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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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Notices of Rulemaking and Proposed Rules

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT STATE PARKS DIVISION

NOTICE OF PROPOSED RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), State Parks Division (Division) hereby gives notice of the following proposed rulemaking. EMNRD proposes to repeal and replace rule, 19.5.1 General Provisions, and amend rules 18.17.2 Boating Operation and Safety, 19.5.2 Park Visitor Provisions, and 19.5.6 Park Fees.

Purpose of Amendment: EMNRD proposes the amendments to include a definition of resident; include a definition of human-powered watercraft; include a definition of paddle craft; change fees for boat registration; include human-powered watercraft in vessels that require wearing of U.S. coast guard approved wearable personal flotation devices; include human-powered watercraft in vessels that are not required to have a bailing bucket, bilge pump or any length of stout rope; clarify visitors shall pay required day-use fees upon entering the park; clarify check out times for campsites; include Cerrillos Hills state park as a park that does not allow camping; amend stay limits in parks based on time of year; clarify ADA sites; change the amount of time a trailer, boat or vessel not attached to a vehicle may be left in parking areas or turnouts; clarify official use of off-highway motor vehicles and golf cars in state parks by the Division and other government agencies; allow for the use of off-highway motor vehicles by concessionaires in certain areas where permitted by the superintendent; remove the allowance for off-highway motor vehicles to be used within parks for ice fishing; remove gender specific language; change references to tape record to audio record; remove

exception to fees for persons who are entering Conchas Lake state park to access the concessionaire; amend language regarding fee waivers or reductions for primary or secondary school groups or college or university groups to include other organized youth groups; exempt New Mexico residents from purchasing day use permits from October 1 through April 30 annually; clarify that visitors shall purchase camping permits to camp in a park; add an annual camping permit for New Mexico resident active-duty military or honorably discharged veterans; amend the expiration dates for annual passes to make them valid from January 1 through December 31 of each year and to allow for permits for the next calendar year to be sold beginning July 1 of each year; amend requirements for replacement annual camping permits to require proof of purchase; amend language for foster family free access to parks to match language in house bill 35 from the 2023 legislative session; amend park fees to include both resident and non-resident fees for day use, camping, and annual permits; change park fees for day use, camping, utilities, annual permits, and special use permits; add a short term concession permit; add a parking fee for Rio Grande Nature Center state park; change entrance fees at Living Desert Zoo and Gardens state park and Smokey Bear historical park; add a RV dump station fee for non-campers; eliminate wildlife blind fees; implement a regular review of fees based off the Chained Consumer Price Index for Urban Consumers; remove outdated wording; correct grammar and clarify wording; and correct spelling.

The full text of the proposed rule amendments are available from Jared Langenegger at 575-420-1733 or jaredr.langenegger@emnrn.nm.gov or can be viewed on the EMNRD, State Parks Division's website at <https://www.emnrn.nm.gov/spd/public-meetings/> or at the State Parks Division's office in Santa Fe.

EMNRD proposes to amend **18.17.2**

NMAC, primarily adding the human-powered watercraft and paddle craft definition to Section 7, amend registration fees for vessels in Section 8, require users of human-powered watercraft to wear personal flotation devices, and include human-powered watercraft in vessels that are not required to have a bailing bucket, bilge pump or any length of stout rope in Section 9.

EMNRD proposes to repeal and replace **19.5.1 NMAC**, primarily adding the definition of resident in Section 7.

EMNRD proposes to amend **19.5.2 NMAC**, Sections 11, 12, 13, 14, 16, 21, 25, 27, 32 -35, 38, 39, and 42.

EMNRD proposes to amend **19.5.6 NMAC**, Sections 8 – 12, 14-16, 18, and 19.

Legal Authority: EMNRD proposes this rule amendment under the authority of Section 66-12-18 NMSA 1978 and Section 16-2-7 NMSA 1978.

Public Hearing and Comment.

EMNRD will hold a public hearing on the proposed rule amendments beginning at 10:00 a.m. on October 22, 2024, at the Wendell Chino Building, Pecos Hall, 1220 South Saint Francis Drive, Santa Fe, NM.

Those wishing to comment on the proposed rule amendment may make oral comments or submit information at the hearing on October 22, 2024, or may submit written comments by 5 p.m. on October 22, 2024, by mail or e-mail. Please mail written comments to Jared Langenegger, EMNRD, State Parks Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505 or submit comments by e-mail to EMNRD-ParksComments@emnrn.nm.gov.

The hearing will be available to be viewed online. Viewing information and a meeting link can be found on the EMNRD, State Parks Division's

website at www.emnrd.nm.gov/spd/public-meetings/.

Technical Information that served as a basis for the proposed rule amendments includes:

Copies of the technical information can be obtained from Jared Langenegger at 575-420-1733 or jaredr.langenegger@emnrd.nm.gov or can be viewed on the EMNRD, State Parks Division's website at <https://www.emnrd.nm.gov/spd/public-meetings/>.

NM State Parks Fees Study

https://www.bls.gov/data/inflation_calculator.htm

NASPD AIX 2019-2020 Final Data Report

NASPD AIX 2020-2021 Final Data Report

If you are an individual with

a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Jared Langenegger at 575-420-1733 or through the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Jared Langenegger at 575-420-1733, if a summary or other type of accessible format is needed.

**FINANCE AND
ADMINISTRATION,
DEPARTMENT OF
FINANCE, BOARD OF**

NOTICE OF RULEMAKING

The State Board of Finance (SBOF) is proposing to repeal and replace the New Mexico Administrative Code (NMAC) rule 1.5.23 NMAC, *Real Property Acquisitions, Sales, Trades, or Leases*, to update and add definitions, clarify the meaning of definitions, update requirements for title in acquisition of property, add clarification and requirements to materials needed for review and

approval by the Board, and clarify and simplify the existing language with grammatical and syntax edits.

Section 13-6-2.1 NMSA 1978 provides generally, with certain exceptions, that any state agency, local public body, or school district that sells, trades or leases real property belonging to that public entity requires state board of finance approval prior to the effective date of such sale, trade or lease. Section 16-6-15, NMSA 1978, makes Section 13-6-2.1, NMSA 1978 expressly applicable to the state fair.

Sections 15-3B-8 NMSA 1978 provide that the property control division is authorized to acquire land by purchase, gift or donation subject to prior approval by the state board of finance.

Subsection B of Section 15-3B-7, NMSA 1978, provides that the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of personal tangible property, is authorized to enter into long-term leases not exceeding ten years of vacant lands when the lessor contracts with the state to construct and complete buildings, subject to approval of the state architect, as a condition precedent to the start of the rental term.

Section 17-1-22.1 NMSA 1978 provides that the state game commission, upon approval from the state board of finance, may transfer money from the game and fish bond retirement fund to the game and fish capital outlay fund. Money in the game and fish capital outlay fund may be expended for fish hatcheries and rearing facilities, habitat acquisition, development and improvements and other similar capital projects. All projects funded by the game and fish capital outlay fund shall be approved by the state board of finance.

Section 3-46-34(B) NMSA 1978

provides that a municipality may dispose of real property in an urban renewal or land development area to private persons only under reasonably competitive bidding procedures as it shall prescribe or as provided in this subsection. The municipality may accept any proposal it deems to be in the best interest and in furtherance of the purposes of the urban renewal law; provided, that a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to any acceptance. Thereafter, the municipality may execute a contract in accordance with the provisions of the urban renewal law, and deliver deeds, leases and other instruments and take all steps necessary to effectuate the contract; provided that if the municipality accepts other than the highest bid, the acceptance must be approved by the state board of finance before the municipality may proceed.

