle layer to administer medication.

CA. “Therapeutic diet” means a diet other than a regular diet, ordered by a physician to manage a health condition.

CB. “Volunteers” means unpaid individuals who provide care or services for the residents.

CC. “Variance” means a decision that is made at the discretion of the licensing authority to allow a facility 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.

CD. “Visit notes” means the documentation of services provided by outside agencies for ongoing care coordination of the resident.

CE. “Waive or waiver” means a decision that is made at the discretion of the licensing authority to allow a facility 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. [8.370.14.7 NMAC - N, 7/1/2024]

8.370.14.8 GENERAL LICENSING REQUIREMENTS:

A. Licensure is

required. No person or entity shall establish, maintain or operate an assisted living facility without first obtaining a license.

B. Application for licensure. An initial or renewal application shall be made on the forms prescribed by and available from the licensing authority. The issuance of an application form is not a guarantee that the completed application will be accepted, or that the authority will issue a license. Information provided by the facility and used by the licensing authority for the licensing process shall be accurate and truthful. The licensing authority will not issue a new license if the applicant has had a health facility license revoked or renewal denied or has surrendered a license under threat of revocation or denial of renewal. The licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of applicable rules 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 non-compliant with plans of correction. The licensing authority will not issue a license until the applicant has supplied all of the information that is required by this rule. Any facility that fails to participate in good faith by falsifying information presented in the licensing process shall be denied licensure by the authority. The following information shall be submitted to the licensing authority for approval:

- (1) a letter of intent that includes the proposed physical address, the primary population of the facility and a summary of the proposed services; after the letter of intent has been received, an application packet including; the application form, fee schedule and the licensing rule will be issued to the applicant by the licensing authority;
- (2) the completed and notarized application and the appropriate non-refundable fee(s);
- (3) a program narrative identifying and detailing the

geographic service area, the primary population including any special needs requirements, along with a full description of the services that the applicant proposes to provide including:

- (a) a description of the characteristics of the proposed population of the facility;
- (b) a description of the services and care that will be provided to the residents;
- (c) a description of the anticipated professional services to be offered to the residents; and
- (d) a description of the facility's relationship to other services and related programs in the service area and how the applicant will collaborate with them to achieve a system of care for the residents.

(4) policies and procedures annotated to this rule;

(5) evidence to establish that the applicant has sufficient financial assets to permit operation of the facility for a period of six months; the evidence shall include a credit report from one of the three recognized credit bureaus with a minimum credit score of 650 or above;

(6) copies of organizational documents to include the following list of items:

(a) the names of all persons or business entities that have at least five percent ownership interest in the facility, whether direct or indirect and whether in profits, land or building; this includes the owners of any business entity which owns all or part of the land or building;

(b) the identities of all creditors that hold a security interest in the premises, whether land or building;

(c) any changes in ownership or management shall be reported to the authority within thirty (30) days;

(7) building plans as required at 8.370.14.41 NMAC of this rule;

(8) fire authority approval as required at 8.370.14.60 NMAC of this rule;

(9) a letter of approval or exemption from the local health authority having jurisdiction for the food service and the kitchen facility;

(10) a copy of liquid waste disposal and treatment system permit from local health authority having jurisdiction;

(11) approval from local zoning authority;

(12) building approval (certificate of occupancy); and

(13) any other information that the applicant wishes to provide or that the licensing authority may request.

C. Application

for amended license. A licensee shall submit an application for an amended license and the required non-refundable fee to the licensing authority prior to a change with the facility. An amended license is required for a change of: location, administrator, facility name, capacity or any modification or addition to the building.

(1) An application for a change of the facility administrator or change of the administrator's name shall be submitted to the licensing authority within 10 business days of the change.

(2) An application for increase in capacity shall be accompanied by a building plan pursuant to 8.370.14.41 NMAC of this rule. A facility shall not increase census until the licensing authority has reviewed and approved the increase and has issued a new license that reflects the approved increase in capacity.

D. Application for license renewal. Each facility shall apply for a renewal of the annual license within thirty (30) business days prior to the license expiration date by submitting the following items:

(1) an application and the required fee;

(2) an updated

program narrative, if the facility has changed the program or the focus of services;

(3) the annual fire inspection report; and

(4) the licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of this rule or has been noncompliant with plans of correction or payment of civil monetary penalties.

E. License. Any person or entity that establishes, maintains or operates an assisted living facility shall obtain a license as required in this rule before accepting residents for care or providing services.

(1) Each facility that provides care or treatment shall obtain a separate license. The license is non-transferable and is only valid for the facility to which it is originally issued and for the owner or operator to whom it is issued. It shall not be sold, reassigned or transferred.

(2) The maximum capacity specified on the license shall not be exceeded.

(3) If the facility is closed and the residents are removed from the facility, the license shall be returned to the licensing authority. Written notification shall be issued to all residents or the residents' surrogate decision maker and the licensing authority at least 30 calendar days prior to the closure.

F. Temporary license.

(1) A temporary license may be issued to a new facility before residents are admitted provided that the facility has met all of the life safety code requirements as stated in this rule and policies and procedures for the facility have been reviewed and approved.

(2) Upon receipt of a temporary license, the facility may begin to admit up to three residents.

(3) After the facility has admitted up to three residents, the facility operator or owner shall request an initial health survey from the licensing authority.

(4) Following

a determination of compliance with this rule by the licensing authority, an annual license will be issued. The renewal date of the annual license is based on the initial date of the first temporary license.

(5)

The licensing authority has the right to determine compliance or noncompliance.

(6) A

temporary license shall cover a period of time, not to exceed 120 calendar days.

(7) No more

than two consecutive temporary licenses shall be issued. If a second temporary license is issued, an additional non-refundable fee is required. If all requirements are not met within the 240 day time frame, the applicant shall repeat the application process.