Subsection J of Section 16-2-11, NMSA 1978, provides that any acquisition of lands adjacent or contiguous to existing state parks or recreational areas or necessary for successful park or recreational area protection and development and will become part of the park or recreational area may be acquired by the state following consultation with local government entities on the acquisition and approval of the acquisition by the state board of finance, and funds for acquisition is available to state parks division or land is being donated to the division.

Notice Date: July 30, 2024

Hearing Date: September 4, 2024

Adoption Date: Proposed as September 17, 2024

Technical Citations: 13.14.5.10 NMAC and 13-6-5 NMSA 1978

The Department is proposing to amend the rule as follows:

Throughout the rule:

1. Language is updated to reflect the addition of the definitional term "Appraisal Report" to mean

a report of an opinion of value conducted by a general certified appraiser and that meets all requirements under the Uniform Standards of Professional Appraisal Practice (USPAP).

2. Language is updated to reflect the addition of the definitional term “School District” to mean those political subdivisions of the state established for the administration of public schools.

3. Language is updated to change the term “Public Body” and replace with “Public Entity”

4. Language is updated to reflect requirements when real property disposition falls within the boundaries of a community land grant.

5. Language is updated to provide greater guidance and clarity on the requirements for submission to the Board for consideration.

6. Several sections have been renumbered due to new sections being added into the NMAC.

Section 7

This section is updated to add new definitions.

This section is renumbered due to new definitions and subsections added to the NMAC.

Subsection B - is added to define the term “Appraisal Report”.

Subsequent Subsections - are adjusted by one letter, such that B becomes C, C becomes D, etc., until Subsection M addition, because of the addition of Subsection B.

Subsection D - part 1 - is updated by adding to define the term “Appraisal Report” to the language.

Subsection E - removes language and citation to specific requirements.

Subsection H - is updated to change the term “Public Body” and replace with “Public Entity”.

Subsection K - removes language and citation to donations by one governmental entity to another governmental entity.

Subsection M - is added to define the term “School District”.

Subsequent Subsections - are adjusted by one letter, such that L becomes N, M becomes O, N

becomes P, O becomes Q, because of the addition of Subsection M.

Section 8

This section is updated to clarify the requirements and rules regarding title binder requirements.

Subsection B - is added to define the term “Appraisal Report”.

Subsection B - part 6a - is updated by adding to subparts a and b to explain and simplify the language need for title binders. The language added requires the inclusion of exceptions listed in 13.14.5.10 NMAC.

Subsection B - part 6b - is updated by adding to subparts a and b to explain and simplify the language need for title binders. The language added requires explanation of any special exceptions listed in Schedule B.

Subsection B - part 7 - is updated by adding requirements that purchase agreements include language that the agreement and any amendments be subject to Board approval.

Section 9

This section is updated to clarify and simplify the requirements for Board submissions for the approval of sale or trade of real property.

This section is renumbered due to new definitions and subsections added to the NMAC.

Subsection B - part 1 - is changed to require summary information, forms, checklists as required by Board staff.

Subsection B - part 2 - is added to require a cover letter providing details of the request.

Subsection B - part 3 - is added with the original language of part 1.

Subsequent Subsection B parts - are adjusted by number, such that 2 becomes 4, 3 becomes 5, 4 becomes 6, 5 becomes 7, 6 becomes 8, 7 becomes 9, 8 becomes 10, 9 becomes 11, because of the addition of Subsection B part 2 and 3.

Subsection B - part 4 - is updated by adding the term “Appraisal Report” to the language.

Subsection B - part 7 - is updated by removing the citation.

Subsection B - part 8 - is updated by

adding requirements that sale or trade agreements include language that the agreement and any amendments be subject to Board approval.

Subsection B - part 10 - is updated by removing the word “and” at the end.

Subsection B - part 11 - is updated by adding the word “and” at the end.

Subsection B - part 12 - is added and requires that when a state agency is requesting approval of the disposition of real property where the boundaries are within the community land grant, that the submission shall require a resolution or meeting minutes showing that the board of trustees of the community land grant intent is not to purchase the real property in accordance with NMSA 13-6-5. If there is no action, the state agency shall document the lack of action to the Board.

Section 10

This section is updated to clarify and simplify the requirements for Board submissions for the approval of lease of real property.

This section is renumbered due to new definitions and subsections added to the NMAC.

Subsection C - part 1 - is added to require summary information, forms, checklists as required by Board staff.

Subsection B - part 2 - is added to require a cover letter providing details of the request.

Subsection B - part 3 - part 3 is renumbered from part 1 and is updated by adding the term “Appraisal Report” to the language and other grammatical changes.

Subsequent Subsection B parts - are adjusted by number, such that 1 becomes 3, 2 becomes 4, 3 becomes 5, 4 becomes 6, 5 becomes 7, 6 becomes 8, 7 becomes 9, because of the addition of Subsection C part 1 and 2.

Subsection B - part 4 - is updated by adding requirements that lease agreements include language that the agreement and any amendments be subject to Board approval.

Subsection B - part 8 - is updated by removing the word “and” at the end.

Subsection B - part 9 - is updated by

adding the word “and” at the end.

Subsection D - is updated by removing the citation.

Section 11

This section is updated to clarify the requirements and rules regarding title binder requirements.

Subsection A - is simplified by changing the language of policy to rule and requiring electronic submissions in the form of PDF packets instead of hard copies.

Subsection B - strikes language in reference to the hard copy submissions.

Subsection C - is updated with clarification language, syntax, and clarification language.

These proposed rule changes will be contained in 1.5.23 NMAC. The register and the proposed rule are available on the SBOF website at: <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting SBOF at bof.administrator@dfa.nm.gov and (505) 827-3985.

The SBOF plans to adopt this rule September 17, 2024.

A public hearing to receive testimony on this proposed rule will be held on September 4, 2024, at 2:00 p.m. The hearing will be held at the New Mexico Public Education Department, Marbry Hall Auditorium, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501, and via Microsoft Teams.

Join Microsoft Teams Meeting

Click here to join the meeting

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDk2NTE1MGUtMTFfIOS00YTI2LWFfYjgtNDkyMmM4YTfYfYTI3%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%222230fd174-04fd-4b77-8270-e716cf95dec%22%7d

Meeting ID: 264 112 737 961

Passcode: uiARHU

Dial in by phone

+1 505-312-4308, 964999186#

Phone conference ID: 964 999 186#

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing the State Board of Finance administrator at: bof.administrator@dfa.nm.gov or calling 505-827-3985.

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

Interested persons may address written comments to:

State Board of Finance
ATTN: SBOF 1.5.23 NMAC Public Comments

407 Galisteo St.

Bataan Memorial Building, Room 181
Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: bof.administrator@dfa.nm.gov. Written mail, electronic mail and recorded comments must be received no later than 12:00 p.m. MT on September 3, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the SBOF website at <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

FINANCE AND ADMINISTRATION, DEPARTMENT OF FINANCE, BOARD OF

NOTICE OF RULEMAKING

The State Board of Finance (the Board) is proposing to repeal and replace the New Mexico Administrative Code (NMAC) rule 2.70.4 NMAC, *Policy on Capital Expenditures by State Educational Institutions* to align new thresholds more in line with modern costs of projects, adding more detailed definitions to clarify project approvals required, and to align with construction requirements set out in 14.7.9 NMAC.

Section 21-1-21, NMSA 1978, as amended, requires State Board of Finance approval by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or construction of buildings or other major structures or major remodeling projects.

Notice Date: July 30, 2024

Hearing Date: September 4, 2024

Adoption Date: Proposed as September 17, 2024

Technical Citations: 14.7.9 NMAC

The Department is proposing to amend the rule as follows:

Throughout the rule:

1. Language is updated to change the dollar amounts for projects.
2. Language is added to define the term “Remodel”.
3. Language is added to define the term “Renovation”.
4. Language is added to define the term “Repair”.
5. Language has been simplified or updated to allow the rules to be more coherent.
6. Language is added to reflect required certification by the Higher Education Department and the Energy, Minerals, and Natural Resources Department that buildings

meet current energy compliance standards as outlined in 14.7.9 NMAC.

7. Several sections have been renumbered due to new sections being added into the NMAC.

Section 7

This section is renumbered due to new definitions and subsections added to the NMAC.

This section is updated to add new definitions.

Subsection A - is added to define the term "Appraisal Report"

Subsection B - is added to define the term "Board"

Subsection C - is added to define the term "Current"

Subsection D - is added to define the term "Equipment Costs"

Subsection E - parts 1, 2, 3, and 4, have been updated with new dollar amounts.

Subsection G - is updated to add the new definition for the term "Remodel".

Subsection H - is updated to add the new definition for the term "Renovation".

Subsection I - is updated to add the new definition for the term "Repair".

Section 8

Subsection A - part 4 - is updated to remove to non emergency repair

Section 9

Subsection A - part 2 is updated to clarify the language about property appraisals and the documents required for review.

Subsection A - part 6 is updated to clarify the language title binders the documents required for review.

Subsection A - part 7 is updated to clarify the language about distinguishing that when an education institution procures real property, a general warranty deed shall be required. However, when a seller is another governmental entity, a quitclaim deed shall be delivered to procurer.

Subsection A - part 9 is updated to replace the language acquisition with purchase and other grammatical corrections.

Subsection A - part 10 is updated to replace the language acquisition with purchase and clarify the language about educational institution's governing body.

Subsection B - is updated to correct language and separate out bond approvals language to Subsection C.

Subsection C - is added and language from subsection B about requirements of bond approvals.

Section 10

Title - is updated to remove the term REPAIRS

Subsection A - is updated to clarify language and correct grammatical errors.

Subsection A - part 1 is updated to replace the term repaired for remodeled.

Subsection A - part 3 is updated to replace the term repair for remodel.

Subsection A - part 4 is updated to add the term equipment costs.

Subsection A - part 8 is updated to add the approval of the Energy, Minerals, and Natural Resources Department.

Subsection A - part 8a is updated to add the certification and demonstration of compliance with 14.7.9 NMAC commercial conservation requirements.

Subsection A - part 8b is added and adjusted with the addition of part 8a as Subsection A part 8b, formerly part 8a.

Subsection A - part 8c is added and adjusted with the addition of part 8a as Subsection A part 8c, formerly part 8b.

Subsection A - part 8d is added and adjusted with the addition of part 8a as Subsection A part 8d, formerly part 8c.

Subsection B - is updated to correct language and separate out bond approvals language to Subsection C.

Subsection C - is added and language from subsection B about requirements of bond approvals.

These proposed rule changes will be contained in 2.70.4 NMAC. The register and the proposed rule are available on the SBOF website at: [of-finance/rules-and-policies/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting SBOF at bof.administrator@dfa.nm.gov and \(505\) 827-3985.](https://www.nmdfa.state.nm.us/board-</p>
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The SBOF plans to adopt this rule September 17, 2024.

A public hearing to receive testimony on this proposed rule will be held on September 4, 2024, at 9:00 a.m. The hearing will be held at the New Mexico Public Education Department, Marbry Hall Auditorium, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501, and via Microsoft Teams.

Join Microsoft Teams Meeting

Click here to join the meeting

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZDk1OWUyYTU0MWNlZC00YTUyLTlhYWQ0Mz00Yzc3Mjc3ODc1%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22230fd174-04fd-4b77-8270-e716cf95dec%22%7d
Meeting ID: 214 625 790 184
Passcode: 3JPRk2

Dial in by phone

+1 505-312-4308, 256122521#

Phone conference ID: 256 122 521#

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing the State Board of Finance administrator at: bof.administrator@dfa.nm.gov or calling 505-827-3985.

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

Interested persons may address written comments to:

State Board of Finance
ATTN: SBOF 2.70.4 NMAC Public Comments
407 Galisteo St.
Bataan Memorial Building, Room 181
Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: bof.administrator@dfa.nm.gov. Written mail, electronic mail and recorded comments must be received no later than 12:00 p.m. MT on September 3, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the SBOF website at <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

HUMAN SERVICES DEPARTMENT LIHEAP

NOTICE OF PUBLIC HEARING

The Health Care Authority (HCA) is required by Federal Law to file a State Plan that describes how HCA will administer the State's Low Income Home Energy Assistance Program (LIHEAP). The State Plan must be submitted every year to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The Department is required to offer a 30-day comment period and conduct a public hearing for the LIHEAP State Plan that includes Weatherization prior to submittal.

The HCA proposes the New Mexico LIHEAP State Plan covering the

period of October 1, 2024, to September 30, 2025.

Interested persons may send comments via electronic mail to: hca-isdrules@hca.nm.gov between July 30 and August 30, 2024. All comments received will be considered for the New Mexico LIHEAP State Plan; any written comments received will be posted to the HCA website within 3 days of receipt.

The proposed State Plan is available on and can be printed from the HCA's website at: <https://www.hca.nm.gov/wp-content/uploads/LIHEAP-DRAFT-FFY2025-State-Plan.pdf>. A copy of the proposed LIHEAP State Plan is available in written format upon request. Please call the Income Support Division at (505) 709-5391 to request a copy. You may also send a request to:

Health Care Authority
Income Support Division
Attn: LIHEAP Unit
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator at the office of General Counsel, at 505-827-7701 or through the New Mexico Relay system, toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide the requested alternative formats and special accommodations.

A public hearing to receive testimony on this proposed plan will be held on August 30, 2024, from 9:00 a.m. to 10:00 a.m. The hearing will be held at 39-B Plaza La Prensa, Santa Fe, NM 87507.

Interested persons may address written or recorded comments to:

Health Care Authority

P.O. Box 2348
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: HCA-isdrules@state.nm.gov.

REGULATION AND LICENSING DEPARTMENT PSYCHOLOGIST EXAMINERS, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Psychologist Examiners will hold a rule hearing on Friday, August 30, 2024, at 9:00 a.m. Immediately following the rule hearing, the Board will convene a regular board meeting to consider adoption of rules and take care of regular business. The hearing and meeting are being held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, NM in the Rio Grande Conference Room.

The meeting will also be held via Microsoft Teams for those desiring to attend virtually.

To join the meeting online by Microsoft Teams Meeting, please use the following link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjExMDFjMzYtNWJkMC00ZDU3LWIyMDItMDE4MGUyMzFhNTBi%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%220e369004-579e-46ef-9c0c-80e56d3f46b0%22%7d

Meeting ID: 214 298 159 091
Passcode: M6zLSq

Or call in (audio only)
+1 505-312-4308,,979105157#

The purpose of the rule hearing is to receive public comment related to

proposed amendments, repealing and/ or replacing the following rules that addresses changes to the Professional Psychologist Act as amended by Senate Bill 127 passed during the 2024 legislative session and signed by the Governor, which is effective July 1, 2024:

- 16.22.1 - General Provisions
- 16.22.21 – Conditional Prescribing or Prescribing Psychologists: Limits of Practice
- 16.22.22 – Conditional Prescribing or Prescribing Psychologists: Application Committee
- 16.22.24 – Application Procedures: Two-Year Supervised Practice
- 16.22.25 – Prescription Certificate: Application; Peer Review; Evaluation Outcome
- 16.22.27 – Conditional Prescribing or Prescribing Psychologists: Formulary
- 16.22.28 – Conditional Prescribing or Prescribing Psychologists: Complaint Procedures

On July 30, 2024, copies of the proposed rules may be obtained by going to the Board’s website at:

NMRLD | Psychologist Examiners | Rules and Laws, or by contacting the Board Administrator for the Board at (505) 476-4622.