G. Annual license.

An annual license is issued for one year for a facility that has met all the requirements of this rule.

H. Display of license.

The facility shall display the license in a conspicuous public place that is visible to residents, staff and visitors.

I. Unlicensed

facilities. Any person or entity that opens or maintains an assisted living facility 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 penalties pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

(1) A civil

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

(2) 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.

(3) A cease

and desist order to discontinue operation of a facility that is operating without a license.

(4) Additional

criminal penalties may apply and shall be imposed as necessary.

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

8.370.14.9 WAIVERS AND VARIANCES.

The licensing authority may vary or waive certain licensure requirements for facilities, provided that it would not adversely affect the health, safety or welfare of the residents or staff.

A. Requests for a

variance or waiver may be made at any time, shall be made in writing to the licensing authority and shall specify the following:

(1) the section

of the rule for which the variance or waiver is requested;

(2) the time

period for which the waiver is requested;

(3) if the

request is for a variance; the specific alternative action that the facility proposes;

(4) the

reason(s) for the request and an explanation of why and how the health, safety and welfare of the residents or staff are not endangered by the requested variance or waiver; and

(5)

justification that the goal or purpose of the rule would be satisfied.

B. The licensing

authority may require additional information from the facility prior to acting on the request.

C. The licensing

authority may impose conditions on the variance or waiver.

D. The licensing

authority shall limit the duration of any waiver.

E. Variances and

waivers are nontransferable and shall be kept on file and readily available at the facility.

F. Variances and

waivers are granted at the discretion of the licensing authority.

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

8.370.14.10 AUTOMATIC EXPIRATION OF A LICENSE: A

license shall automatically expire:

A. at midnight on the

day indicated as the expiration date on the license;

B. when the operation

of a facility is discontinued;

C. when a facility is

sold or leased or the licensee changes; or

D. when there is a

change of location for a facility.

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

8.370.14.11 SURVEY OR MONITORING VISITS:

A. The licensing

authority shall perform on-site survey or monitoring visits at all assisted living facilities to determine compliance with this rule.

B. The facility shall

provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility.

C. The most recent

survey inspection reports and related correspondence shall be posted in a conspicuous public place in the facility.

D. Failure by the

facility 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.

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

8.370.14.12 CORRECTIVE ACTION:

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

A. **Informal dispute**

review (IDR). The facility 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 facility 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 facility.

(3) The facility 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.

B. Plan of correction (POC). The facility shall submit a plan of correction within 10 calendar days of receipt of the statement of deficiencies and after receipt of a revised statement of deficiencies, when the findings are changed pursuant to an IDR.

(1) If the first plan of correction (POC) is rejected by the licensing authority, the facility will be sent a second (2nd) copy of the statement of deficiencies. The facility shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The process will repeat 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) The plan of correction shall:

(a) address how all violations identified in the official statement of deficiencies will be corrected;

(b) address how the facility will monitor the corrective action and ensure ongoing compliance; and

(c) specify the date that the corrective action will be completed.

(4) All cited violations shall be corrected within 30 calendar days from the date of the survey; unless the licensing authority

approves an extended date.

(5) 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 facility license.

(6) The licensing authority may accept, reject, or direct the plan of correction. [8.370.14.12 NMAC - N, 7/1/2024]

8.370.14.13 GROUNDS FOR REVOCATION, SUSPENSION OR DENIAL OF INITIAL OR RENEWAL OF LICENSE, OR THE IMPOSITION OF SANCTIONS OR CIVIL MONETARY PENALTIES:

A. When the licensing authority determines that an application for the renewal of a license will be denied or that a license will be revoked, the licensing authority shall provide written notification to the facility, the residents and the surrogate decision makers for the residents.

B. After notice to the facility and an opportunity for a hearing, the authority may deny an initial or renewal application, revoke or suspend the license of a facility or may impose an intermediate sanction and a civil monetary penalty as provided in accordance with the Public Health Act, Section 24-1-5.2 NMSA 1978.

C. Grounds for implementing these penalties may be based on the following:

(1) failure to comply with any provision of this rule;

(2) failure to allow a survey by authorized representatives of the licensing authority;

(3) the hiring or retaining of any staff or permitting any private duty attendant or volunteer to work with residents that has a disqualifying conviction under the requirements of the caregiver's criminal history screening program, 8.370.5 NMAC;

(4) the misrepresentation or falsification of

any information on the application forms or other documents provided to the licensing authority;

(5) repeat violations of this rule;

(6) failure to maintain or provide services as required by this rule;

(7) exceeding licensed capacity;

(8) failure to provide an acceptable plan of correction within the time period established by the licensing authority;

(9) failure to correct deficiencies within the time period established by the licensing authority;

(10) failure to comply with the incident reporting requirements pursuant to incident reporting, intake processing and training requirements, 8.370.9 NMAC; and

(11) failure to pay civil monetary penalties pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC. [8.370.14.13 NMAC - N, 7/1/2024]

8.370.14.14 HEARING PROCEDURES:

A. Hearing procedures for an adverse action taken against a facility by the authority will be conducted in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.

B. The facility will receive a copy of the hearing procedures at the time that an adverse action is taken or may request a copy by contacting the licensing authority.

C. If immediate action is required to protect human health and safety, the licensing authority may suspend a license or impose an intermediate sanction pending a hearing, provided that the hearing is held within five working days of the suspension or the sanction, unless waived by the facility, in accordance with the Public Health Act, Subsection H of Section 24-1-5 NMSA. [8.370.14.14 NMAC - N, 7/1/2024]

8.370.14.15 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 facility is in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.

B. A copy of the adjudicatory hearing procedures will be forwarded to the facility when an adverse action is taken against the licensee by the licensing authority.