The Board will begin accepting public comments on the proposed rule beginning July 30, 2024. Please submit written comments on the proposed rules to Ruth Romero, Board Administrator, via electronic mail at psychologist.examiners@rld.nm.gov, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, August 30, at 8:00 a.m. Written comments received prior to the rule hearing will be posted to the RLD website at: NMRLD | Psychologist Examiners | Rules and Laws. Persons in attendance will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on

the Board website at: Psychologist Examiners Board Meetings | New Mexico Regulation & Licensing Dept. (nm.gov). Copies of the rules or the agenda may also be obtained by contacting Ruth Romero, Board Administrator at (505) 476-4622.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Ruth Romero, Board Administrator at (505) 476-4622 at least seven (7) days prior to the rule hearing and regular board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

Statutory Authority: The Professional Psychologist Act, NMSA 1978, Sections 61-9-6, among other provisions, specifically authorizes the Board to “adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4, 1978], rules necessary to carry out the provision of the Professional Psychologist Act, in accordance with the provisions of the Uniform Licensing Act”.

Purpose of Proposed Rules: The proposed rule changes are intended to address statutory changes to the Professional Psychologist Act that were included in SB 127, which was passed by the New Mexico Legislature during the 2024 Regular Session. The proposed rule changes are also intended to provide greater clarity regarding the qualification and experience required for conditional prescribing psychologists and prescribing psychologists.

Summary of Proposed Changes: The proposed rules are summarized as follows:

- 16.22.1 NMAC – General Provisions – Adds a definition for “Clinical Psychopharmacology” and adds gender-neutral pronouns.
- 16.22.21 NMAC – Conditional

Prescribing or Prescribing Psychologists: Limits of Practice – Changes the scope of prescription drugs allowed to include drugs that are consistent with standards of practice in the field, clarifies that electronically transmitted prescriptions shall comply with state and federal law, clarifies ordering and reviewing laboratory tests, clarifies prescribing to family or household members, and implements a requirement for the prescribing psychologist to discuss with the patient’s healthcare provider within 20 business days when prescribing drugs for the management of side effects that are the result of psychotropic treatment, as required by statute.

16.22.22 NMAC – Conditional Prescribing or Prescribing Psychologist: Application Committee – Redefines who may be appointed as a member of the RxP application committee to remove specific member appointments.

16.22.24 NMAC – Application Procedures: Two-Year Supervised Practice – changes the definition of clinician to remove “independently licensed prescribing” to conform with the new definitions in statute. Also clarifies initial contact with a conditional prescribing psychologist as a person in training.

16.22.25 NMAC – Prescription Certificate: Application; Peer Review; Evaluation Outcome – Adds additional requirements to be provided when submitting an application for a prescription certificate, including a log of patients seen and a supervision log. Also removes “independently licensed prescribing” regarding the supervising clinician.

16.22.27 NMAC – Conditional Prescribing or Prescribing Psychologists: Formulary – sets out scope of practice and limitations of practice for prescribing psychologists and conditional prescribing psychologists by allowing the prescribing of medications to address

the management of side effects of psychotropic medications.

16.22.28 NMAC - Conditional Prescribing or Prescribing Psychologists: Complaint Procedures – Redefines members of the complaint committee regarding complaints about a conditional prescribing or prescribing psychologist to include two prescribing psychologists and two physicians recommended by the New Mexico medical board. In addition, adjusts the list of professional members who may be included on the complaint committee, removing psychologists with specialized training in psychopharmacology and licensed psychologists. Also clarifies the complaint process, including informal resolutions. Also adds a requirement for the committee to report on complaints specific to management of side effects on a quarterly basis.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF TERMINATION OF RULEMAKING

The Office of Superintendent of Insurance (OSI) is providing notice to terminate the rulemaking for the repeal and replace of 13.19.4 NMAC Multiple Employer Welfare Arrangements (MEWAs). The Superintendent has reviewed the record in this matter and has determined that due to the passage of legislation that will change the nature of the regulation of MEWAs in New Mexico, and that these changes were not noticed in the original NOPR or the Supplemental NOPR, there is no way to reconcile the proposed rule as a final rule at this time. Therefore, pursuant to NMSA 1978, Section 14-4-5(C), the rulemaking noticed on August 23, 2022, and on September 12, 2022 is hereby terminated and shall be promulgated at a later date.

VETERINARY MEDICINE, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The New Mexico Board of Veterinary Medicine (“NMBVM”) will hold a public rule hearing beginning on September 11, 2024, at 1:00 p.m., to consider any public comment and adoption of the proposed rules listed below.

Public participation is welcomed, and comments may be submitted in writing during the public comment period, or in person during the public rule hearing. The hearing and subsequent meeting will take place at the Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, New Mexico 87109.

The hearing and subsequent meeting may also be accessed virtually via Zoom

Meeting Link: <https://us02web.zoom.us/j/82643031507?pwd=78acOKCamWm1HtrTaxhRzdJrCuzTGS.1>

Meeting ID: 826 4303 1507

Passcode: 768379

or

Join by Phone: +1 346 248 7799 US

Copies of the proposed rule may be obtained through the board website or contacting the Board Office through the information below:

www.bvm.nm.gov

Deborah Schenk, Executive Assistant/
CPO

(575) 748-2042

deborah.schenk@bvm.nm.gov

Written comment will be accepted during the public comment period, up until September 11, 2024, and may be submitted either by email or by postal mail to the following addresses:
deborah.schenk@bvm.nm.gov
Attn: New Mexico Board of Veterinary Medicine
7301 Jefferson Street NE, Suite H
Albuquerque, NM 87109

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

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

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact the Board Chair.

Statutory Authority:

NMSA 1978, Section 61-14-7.1 directs the Animal Sheltering Committee of the New Mexico Board of Veterinary Medicine to develop criteria for individuals, nonprofit organizations, animal shelters and euthanasia agencies to receive monetary assistance for dog and cat spaying and neutering from the Animal Care and Facility Fund; and recommend to the Board the disbursements of money from the Animal Care and Facility Fund to eligible individuals, nonprofit organizations, animal shelters and euthanasia agencies.

Purpose of Proposed Rules:

The purpose of the proposed rules is to establish criteria and procedures for the disbursement of funds from the Animal Care and Facility Fund to eligible recipients for providing spay and neuter services to dogs and cats.

Summary of Proposed Rule:

The proposed rule determines the eligibility of all organizations and individuals seeking disbursements from the Animal Care and Facility Fund, outlines the obligations of successful applicants, describes the qualifications for individuals seeking disbursements from the Fund, details possible loss of eligibility for applicants, and provides the procedure for Board approval of disbursements from the Fund.

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF**

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing to receive public comments regarding proposed amendments to NMAC 11.2.31 (Apprenticeship Assistance) in the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on September 4, 2024 from 1:00 pm to 3:00 pm.

The purpose and summary of the public comment hearing will be to obtain input and public comment on proposed amendments to allow additional opportunities for apprenticeship programs to participate in the Apprenticeship Assistance funding.

Pursuant to NMSA 1978 §21-19A-6, the Labor Relations Division is responsible for promulgating such rules and regulations as are necessary to carry out the provisions of the Apprenticeship Assistance Act.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention

Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on September 3, 2023. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@dws.nm.gov. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**End of Notices of
Rulemaking and
Proposed Rules**

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Adopted Rules

Effective Date and Validity of Rule Filings

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

**HEALTH CARE
AUTHORITY
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.200.510 NMAC, Sections 1, 8, 11, 12, 13 and 15 effective 8/1/2024.