C. All notices, orders or decisions which the licensing authority issues to a facility 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. [8.370.14.15 NMAC - N, 7/1/2024]

8.370.14.16 STAFF QUALIFICATIONS: A facility shall employ staff with the following qualifications.

A. Administrator, director, operator: an assisted living facility shall be supervised by a full-time administrator. Multiple facilities that are located within a 40-mile radius may have one full-time administrator. The administrator shall:

- (1) be at least 21 years of age;
- (2) have a high school diploma or its equivalent;
- (3) comply with the requirements of the New Mexico caregivers criminal history screening act, 8.370.5 NMAC;
- (4) complete a state approved certification program for assisted living administrators;
- (5) be able to communicate with the residents in the language spoken by the majority of the residents;
- (6) not work while under the influence of alcohol or illegal drugs;
- (7) have evidence of education and experience to prove the ability to administer, direct and operate an assisted living

facility; the evidence of education and experience shall be directly related to the services that are provided at the facility;

(8) provide three notarized letters of reference from persons unrelated to the applicant; and

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

B. Direct care staff:

(1) shall be at least 16 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; and

(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;

(5) if a facility provides transportation for residents, the employees of the facility who drive vehicles and transport residents shall have copies of the following documents on file at the facility:

(a) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(b) documentation of training in transportation safety for the elderly and disabled, including safe vehicle operation;

(c) proof of insurance; and

(d) documentation of a clean driving record;

(6) any person who provides direct care who is not employed by an agency that is covered by the requirements of the caregivers criminal history screening

requirements, 8.370.5 NMAC, shall provide current (within the last 6 months) proof of the caregiver's criminal history screening to the facility; the facility shall maintain and have proof of such screening readily available; and

(7) employers shall comply with the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC.

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

8.370.14.17 STAFF TRAINING:

A. Training and orientation for each new employee and volunteer that provides direct care shall include a minimum of 16 hours of supervised training prior to providing unsupervised care for residents.

B. Documentation of orientation and subsequent trainings shall be kept in the personnel file at the facility.

C. Training shall be provided at orientation and at least 12 hours annually, the orientation, training and proof of competency shall include:

(1) fire safety and evacuation training;

(2) first aid;

(3) safe food handling practices (for persons involved in food preparation), 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 information;

(5) infection control;

(6) resident rights;

(7) reporting

requirements for abuse, neglect or exploitation in accordance with 8.370.9 NMAC;

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

(9) methods to provide quality resident care;

(10) emergency procedures;

(11) medication assistance, including the certificate of training for staff that assist with medication delivery; and

(12) the proper way to implement a resident ISP for staff that assist with ISPs.

D. If a facility provides transportation to residents, employees of the facility who drive vehicles and transport residents shall have training in transportation safety for the elderly and disabled, including safe vehicle operation.
[8.370.14.17 NMAC - N, 7/1/2024]

8.370.14.18 POLICIES: The facility 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;
- G.** the retention and maintenance of current and past personnel records; and
- H.** facilities shall maintain records and files that reflect compliance with NM and federal employment rules.
[8.370.14.18 NMAC - N, 7/1/2024]

8.370.14.19 STAFFING RATIOS: The following staffing levels are the minimum requirements.

A. The facility shall employ the sufficient number of staff to provide the basic care,

resident assistance and the required supervision based on the assessment of the residents' needs.

(1) During resident waking hours, facilities shall have at least one direct care staff person on duty and awake at all times for each 15 residents.

(2) During resident sleeping hours, facilities with 15 or fewer residents shall have at least one direct care staff person on duty, awake and responsible for the care and supervision of the residents.

(3) During resident sleeping hours, facilities with 16 to 30 residents shall have at least one direct care staff person on duty and awake at all times and at least one additional staff person available on the premises.

(4) During resident sleeping hours, facilities with 31 to 60 residents shall have at least two direct care staff persons on duty and awake at all times and at least one additional staff person immediately available on the premises.

(5) During resident sleeping hours, facilities with more than 61 residents shall have at least three direct care staff persons on duty and awake at all times and one additional staff person immediately available on the premises or fraction thereof in the facility.

B. Upon request of the authority, the facility shall provide the staffing ratios per each 24 hour day for the past 30 days.
[8.370.14.19 NMAC - N, 7/1/2024]

8.370.14.20 ADMISSIONS AND DISCHARGE: The facility shall complete an admission agreement for each resident. The administrator of the facility or a designee responsible for admission decisions shall meet with the resident or the resident's surrogate decision maker prior to admission. No resident shall be admitted who is below the age of eighteen (18) or for whom the facility is unable to provide appropriate care.

A. Admission agreement: The admission

agreement shall include the following information:

- (1) the parties to the agreement;
- (2) the program narrative;
- (3) the facility's rules;
- (4) the cost of services and the method of payment;
- (5) the refund provision in case of death, transfer, voluntary or involuntary discharge;
- (6) information to formulate advance directives;
- (7) a written description of the legal rights of the residents translated into another language, if necessary;
- (8) the facility's staffing ratio;
- (9) written authorization for staff to assist with medications;
- (10) notification of rights and responsibilities pursuant to the incident reporting intake, processing and training requirements, 8.370.9 NMAC;
- (11) the facility's bed hold policy; and
- (12) the admission agreement may be terminated if an appropriate placement is found for the resident, under the following circumstances:
 - (a) there shall be a 15 day written notice of termination given to the resident or his or her surrogate decision maker, unless the resident requests the termination;
 - (b) the resident has failed to pay for a stay at the facility as defined in the admission agreement;
 - (c) the facility ceases to operate or is no longer able to provide services to the resident;
 - (d) the resident's health has improved sufficiently and therefore no longer requires the services of the facility;
 - (e) termination without prior notice is permitted in emergency situations for the following reasons:

(i) the transfer or discharge is necessary for the resident’s safety and welfare;

(ii) the resident’s needs cannot safely be met in the facility; or

(iii) the safety and health of other residents and staff in the facility are endangered;

(13) the facility shall provide a 30 day written notice to residents regarding any changes in the cost or the material services provided; a new or amended admission agreement must be executed whenever services, costs or other material terms are changed; and

(14) facilities representing their services as “specialized” must disclose evidence of staff specialty training to prospective residents.