8.200.510.1 ISSUING

AGENCY: New Mexico [~~Human Services Department (HSD)~~] Health Care Authority (HCA).
[8.200.510.1 NMAC - Rp,
8.200.510.1 NMAC, 7/1/2015; A,
8/1/2024]

8.200.510.8 MISSION

STATEMENT: [~~To transform lives. Working with our partners, we design and deliver innovative, high-quality health and human services that improve the security and promote independence for New Mexicans in their communities.~~] We ensure that New Mexicans attain their highest level of health by providing whole-person, cost effective, accessible, and high-quality health care and safety-net services.
[8.200.510.8 NMAC - Rp,
8.200.510.8 NMAC, 7/1/2015;
A/E, 3/1/2017; A/E, 1/16/2020, A,
8/1/2024]

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):

The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

A. Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000

and the federal maximum CSRA is \$60,000.

B. On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

C. On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

D. On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

E. On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

F. On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

G. On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

H. On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

I. On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

J. On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

K. On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

L. On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

M. On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

N. On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

O. On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

P. On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

Q. On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

R. On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

S. On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

T. On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

U. On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

V. On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

W. On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

X. On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

Y. On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

Z. On or after January 1, 2014, the state minimum is \$31,290

and the federal maximum CSRA is \$117,240.

AA. On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

BB. On or after January 1, 2016, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.

CC. On or after January 1, 2017, the state minimum is \$31,290 and the federal maximum CSRA is \$120,900.

DD. On or after January 1, 2018, the state minimum is \$31,290 and the federal maximum CSRA is \$123,600.

EE. On or after January 1, 2019, the state minimum is \$31,290 and the federal maximum CSRA is \$126,420.

FF. On or after January 1, 2020, the state minimum is \$31,290 and the federal maximum CSRA is \$128,640.

GG. On or after January 1, 2021, the state minimum is \$31,290 and the federal maximum CSRA is \$130,380.

HH. On or after January 1, 2022, the state minimum is \$31,290 and the federal maximum CSRA is \$137,400.

II. On or after January 1, 2023, the state minimum is \$31,290 and the federal maximum CSRA is \$148,620.

JJ. On or after January 1, 2024, the state minimum is \$31,290 and the federal maximum CSRA is \$154,140.

[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 7/1/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):

Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION AMOUNT

A. Personal needs allowance for institutionalized spouse: [July 1, 2022] [\$83] July 1, 2023 \$91

B. Minimum monthly maintenance needs allowance (MMMNA): [July 1, 2022] [\$2,289] July 1, 2023 \$2,465

C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:

(1) If allowable shelter expenses of the community spouse exceeds the minimum allowance then deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

[July 1, 2022] \$687]

2023 \$740

(2) Excess shelter allowance may not exceed the maximum:

[**(a)** Jan. 1, 2023 \$1,427

(b) Jan. 1, 2022 \$1,257

(c) Jan. 1, 2021 \$1,105

(d) July 1, 2020 \$1,062

(e) Jan. 1, 2020

\$1,103]

(a) Jan. 1, 2024

\$1,388.50 **(b)**

July 1, 2023 \$1,251 **(c)**

Jan. 1, 2023 \$1,427 **(d)**

July 1, 2022 \$1,146 **(e)**

Jan. 1, 2022 \$1,257 **(f)**

July 1, 2021 \$1,082 **(g)**

Jan. 1, 2021 \$1,105

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).

F. Non-covered medical expenses.

G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed [\$3,716] \$3,853.50.

[8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 7/1/2015; A/E, 3/1/2017; A/E, 8/30/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 1/16/2020; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

DATE AVERAGE COST PER MONTH

A. July 1, 1988 - Dec. 31, 1989 \$1,726 per month

B. Jan. 1, 1990 - Dec. 31, 1991
\$2,004 per month

C. Jan. 1, 1992 - Dec. 31, 1992
\$2,217 per month

D. Effective July 1, 1993, for application
\$2,377 per month
register on or after
Jan. 1, 1993

E. Jan. 1, 1994 - Dec. 31, 1994
\$2,513 per month

F. Jan. 1, 1995 - Dec. 31, 1995
\$2,592 per month

G. Jan. 1, 1996 - Dec. 31, 1996
\$2,738 per month

H. Jan. 1, 1997 - Dec. 31, 1997
\$2,889 per month

I. Jan. 1, 1998 - Dec. 31, 1998
\$3,119 per month

J. Jan. 1, 1999 - Dec. 31, 1999
\$3,429 per month

K. Jan. 1, 2000 - Dec. 31, 2000
\$3,494 per month

L. Jan. 1, 2001 - Dec. 31, 2001
\$3,550 per month

M. Jan. 1, 2002 - Dec. 31, 2002
\$3,643 per month

N. Jan. 1, 2003 - Dec. 31, 2003
\$4,188 per month

O. Jan. 1, 2004 - Dec. 31, 2004
\$3,899 per month

P. Jan. 1, 2005 - Dec. 31, 2005
\$4,277 per month

Q. Jan. 1, 2006 - Dec. 31, 2006
\$4,541 per month

R. Jan. 1, 2007 - Dec. 31, 2007
\$4,551 per month

S. Jan. 1, 2008 - Dec. 31, 2008
\$4,821 per month

T. Jan. 1, 2009 - Dec. 31, 2009
\$5,037 per month

U. Jan. 1, 2010 - Dec. 31, 2010
\$5,269 per month

V. Jan. 1, 2011 - Dec. 31, 2011
\$5,774 per month

W. Jan. 1, 2012 - Dec. 31, 2012
\$6,015 per month

X. Jan. 1, 2013 - Dec. 31, 2013
\$6,291 per month

Y. Jan. 1, 2014 - Dec. 31, 2014
\$6,229 per month

Z. Jan. 1, 2015 - Dec. 31, 2015
\$6,659 per month

AA. Jan. 1, 2016 - Dec. 31, 2016
\$7,786 per month

BB. Jan. 1, 2017 - Dec. 31, 2017
\$7,485 per month

CC. Jan. 1, 2018 - Dec. 31, 2018
\$7,025 per month

DD. Jan. 1, 2019 - Dec. 31, 2019
\$7,285 per month

EE. Jan. 1, 2020 - Dec. 31, 2020
\$7,480 per month

FF. Jan. 1, 2021 - Dec. 31, 2021
\$7,590 per month

GG. Jan. 1, 2022 - Dec. 31, 2021
\$7,811 per month

HH. Jan. 1, 2023 - Dec. 31, 2023
\$8,275 per month

II. Jan. 1, 2024 -
\$8,919 per month
[8.200.510.13 NMAC - Rp,
8.200.510.13 NMAC, 7/1/2015;
A/E, 1/1/2016; A/E, 3/1/2017;
A/E, 8/30/2018; A/E, 4/11/2019;
A, 7/30/2019; A/E, 8/11/2020;
A, 12/15/2020; A/E, 4/1/2021; A,
9/1/2021; A/E, 4/1/2022; A, 8/9/2022;
A/E, 4/1/2023; A/E, 4/1/2024; A,
8/1/2024]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:

A. Jan. 2024
\$713,000
[(A)] **B.** Jan. 2023
\$688,000
[(B)] **C.** Jan. 2022
\$636,000
[(C)] **D.** Jan. 2021
\$603,000
[(D)] **E.** Jan. 2020
\$595,000
[(E)] **F.** Jan. 2019
\$585,000
[(F)] **G.** Jan. 2018
\$572,000
[(G)] **H.** Oct. 2017
\$560,000
[(H)] **I.** Jan. 2017
\$840,000
[(I)] **J.** Jan. 2016
\$828,000
[(J)] **K.** Jan. 2015
\$828,000
[(K)] **L.** Jan. 2014
\$814,000
[(L)] **M.** Jan. 2013
\$802,000
[(M)] **N.** Jan. 2012
\$786,000
[(N)] **O.** Jan. 2011
\$758,000
[(O)] **P.** Jan. 2010
\$750,000
[8.200.510.15 NMAC - Rp,
8.200.510.15 NMAC, 7/1/2015; A/E,
1/1/2016; A/E, 3/1/2017; A, 3/1/18;
A/E, 8/30/2018; A/E, 4/11/2019;
A, 7/30/2019; A/E, 8/11/2020;
A, 12/15/2020; A/E, 4/1/2021; A,
9/1/2021; A/E, 4/1/2022; A, 8/9/2022;
A/E, 4/1/2023; A/E, 4/1/2024; A,
8/1/2024]

**HEALTH CARE
AUTHORITY
MEDICAL ASSISTANCE
DIVISION**

This is an amendment to 8.200.520 NMAC, Sections 1, 8, 11, 12, 13, 15, 16 and 20 effective 8/1/2024.

8.200.520.1 ISSUING
AGENCY: New Mexico [Human-Services Department (HSD)] Health Care Authority (HCA).

[8.200.520.1 NMAC - Rp,
8.200.520.1 NMAC, 8/28/2015; A,
8/1/2024]

8.200.520.8 MISSION

STATEMENT: [~~To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.~~] We ensure that New Mexicans attain their highest level of health by providing whole-person, cost-effective, accessible, and high-quality health care and safety-net services.

[8.200.520.8 NMAC - Rp,
8.200.520.8 NMAC, 8/28/2015;
Repealed/E, 4/1/2016; A/E,
8/11/2020; A, 8/1/2024]

8.200.520.11 FEDERAL POVERTY INCOME GUIDELINES:

A. One hundred percent federal poverty limits (FPL):

	Size of budget group
FPL per month	[1 _____

\$1,215*	_____ 2 _____
----------	---------------

\$1,644*	_____ 3 _____
----------	---------------

\$2,072	_____ 4 _____
---------	---------------

\$2,500	_____ 5 _____
---------	---------------

\$2,929	_____ 6 _____
---------	---------------

\$3,357	_____ 7 _____
---------	---------------

\$3,785	_____ 8 _____
---------	---------------

\$4,214]	_____ 1 _____
----------	---------------

\$1,255*	_____
----------	-------

_____ 2 _____

\$1,704*	_____
----------	-------

_____ 3 _____

\$2,152	_____
---------	-------

_____ 4 _____

\$2,600	_____
---------	-------

_____ 5 _____

\$3,049	_____
---------	-------

_____ 6 _____

\$3,497	_____
---------	-------

_____ 7 _____

\$3,945	_____
---------	-------

_____ 8 _____

\$4,394	_____
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Add
[~~\$429~~] \$449 for each additional person in the budget group.

*FPL must be below 100% for an individual or couple for qualified medicare beneficiary (QMB) program.

B. One hundred twenty percent FPL: This income level is used only in the determination of the maximum income limit for specified low income medicare beneficiaries (SLIMB) applicants or eligible recipients.

Applicant or eligible recipient Amount

1 Individual At least [~~\$1,215~~] \$1,255 per month but no more than [~~\$1,458~~] \$1,506 per month.

2 Couple At least [~~\$1,644~~] \$1,704 per month but no more than [~~\$1,972~~] \$2,044 per month.

For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed.

C. One hundred thirty-three percent FPL:

Size of budget group	FPL per month
_____	[1 _____

\$1,616	_____ 2 _____
---------	---------------

\$2,186	_____ 3 _____
---------	---------------

\$2,756	_____ 4 _____
---------	---------------

\$3,325	_____ 5 _____
---------	---------------

\$3,895	_____ 6 _____
---------	---------------

\$4,465	_____ 7 _____
---------	---------------

\$5,035	_____ 8 _____
---------	---------------

\$5,604]	_____ 1 _____
----------	---------------

\$1,670	_____ 2 _____
---------	---------------

\$2,266	_____ 3 _____
---------	---------------

\$2,862	_____ 4 _____
---------	---------------

\$3,458	_____ 5 _____
---------	---------------

\$4,055	_____ 6 _____
---------	---------------

\$4,651	_____ 7 _____
---------	---------------

\$5,247	_____ 8 _____
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\$5,844	_____
---------	-------

Add [~~\$569~~] \$597 for each additional person in the budget group.

D. One hundred thirty-five percent FPL: This income level is used only in the determination of the maximum income limit for a qualified

individual 1 (Q11) applicant or eligible recipient. For purposes of this eligibility calculation, "couple" means an applicant couple or an applicant with an ineligible spouse when income is deemed. The following income levels apply:

Applicant or eligible recipient Amount

1
Individual At least [\$1,458] \$1,506 per month but no more than [\$1,641] \$1,695 per month.

2
Couple At least [\$1,972] \$2,044 per month but no more than [\$2,219] \$2,300 per month.

E. One hundred eighty-five percent FPL:

Size of budget group FPL per month [1—

\$2,248 2

\$3,041 3

\$3,833 4

\$4,625 5

\$5,418 6

\$6,210 7

\$7,003 8

\$7,795] 1

\$2,322 2

\$3,152 3

\$3,981 4

\$4,810

5
\$5,640

6
\$6,469

7
\$7,299

8
\$8,128

Add [\$792] \$829 for each additional person in the budget group.

F. Two hundred percent FPL:

Size of budget group FPL per month [1—

\$2,430 2

\$3,287 3

\$4,144 4

\$5,000 5

\$5,857 6

\$6,714 7

\$7,570 8

\$8,427] 1

\$2,510 2

\$3,407 3

\$4,304 4

\$5,200 5

\$6,097

6
\$6,994

7
\$7,890

8
\$8,787

Add [\$857] \$897 for each additional person in the budget group.

G. Two hundred thirty-five percent FPL:

Size of budget group FPL per month [1—

\$2,856 2

\$3,862 3

\$4,869 4

\$5,875 5

\$6,882 6

\$7,889 7

\$8,895 8

\$9,902] 1

\$2,950 2

\$4,003 3

\$5,057 4

\$6,110 5

\$7,164 6

\$8,218

7	\$9,271
8	\$10,325

Add [~~\$1,007~~] \$1,054 for each additional person in the budget group.

H. Two hundred fifty percent FPL:

Size of budget group	FPL per month
1	\$3,038
2	\$4,109
3	\$5,180
4	\$6,250
5	\$7,321
6	\$8,392
7	\$9,463
8	\$10,534]
1	\$3,138
2	\$4,259
3	\$5,380
4	\$6,500
5	\$7,621
6	\$8,742
7	\$9,863
8	\$10,984

Add [~~\$1,071~~] \$1,121 for each additional person in the budget group.

[8.200.520.11 NMAC - Rp, 8.200.520.11 NMAC, 8/28/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019, A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.200.520.12 COST OF LIVING ADJUSTMENT (COLA) DISREGARD COMPUTATION: The countable social security benefit without the COLA is calculated using the COLA increase table as follows:

- A.** divide the current gross social security benefit by the COLA increase in the most current year; the result is the social security benefit before the COLA increase;
- B.** divide the result from Subsection A above by the COLA increase from the previous period or year; the result is the social security benefit before the increase for that period or year; and
- C.** repeat Subsection B above for each year, through the year that the applicant or eligible recipient received both social security benefits and supplemental security income (SSI); the final result is the countable social security benefit.