B. Restrictions in admission: The facility shall not admit or retain individuals that require 24 hour continuous nursing care, refer to Subsection U of 8.370.14.7 NMAC definitions. This rule does not apply to hospice residents who have elected to receive the hospice benefit. Conditions or circumstances that usually require continuous nursing care may include but are not limited to the following:

- (1) ventilator dependency;
- (2) pressure sores and decubitus ulcers (stage III or IV);
- (3) intravenous therapy or injections;
- (4) any condition requiring either physical or chemical restraints;
- (5) nasogastric tubes;
- (6) tracheostomy care;
- (7) residents that present an imminent physical threat or danger to self or others;
- (8) residents whose psychological or physical condition has declined and placement in the current facility is no longer appropriate as determined by the PCP;
- (9) residents

with a diagnosis that requires isolation techniques;

(10) residents that require the use of a hooyer lift; and

(11) ostomy (unless resident is able to provide self-care).

C. Exceptions to admission, readmission and retention: If a resident requires a greater degree of care than the facility would normally provide or is permitted to provide and the resident wishes to be re-admitted or remain in the facility and the facility wishes to re-admit or retain the resident. The facility shall comply with the following requirements.

- (1) Convene a team, comprised of:
 - (a) the facility administrator and a facility health care professional if desired;
 - (b) the resident or resident’s surrogate decision maker; and
 - (c) the hospice or home health clinician.
- (2) The team shall jointly determine if the resident should be admitted, readmitted or allowed to remain in the facility. Team approval shall be in writing, signed and dated by all team members and the approval shall be maintained in the resident’s record and shall:
 - (a) be based upon an individual service plan (ISP) which identifies the resident’s specific needs and addresses the manner that such needs will be met;
 - (b) ensure that if the facility is licensed for more than eight residents and does not have complete fire sprinkler coverage, the facility shall maintain an evacuation rating score of prompt as determined by the fire safety equivalency system (FSES);
 - (c) evaluate and outline how meeting the specific needs of the resident will impact the staff and the other residents; and
 - (d) include an independent advocate such as a certified ombudsman if requested

by the resident, the family or the facility.

(3) The team recommendation shall be maintained on site in the resident’s file.

(4) When a resident is discharged, the facility shall record where the resident was discharged to and what medications were released with the resident.

D. Coordination of care:

(1) Assisted living facilities shall have evidence of care coordination on an ISP for all services that are provided in the facility by an outside health care provider, such as hospice or home health providers.

(2) Residents shall be given a list of providers, including hospice and home health if applicable, and have the right to choose their provider. If applicable, the referring party shall disclose any ownership interest in a recommended or listed provider.

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

8.370.14.21 RESIDENT RECORDS:

A. Record contents: A record for each resident shall be maintained in accordance with the specific requirements of this section. Entries in each resident’s record shall be legible, dated and authenticated by the signature of the person making the entry. Resident records shall be readily available on site and organized utilizing a table of contents. Each resident record shall include:

- (1) the admission agreement records, as set forth in 8.370.14.20 NMAC;
- (2) the resident evaluation form, that is to be completed within 15 days prior to admission and updated at a minimum of every six months;
- (3) the current ISP, that is to be completed within 10 calendar days of admission and updated at a minimum of every six months;
- (4) the physical examination report; the physical examination report shall

have been completed within the past six months, by a primary care physician, a nurse practitioner or a physician’s assistant and shall be on file in the resident’s record within 10 days of admission;

(5) personal and demographic information for the resident, to include:

(a) current names, addresses, relationship and phone numbers of family members, or surrogate decision makers updated as necessary;

(b) resident’s name;

(c) age;

(d) recent photograph;

(e) marital status;

(f) date of birth;

(g) sex;

(h) address prior to admission;

(i) religion (optional);

(j) personal physician;

(k) dentist;

(l) social history;

(m) surrogate decision maker or other emergency contact person;

(n) language spoken and understood;

(o) legal documentation relevant to commitment or guardianship status;

(p) current medications list; and

(q) required diet; (6) unless included in the admission agreement, a separate written agreement between the facility and the resident relating to the resident’s funds, in accordance with the facility’s policy and procedures;

(7) entries by direct care staff, appropriate health care professionals and others

authorized to care for the resident; entries shall be dated and signed by the person making the entry and shall include significant information related to the ISP;

(8) entries that provide a written account of all accidents, injuries, illnesses, medical and dental appointments, any problems or improvements observed in the resident, any condition that would indicate a need for alternative placement or medical attention and entries reflecting appropriate follow-up; the maintenance of such written documentation in the resident record may be by copy of an incident or accident report, if the original incident or accident report is maintained elsewhere by the facility;

(9) the medication assistance record (MAR); the MAR is the document that details the resident’s medication; the MAR shall include all of the information pursuant to Subsection G of 8.370.14.35 NMAC of this rule;

(10) progress notes completed by any contract agency (e.g., hospice, home health); the progress notes shall include the date, time and type of health services provided;

(11) copies of all completed and signed transfer forms from the accepting facility when a resident is transferred to a hospital or another health care facility and when the resident is transferred back to the facility; and

(12) upon the death or transfer of a resident, documentation of the disposition of the resident’s personal effects and money or valuables that are deposited with the assisted living facility.