	Period and year	COLA increase	= benefit before
<u>1</u>	<u>2024 Jan - Dec</u>	<u>3.2</u>	<u>Jan 24</u>
[1] <u>2</u>	2023 Jan - Dec	8.7	Jan 23
[2] <u>3</u>	2022 Jan - Dec	5.9	Jan 22
[3] <u>4</u>	2021 Jan - Dec	1.3	Jan 21
[4] <u>5</u>	2020 Jan - Dec	1.6	Jan 20
[5] <u>6</u>	2019 Jan - Dec	2.8	Jan 19
[6] <u>7</u>	2018 Jan - Dec	2.0	Jan 18
[7] <u>8</u>	2017 Jan - Dec	0.3	Jan 17
[8] <u>9</u>	2016 Jan - Dec	0	Jan 16
[9] <u>10</u>	2015 Jan - Dec	1.017	Jan 15
[10] <u>11</u>	2014 Jan - Dec	1.015	Jan 14
[11] <u>12</u>	2013 Jan - Dec	1.017	Jan 13
[12] <u>13</u>	2012 Jan - Dec	1.037	Jan 12
[13] <u>14</u>	2011 Jan - Dec	0	Jan 11

[14] <u>15</u>	2010 Jan - Dec	1	Jan 10
[15] <u>16</u>	2009 Jan - Dec	1	Jan 09
[16] <u>17</u>	2008 Jan - Dec	1.058	Jan 08
[17] <u>18</u>	2007 Jan - Dec	1.023	Jan 07
[18] <u>19</u>	2006 Jan - Dec	1.033	Jan 06
[19] <u>20</u>	2005 Jan - Dec	1.041	Jan 05
[20] <u>21</u>	2004 Jan - Dec	1.027	Jan 04
[21] <u>22</u>	2003 Jan - Dec	1.021	Jan 03
[22] <u>23</u>	2002 Jan - Dec	1.014	Jan 02
[23] <u>24</u>	2001 Jan - Dec	1.026	Jan 01
[24] <u>25</u>	2000 Jan - Dec	1.035	Jan 00
[25] <u>26</u>	1999 Jan - Dec	1.025	Jan 99
[26] <u>27</u>	1998 Jan - Dec	1.013	Jan 98
[27] <u>28</u>	1997 Jan - Dec	1.021	Jan 97
[28] <u>29</u>	1996 Jan - Dec	1.029	Jan 96
[29] <u>30</u>	1995 Jan - Dec	1.026	Jan 95
[30] <u>31</u>	1994 Jan - Dec	1.028	Jan 94
[31] <u>32</u>	1993 Jan - Dec	1.026	Jan 93
[32] <u>33</u>	1992 Jan - Dec	1.03	Jan 92
[33] <u>34</u>	1991 Jan - Dec	1.037	Jan 91
[34] <u>35</u>	1990 Jan - Dec	1.054	Jan 90
[35] <u>36</u>	1989 Jan - Dec	1.047	Jan 89
[36] <u>37</u>	1988 Jan - Dec	1.04	Jan 88
[37] <u>38</u>	1987 Jan - Dec	1.042	Jan 87
[38] <u>39</u>	1986 Jan - Dec	1.013	Jan 86
[39] <u>40</u>	1985 Jan - Dec	1.031	Jan 85
[40] <u>41</u>	1984 Jan - Dec	1.035	Jan 84
[41] <u>42</u>	1982 Jul - 1983 Dec	1.035	Jul 82
[42] <u>43</u>	1981 Jul - 1982 Jun	1.074	Jul 81
[43] <u>44</u>	1980 Jul - 1981 Jun	1.112	Jul 80
[44] <u>45</u>	1979 Jul - 1980 Jun	1.143	Jul 79
[45] <u>46</u>	1978 Jul - 1979 Jun	1.099	Jul 78
[46] <u>47</u>	1977 Jul - 1978 Jun	1.065	Jul 77
[47] <u>48</u>	1977 Apr - 1977 Jun	1.059	Apr 77

[8.200.520.12 NMAC - Rp, 8.200.520.12 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.200.520.13 FEDERAL BENEFIT RATES (FBR) AND VALUE OF ONE-THIRD REDUCTION (VTR):

Year	Individual	Institution	Individual	Couple	Institution	Couple
	FBR	FBR	VTR	FBR	FBR	VTR

1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/11 to 1/12	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/12 to 1/13	\$698	\$30	\$232.66	\$1,048	\$60	\$349.33
1/13 to 1/14	\$710	\$30	\$237	\$1,066	\$60	\$355
1/14 to 1/15	\$721	\$30	\$240	\$1,082	\$60	\$361
1/15 to 12/15	\$733	\$30	\$244	\$1,100	\$60	\$367
1/16 to 12/16	\$733	\$30	\$244	\$1,100	\$60	\$367
1/17 to 12/17	\$735	\$30	\$245	\$1,103	\$60	\$368
1/18 to 12/18	\$750	\$30	\$250	\$1,125	\$60	\$375
1/19 to 12/19	\$771	\$30	\$257	\$1,157	\$60	\$386
1/20 to 12/20	\$783	\$30	\$261	\$1,175	\$60	\$392
1/21 to 12/21	\$794	\$30	\$264.66	\$1,191	\$60	\$397
1/22 to 12/22	\$841	\$30	\$280.33	\$1,261	\$60	\$420.50
1/23 to 12/23	\$914	\$30	\$304.66	\$1,371	\$60	\$456.99
1/24 to 12/24	\$943	\$30	\$314.33	\$1,415	\$60	\$471.66

A. Ineligible child deeming allocation is [~~\$457~~] \$472.

B. Part B premium is [~~\$164.90~~] \$174.70 per month.

C. VTR (value of one third reduction) is used when an individual or a couple lives in the household of another and receives food and shelter from the household or when the individual or the couple is living on ~~his or her~~ their own household but receiving support and maintenance from others.

D. The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[8.200.520.13 NMAC - Rp, 8.200.520.13 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.200.520.15 SUPPLEMENTAL SECURITY INCOME (SSI) LIVING ARRANGEMENTS:

A. Individual living in [his or her] their own household who own or rent:

Payment amount:

[~~\$914~~] \$943 Individual

[~~\$1,371~~] \$1,415 Couple

B. Individual receiving support and maintenance payments:

For an individual or couple living in [his or her] their own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount:

[~~\$914 - \$304.66 = \$609.34 Individual~~
~~\$1,371 - \$456.99 = \$914.01~~

Couple]

\$943 - \$314.33 = \$628.67

Individual

\$1,415 - \$471.66 = \$943.34

Couple

C. Individual or couple living household of another:

For an individual or couple living in another person's household and not contributing [his or her] their pro-rata share of household expenses, subtract the VTR.

Payment amount:

[~~\$914 - \$304.66 = \$609.34 Individual~~
~~\$1,371 - \$456.99 = \$914.01~~

Couple]

\$943 - \$314.33 = \$628.67

Individual

\$1,415 - \$471.66 = \$943.34

Couple

D. Child living in home with [his or her] their parent:

Payment

amount: [~~\$914~~] \$943

E. Individual in institution:

Payment

amount: \$30.00

[8.200.520.15 NMAC - Rp, 8.200.520.15 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER SERVICES (HCBS) CATEGORIES:

Effective [January 1, 2022] January 1, 2024, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$2,742~~] \$2,829.