B. Resident records maintenance:

(1) Current resident records shall be maintained on-site and stored in an organized, accessible and permanent manner.

(2) The facility shall establish a policy to maintain and ensure the confidentiality of resident records, including the authorized release of information from the resident records.

(3) Non-current resident 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 readily available within 24 hours of request.

(4) There shall be a policy and procedure in place for record retention in the event of facility closure.

(5) Failure to follow facility policies is grounds for sanctions.

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

8.370.14.22 FACILITY REPORTS, RECORDS, RULES, POLICIES AND PROCEDURES:

A. Reports and records: Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority, residents, potential residents or their surrogate decision makers:

- (1) fire inspection report;
- (2) zoning approval;
- (3) building official approval (certificate of occupancy);
- (4) a copy of the approved building plans;
- (5) a copy of the most recent survey conducted by the licensing authority, to include adverse actions or appeals and complaints;

(6) for facilities with food establishments/ kitchens that require a permit from the local health authority that has jurisdiction, a copy of the current inspection report in accordance with the applicable, municipal, or federal laws and regulations and pursuant to Subsection B of 7.6.2.8 NMAC, regarding kitchen and food management; if a facility is considered a licensed private home and not required to meet specific requirements by the local health authority, a copy of that determination must also be maintained;

(7) where

necessary, a copy of the liquid waste disposal and treatment system permit from the local health authority that has jurisdiction;

(8) 30 days of menus as planned, including snacks and 30 days of menus as served, including snacks;

(9) record of monthly fire drills conducted at the facility and the fire safety evaluation system (FSES) rating, if applicable;

(10) written emergency plans, policies and procedures for medical emergencies, power failure, fire or natural disaster; plans shall include evacuation, persons to be notified, emergency equipment, evacuation routes, refuge areas and the responsibilities of personnel during emergencies; plans shall also include a list of transportation resources that are immediately available to transport the residents to another location in an emergency; the emergency preparedness plan shall address two types of emergencies:

(a) an emergency that affects just the facility; and

(b) a region/area wide emergency;

(11) a copy of this rule, requirements for assisted living facilities for adults, 8.370.14 NMAC;

(12) for facilities with two or more residents (that are not related to the owner), a valid custodial drug permit issued by the NM board of pharmacy, that supervise administration and self-administration of medications or safeguards with regard to medications for the residents; and

(13) vaccination records for pets in the facility.

B. Reports and records: Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority:

(1) a copy of the facility license;

(2) employee

personnel records, including an application for employment, training records and personnel actions:

(a) caregiver criminal history screening documentation pursuant to 8.370.5 NMAC;

(b) employee abuse registry documentation pursuant to 8.370.8 NMAC; and

(3) a copy of all waivers or variances granted by the licensing authority.

C. Rules: Prior to admission to a facility a prospective resident or his or her representative shall be given a copy of the facility rules. Each facility shall have written rules pertaining to resident's rights and shall include the following:

(1) resident use of tobacco and alcohol;

(2) resident use of facility telephone or personal cell phone;

(3) resident use of television, radio, stereo and cd;

(4) the use and safekeeping of residents' personal property;

(5) meal availability and times;

(6) resident use of common areas;

(7) accommodation of resident's pets; and

(8) resident use of electric blankets and appliances.

D. Policies and procedures: All facilities shall have written policies and procedures covering the following areas:

(1) actions to be taken in case of accidents or emergencies;

(2) policy and procedure for updating and consolidating the resident's current physician or PCP orders, treatments and diet plans every six months or when a significant change occurs, such as a hospital admission;

(3) policy for medication errors;

(4) method of staying informed when residents

are away from the facility (e.g., sign-out sheets or other record indicating where the resident will be, cell phone contact, etc.);

(5) the handling of resident's funds, if the facility provides such services;

(6) reporting of incidents, including abuse, neglect and misappropriation of property, injuries of unknown cause, environmental hazards and law enforcement interventions in accordance with 8.370.9 NMAC;

(7) reporting and investigating internal complaints;

(8) reporting and investigating complaints to the incident management bureau;

(9) staff and resident fire and safety training;

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

(11) the facility's bed hold policy;

(12) admission agreement;

(13) admission records;

(14) resident records including maintenance and record retention if the facility closes;

(15) program narrative;

(16) resident's rights with regard to making health care decisions and the formulation of advance directives;

(17) personnel policies;

(18) identifying and safeguarding resident possessions;

(19) securing medical assistance if a resident's own physician is not available;

(20) staff training appropriate to staff responsibilities;

(21) staff training for employees who provide assistance to residents with boarding or alighting from motor vehicles and safe operation of motor vehicles to transport residents;

(22) witnessed destruction of unused, outdated or recalled medication by the facility

administrator with the consulting pharmacist present; and
 (23) mealtimes, daily snacks, menus, special diets, resident’s personal preference for eating alone or in the dining room setting.
 [8.370.14.22 NMAC - N, 7/1/2024]

8.370.14.23 PETS: Pets are permitted in a licensed facility, in accordance with the facility’s rules.

A. Prohibited areas:
 Animals are not permitted in food processing, preparation, storage, display and serving areas, or in equipment or utensil washing areas. Guide dogs for the blind and deaf and service animals for the handicapped shall be permitted in dining areas pursuant to Subsection K of 7.6.2.9 NMAC.

B. Vaccination: Pets shall be vaccinated in accordance with all state and local requirements and records of such vaccination shall be kept on file in the facility.
 [8.370.14.23 NMAC - N, 7/1/2024]

8.370.14.24 ASSISTANCE WITH DAILY LIVING: The facility shall supervise and assist the residents, as necessary, with health, hygiene and grooming needs, to include but not limited to the following:

- A. eating;
- B. dressing;
- C. oral hygiene;
- D. bathing;
- E. grooming;
- F. mobility; and
- G. toileting.

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

8.370.14.25 RESIDENT EVALUATION:

A. A resident evaluation shall be completed by an appropriate staff member within 15 days prior to admission to determine the level of assistance that is needed and if the level of services required by the resident can be met by the facility.

B. The initial resident evaluation shall establish a baseline in the resident’s functional status and thereafter assist with identifying

resident changes. The resident evaluation shall be reviewed and updated at a minimum of every six months or when there is a significant change in the resident’s health status.

C. The resident’s evaluation shall be documented on a resident evaluation form and at a minimum include the following abilities, behaviors or status:

- (1) activities of daily living;
- (2) cognitive abilities; reasoning and perception; the ability to articulate thoughts, memory function or impairment, etc.;
- (3) communication and hearing; ability to communicate needs and understand instructions, etc.;
- (4) vision;
- (5) physical functioning and skeletal problems;
- (6) incontinence of bowel/bladder;
- (7) psychosocial well-being;
- (8) mood and behavior;
- (9) activity interests;
- (10) diagnoses;
- (11) health conditions;
- (12) nutritional status;
- (13) oral or dental status;
- (14) skin conditions;
- (15) medication use and level of assistance needed with medications;
- (16) special treatments and procedures or special medical needs such as hospice; and
- (17) safety needs/high risk behaviors; history of falls agitation, wandering, fire safety issues, etc.

D. The resident evaluation shall include a history and physical examination and an evaluation report by a physician or a physician extender within six months of admission. A resident shall have a medical evaluation by a physician or a physician extender at least annually.

E. The resident evaluation shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or physician extender at the time the individual service plan is reviewed, at a minimum of every six months or when a significant change in health status occurs.
 [8.370.14.25 NMAC - N, 7/1/2024]

8.370.14.26 INDIVIDUAL SERVICE PLAN (ISP): An ISP shall be developed and implemented within 10 calendar days of admission for each resident residing in the facility.

A. The ISP shall address those areas of need as identified in the resident evaluation and through staff observation.

(1) The ISP shall detail the services that are provided by the facility as well as the services to be provided by other agencies.

(2) The resident evaluation and the ISP shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or a physician extender.

(3) The ISP shall be reviewed and or revised at a minimum of every six months or when there is a significant change in the resident’s health status.

B. The ISP shall include the following:

- (1) a description of identified needs as noted in the resident evaluation;
- (2) a written description of all services to be provided;
- (3) who will provide the services;
- (4) when or how often the services will be provided;
- (5) how the services will be provided;
- (6) where the services will be provided;
- (7) expected goals and outcomes of the services;
- (8) documentation of the facility’s determination that it is able to meet the needs of the resident;

(9) the level of assistance that the resident will require with activities of daily living and with medications;

(10) a crisis prevention/intervention plan when indicated by diagnosis or behavior; and

(11) current orders for all medications, including those authorized for PRN usage. [8.370.14.26 NMAC - N, 7/1/2024]

8.370.14.27 RESIDENT ACTIVITIES: Each facility shall provide or make available recreational and social activities appropriate to the residents' abilities that meet their psychosocial needs and are relevant to their social history; including a balance of cognitive, reminiscence, physical and social activities. The facility shall post the activities and encourage residents to participate. [8.370.14.27 NMAC - N, 7/1/2024]

8.370.14.28 PERSONAL POSSESSIONS:

A. Each resident shall be permitted to keep personal property in their possession at the facility, if it is not detrimental to the health and safety of anyone in the facility. These possessions may include, but are not limited to the following items:

(1) clothing; the facility shall ensure that each resident has his or her own clothing; residents shall be allowed and encouraged to select their daily clothing and change their clothing to suit their activities and the weather conditions;

(2) personal care items; each resident shall have his or her own personal care items such as, but not limited to, a comb, razor, hairbrush, toothbrush, toothpaste and like items.

B. The facility shall have policies and procedures for identifying and safeguarding resident possessions. [8.370.14.28 NMAC - N, 7/1/2024]

8.370.14.29 TRANSPORTATION: The facility

shall either provide transportation or assist the resident in using public transportation.

A. The facility's motor vehicle transportation assistance program shall include the following elements:

(1) resident evaluation;

(2) staff training in hazardous driving conditions;

(3) safe passenger transport and assistance;

(4) emergency procedures and use of equipment;

(5) supervised practice in the safe operation of motor vehicles, maintenance and safety record keeping; and

(6) copies of employee training certificates that give evidence of successful completion of any applicable course(s) shall be kept on site in the employee files.

B. To assist residents in using public transportation, the facility shall provide information on bus schedules, location of bus stops and telephone numbers of taxi cab companies. [8.370.14.29 NMAC - N, 7/1/2024]

8.370.14.30 HANDLING OF RESIDENT FUNDS:

A. Each resident has the right to manage their personal funds in accordance with state or federal laws.

B. If the facility agrees, the resident may entrust his or her personal funds to the facility for safekeeping and management. In such cases, the facility shall:

(1) have written authorization from the resident or his or her surrogate decision maker;

(2) maintain a written record of all financial transactions and arrangements involving the resident's funds and make this written record available upon request, to the resident, his or her surrogate decision maker and the licensing authority;

(3) safeguard

any and all funds received from the resident in an account separate from all other funds of, or held by, the facility;

(4) upon written or verbal request by the resident or his or her surrogate decision maker, return to the resident all or any part of the resident's funds given to the facility for safekeeping and management, including all accrued interest if applicable; and

(5) upon the resident's death, will transfer all personal funds held by the facility to the resident's estate in accordance with Section 45-3-709 NMSA 1978.

C. The facility shall not commingle the resident's funds, valuables or property with that of the licensee. Resident's funds, valuables or property shall be maintained separate, intact and free from any liability of the licensee, staff and management. [8.370.14.30 NMAC - N, 7/1/2024]

8.370.14.31 HANDLING OF EMERGENCIES:

A. Upon admission, each resident or surrogate decision maker shall designate a primary care practitioner (PCP) to be called in case of a medical necessity. Each resident or representative shall also designate a concerned person to be called in case of an emergency. The facility shall establish a policy to secure medical assistance if the resident's own physician is not available. In the event of an illness or an injury to the resident, the PCP or a physician extender shall be notified by the facility.

B. The facility shall have a first aid kit that contains at a minimum, gauze, adhesive tape, antiseptic ointment and bandages for emergencies. The first aid kit shall be kept in a designated, easily accessible place within the facility.

C. An easily accessible and functional telephone shall be available in each facility for summoning help in case of an emergency. A pay telephone does not fulfill this requirement.

D. A list of emergency

numbers including: fire department, police department, ambulance services and poison control shall be posted near each public telephone in the facility.

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

8.370.14.32 REPORTING OF INCIDENTS:

A. The facility shall insure that all suspected cases or known incidents of resident abuse, neglect or exploitation are reported in accordance with 8.370.9 NMAC.

(1) The facility shall also report any incident or unusual occurrence which has or could threaten the health, safety, or welfare of the residents and staff to the licensing authority complaint hotline within 24 hours or by the next business day, if it is a weekend or a holiday.

(2) The facility shall not delay a report to the complaint hotline while an internal investigation is conducted.

B. The facility is responsible for conducting and documenting the investigation of all incidents within five business days and shall submit a copy of the investigation report to the licensing authority. A copy of the report and the documentation, including the date and time that it was submitted to the licensing authority, shall be maintained on file at the facility. The investigation shall include the following:

(1) a narrative description of the incident;

(2) the result of the facility's investigation shall be recorded on the state approved incident report form for the current year, pursuant to 8.370.9 NMAC; and

(3) plans for further actions in response to the incident.

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

8.370.14.33 RESIDENT RIGHTS: All licensed facilities shall understand, protect and respect the rights of all residents.

A. Prior to admission to a facility, a resident and legal

representative shall be given a written description of the legal rights of the resident, translated into another language, if necessary, to meet the resident's understanding.

B. If the resident has no legal representative and is incapable of understanding his or her legal rights, a written copy of the resident's legal rights shall be provided to the most significant responsible party in the following order:

(1) the resident's spouse;

(2) significant other;

(3) any of the resident's adult children;

(4) the resident's parents;

(5) any relative the resident has lived with for six or more months before admission;

(6) a person who has been caring for, or paying benefits on behalf of the resident;

(7) a placing agency;

(8) resident advocate; or

(9) the ombudsman.

C. The resident rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers for the incident management hotline and for the state ombudsman program.

D. To protect resident rights, the facility shall:

(1) treat all residents with courtesy, respect, dignity and compassion;

(2) not discriminate in admission or services based on gender, sexual orientation, resident's age, race, religion, physical or mental disability, or nationality;

(3) provide residents written information about all services provided by the facility and their costs and give advance written notice of any changes;

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

(5) provide humane care for all residents;

(6) provide the right to privacy, including privacy during medical examinations, consultations and treatment;

(7) protect the confidentiality of the resident's medical record;

(8) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; and privacy in the resident's own room;

(9) protect the right to communicate privately and freely with any person, including private telephone conversations and private correspondence; and the right to receive visits from family, friends, lawyers, ombudsmen and community organizations;

(10) prohibit the use of any and all physical and chemical restraints;

(11) ensure that residents:

(a) are free from physical and emotional abuse neglect and misappropriation/or exploitation;

(b) are free from financial abuse and misappropriation by facility staff or management;

(c) are free to participate in religious, social, community and other activities and freely associate with persons in and out of the facility;

(d) are free to leave the facility and return without unreasonable restriction;

(e) are given a 15 calendar day, written notice before room transfers or discharge from the facility unless there is immediate danger to self or others in the facility;

(f) have an environment that fosters social interaction and avoids social isolation;

(g) or their surrogate decision makers, are informed of and consent to the services provided by the facility;

- (h) have the right to voice grievances to the facility staff, public officials, the ombudsmen, any state agency, or any other person, without fear of reprisal or retaliation;
- (i) have the right to have their complaints addressed within 14 calendar days or sooner;
- (j) have the right to participate in the development of their care plan/ISP;
- (k) have the right to choose a doctor, pharmacist and other health care provider(s);
- (l) have the right to participate in medical treatment decisions and formulate advance directives such as living wills and powers of attorney;
- (m) have the right to keep and use personal possessions without loss or damage;
- (n) have the right to manage and control their personal finances;
- (o) have the right to freely organize and participate in a resident association that may recommend changes in the facility's policies, services and management;
- (p) shall not be required to work for the facility; and
- (q) are protected from unjustified room transfers or discharge.

E. The resident's rights shall not be restricted unless this restriction is for the health and safety of the resident, agreed to by the resident or the resident's surrogate decision maker and outlined in the resident's individual service plan. [8.370.14.33 NMAC - N, 7/1/2024]

8.370.14.34 CUSTODIAL DRUG PERMITS: A facility with two or more residents that is licensed pursuant to this rule and that assists with self-administration or safeguards medications for residents shall have a current custodial drug permit issued by the state board of pharmacy.

A. Procurement, labeling and storage: The facility shall provide assistance to the resident in obtaining the necessary medications, treatment and medical supplies as identified in the ISP. The facility shall procure, label and store medications for residents who require assistance with self-administration of medication in compliance with state and federal laws.

(1) 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 administrator or designee.

(2) Internal medication shall be kept separate from external medications. Drugs to be taken by mouth shall be separated from all other delivery forms.

(3) A separate, locked refrigerator shall be provided by the facility for medications. The refrigerator temperature shall be kept in compliance with the state board of pharmacy requirements for medications.

(4) 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.

(5) A resident may be permitted to keep his or her own medication in a locked compartment in his or her room for self-administration, if the physician's order deems it appropriate.

(6) The facility shall not require the residents to purchase medications from any pharmacy.

(7) Medical gases (oxygen) and equipment used for the administration of inhalation therapy and for resuscitative purposes shall comply with the national fire protection association (NFPA) 99.

(8) A proof of use record shall be maintained separately for each schedule II through IV drug (controlled substances). The proof of use sheet shall document:

(a) the type and strength of the schedule II through IV drugs;

(b) the date and time staff assisted with self-administration;

(c) the resident's name;

(d) the prescriber's name;

(e) the dose;

(f) the signature of the person assisting with delivery of the medication; and

(g) the balance of medication remaining.

(9) Any remaining medication discontinued by a physician's order, or upon discharge or death of the resident shall be inventoried and moved to a separate locked storage container. Such discontinued medications shall be destroyed upon the next quarterly visit by the consulting pharmacist in accordance with 16.19.11.10 NMAC.

(10) The record of medication destruction shall be signed by the administrator or designee and the pharmacist and shall be kept on file at the facility.

B. Consulting pharmacist: The facility shall maintain records demonstrating that the consulting pharmacist provides the following oversight and guidance.

(1) Reviews the medication regimen as needed, but at least quarterly/every three months, to determine that all medications and records are accurate and current. All irregularities shall be reported to the administrator of the facility and these irregularities shall be resolved by the administrator within 72 hours.

(2) A system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation.

(3) Consultation shall be provided on all aspects of pharmacy services in the facility, including reference information regarding side effects and, when needed, physician consultation in cases involving the use of psychotropic medications.

(4) The consulting pharmacist will be responsible for assuring that the facility meets all requirements for storage, labeling, destruction and documentation of medications as required by the state board of pharmacy, 16.19.11.10 NMAC and 8.370.14 NMAC. [8.370.14.34 NMAC - N, 7/1/2024]

8.370.14.35 MEDICATIONS:

Administration of medications or staff assistance with self-administration of medications shall be in accordance with state and federal laws. No medications, including over-the-counter medications, PRN (when needed) medications, or treatment shall be started, changed or discontinued by the facility without an order from the physician, physician assistant or nurse practitioner and with entry into the resident's record.

A. State board of nursing licensed or certified health care professionals are responsible for the administration of medications. Administration may only be performed by these individuals.

B. Facility staff may assist a resident with the self-administration of medications if written consent by the resident is given to the administrator of the facility or the administrator's designee. If the resident is incapable of giving consent, the surrogate decision maker named in accordance with New Mexico law may give written consent for assistance with self-administration of medications. All staff that assist with self-administration of medications shall have successfully completed a state approved assistance with self-administration of medication training program or be licensed or certified by the state board of nursing.

C. PRN (pro re nada) medication:

(1) Physician or physician extender's orders for PRN medications shall clearly indicate the circumstances in which they are to be used, the number of doses that may be given in a 24-hour period and indicate under what

circumstances the primary care practitioner (PCP) is to be notified.

(2) The utilization of PRN medications shall be reviewed routinely. Frequent or escalating use of PRN medications shall be reported to the PCP.

D. Only a licensed nurse (RN or LPN) shall administer any medications or conduct any invasive procedures provided by the following routes: intravenous (IV), subcutaneous (SQ), intramuscular (IM), vaginal or rectal. Only a licensed nurse shall administer non-premixed nebulizer treatments.

E. The facility shall have medication reference material that contains information relating to drug interactions and side effects on the premises. Staff that assist in the self-administration of medications shall know interactions or possible side effects that might occur.

F. Medications prescribed for one resident shall not be used for another resident.

G. Medication assistance record (MAR): For residents who are not independent and require assistance with self-administration, the facility shall have a MAR that documents the details of the residents' medication, including PRN and over-the-counter medication that is assisted with self-administration by qualified staff or administered to the resident by licensed or certified staff. The information in the MAR shall include:

(1) the resident's name;

(2) any known allergies to medication that the resident has;

(3) the name of the resident's PCP or the prescriber of the medication;

(4) the diagnosis or reason for the medication;

(5) the name of the medication, including the drug product brand name and the generic name;

(6) notation if the medication is a schedule II-IV drug;

(7) the dosage of the medication;

(8) the strength of the medication;

(9) the frequency or how often the medication is to be taken or given;

(10) the route of delivery for the medication (mouth, eye, ear, other);

(11) the method of delivery for the medication (pills, drops, IM injection, other);

(12) the date that the medication was started or discontinued;

(13) any change in the medication order;

(14) pre-medication information (i.e., pulse, respiration, blood pressure, blood sugar) as required by the medication order;

(15) the date and time that the medication is self-administered, administered with assistance or is administered;

(16) the initials and signature of the person assisting with or administering the medication;

(17) the desired results obtained from or problems encountered with the medication (pain relieved, allergic reaction, etc.);

(18) any refused dose of medication;

(19) any missed dose of medication; and

(20) any medication error.

H. No medication shall be stopped or started without specific orders from the primary care physician.

I. If a resident refuses to take a prescribed medication, it shall be documented and the facility shall report it to the prescriber.

J. A suspected adverse reaction to a medication shall be documented on the MAR and reported immediately to the PCP and the resident's surrogate decision maker. If applicable, emergency medical treatment shall be arranged. Documentation of the event shall be kept in the resident's record.

K. Prescription