[8.200.520.16 NMAC - Rp, 8.200.520.16 NMAC, 8/28/2015; A/E, 3/1/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

Date	
Calendar Quarter	
Amount	
<u>Jan. 2024 - Dec. 2024</u>	<u>\$1,730 per calendar</u>

quarter	Jan. 2023 - Dec. 2023	\$1,640 per calendar
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quarter	Jan. 2022 - Dec. 2022	\$1,510 per calendar
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quarter	Jan. 2021 - Dec. 2021	\$1,470 per calendar
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quarter	Jan. 2020 - Dec. 2020	\$1,410 per calendar
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quarter	Jan. 2019 - Dec. 2019	\$1,360 per calendar
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quarter	Jan. 2018 - Dec. 2018	\$1,320 per calendar
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quarter	Jan. 2017 - Dec. 2017	\$1,300 per calendar
---------	-----------------------	----------------------

quarter	Jan. 2016 - Dec. 2016	\$1,260 per calendar
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	Jan. 2015 - Dec. 2015	\$1,220 per calendar
quarter	Jan. 2014 - Dec. 2014	\$1,200 per calendar
quarter	Jan. 2013 - Dec. 2013	\$1,160 per calendar
quarter	Jan. 2012 - Dec. 2012	\$1,130 per calendar
quarter	Jan. 2011 - Dec. 2011	\$1,120 per calendar
quarter	Jan. 2010 - Dec. 2010	\$1,120 per calendar
quarter	Jan. 2009 - Dec. 2009	\$1,090 per calendar
quarter	Jan. 2008 - Dec. 2008	\$1,050 per calendar
quarter	Jan. 2007 - Dec. 2007	\$1,000 per calendar
quarter	Jan. 2006 - Dec. 2006	\$970 per calendar
quarter	Jan. 2005 - Dec. 2005	\$920 per calendar
quarter	Jan. 2004 - Dec. 2004	\$900 per calendar
quarter	Jan. 2003 - Dec. 2003	\$890 per calendar
quarter	Jan. 2002 - Dec. 2002	\$870 per calendar
quarter	[8.200.520.20 NMAC - Rp, 8.200.520.20 NMAC, 8/28/2015; A/E, 1/1/2016; A/E, 03/01/2017; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A/E, 8/11/2020; A, 12/15/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]	

**HEALTH CARE AUTHORITY
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.291.430 NMAC, Sections 1, 8, 10, 13, 14 and 15 effective 8/1/2024.

8.291.430.1 ISSUING AGENCY: New Mexico [Human Services Department (HSD)] Health Care Authority (HCA).

[8.291.430.1 NMAC - Rp, 8.291.430.1 NMAC, 11/16/2015; A, 8/1/2024]

8.291.430.8 MISSION STATEMENT: [To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.] We ensure that New Mexicans attain their highest level of health by providing whole-person, cost-effective, accessible, and high-quality health care and safety-net services.

[8.291.430.8 NMAC - Rp, 8.291.430.8 NMAC, 11/16/2015; A/E, 4/1/2016; A, 12/1/2020; A, 8/1/2024]

8.291.430.10 FEDERAL POVERTY LEVEL (FPL): This part contains the monthly federal poverty level table for use in determining monthly income standards for MAP categories of eligibility outlined in 8.291.400.10 NMAC:

HOUSEHOLD SIZE	100%	133%	138%	190%	240%	250%	300%
1	[\$1,215] \$1,255	[\$1,616] \$1,670	[\$1,677] \$1,732	[\$2,309] \$2,385	[\$2,916] \$3,012	[\$3,038] \$3,138	[\$3,645] \$3,765
2	[\$1,644] \$1,704	[\$2,186] \$2,266	[\$2,268] \$2,351	[\$3,123] \$3,237	[\$3,944] \$4,088	[\$4,109] \$4,259	[\$4,930] \$5,110
3	[\$2,072] \$2,152	[\$2,756] \$2,862	[\$2,859] \$2,970	[\$3,937] \$4,089	[\$4,972] \$5,164	[\$5,180] \$5,380	[\$6,215] \$6,455
4	[\$2,500] \$2,600	[\$3,325] \$3,458	[\$3,450] \$3,588	[\$4,750] \$4,940	[\$6,000] \$6,240	[\$6,250] \$6,500	[\$7,500] \$7,800
5	[\$2,929] \$3,049	[\$3,895] \$4,055	[\$4,042] \$4,207	[\$5,564] \$5,792	[\$7,028] \$7,316	[\$7,321] \$7,621	[\$8,785] \$9,145
6	[\$3,357] \$3,497	[\$4,465] \$4,651	[\$4,633] \$4,826	[\$6,378] \$6,644	[\$8,056] \$8,392	[\$8,392] \$8,742	[\$10,070] \$10,490
7	[\$3,785] \$3,945	[\$5,035] \$5,247	[\$5,224] \$5,445	[\$7,192] \$7,496	[\$9,084] \$9,468	[\$9,463] \$9,863	[\$11,355] \$11,835
8	[\$4,214] \$4,394	[\$5,604] \$5,844	[\$5,815] \$6,063	[\$8,006] \$8,348	[\$10,112] \$10,544	[\$10,534] \$10,984	[\$12,640] \$13,180
+1	[\$429] \$449	[\$569] \$597	[\$591] \$618	[\$814] \$852	[\$1,028] \$1,076	[\$1,071] \$1,121	[\$1,285] \$1,345

[8.291.430.10 NMAC - Rp, 8.291.430.10 NMAC, 11/16/2015; A/E, 4/1/2016; A/E, 9/14/2017; A, 2/1/2018; A/E, 5/17/2018; A, 9/11/2018; A/E, 4/11/2019; A, 7/30/2019; A, 12/1/2020; A/E, 4/1/2021; A, 9/1/2021; A/E, 4/1/2022; A, 8/9/2022; A/E, 4/1/2023; A/E, 4/1/2024; A, 8/1/2024]

8.291.430.13 LIVING ARRANGEMENT: All individuals listed on the MAP application are evaluated according to their living arrangement to determine if they can be included in an assistance group or budget group.

A. Extended living in the home: An individual physically absent from the home is a member of the assistance unit or budget group. Extended living in the home includes:

- (1) attending college or boarding school;
- (2) receiving treatment in a title XIX MAD enrolled facility (including institutionalized when meeting a nursing facility (NF) level of care (LOC) and intermediate care facilities for the mentally retarded (ICF-MRs);
- (3) emergency absences: an applicant or recipient absent from the home due to an emergency, who is expected to return to the household, continues to be a member of the household;
- (4) foster care placements: a minor applicant or minor recipient removed from the home by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department) will be considered to be living in the home until the adjudicatory hearing; if the adjudicatory hearing results in custody being granted to some other entity, the minor applicant or minor recipient will be removed from the assistance unit and budget group;

(5) inmate of a public institution:

(a) see 8.200.410.15 NMAC for the definition of a public institution and an inmate of a public institution;

(b) an inmate of a public institution is included in the household with other mandatory household members if [~~he or she is~~] they are expected to file a tax return or be claimed as a tax dependent; see 8.291.430.14 NMAC;

(c) an inmate of a public institution is not included in the household if [~~he or she neither files~~] they neither file a tax return nor is claimed as a tax dependent which requires that mandatory household members be living together; see 8.291.430.14 NMAC.

B. Extended living in the home also includes:

(1) residential treatment centers;

(2) group homes; and

(3) free-standing psychiatric hospitals.

C. Living in the home with a parent caretaker: To be included in the assistance unit, a minor applicant or minor recipient must be living, or considered to be living, in the home of:

(1) a biological or adoptive or step parent (there is a presumption that a child born to a married woman is the child of the husband); or

(2) a specified relative who:

(a) is related within the fifth degree of relationship by blood, marriage or adoption, as determined by New Mexico statute Chapter 45 - Uniform Probate Code; a relationship based upon marriage, such as "in-law" or "step" relationships, continues to exist following the dissolution of the marriage by divorce or death; and

(b) assumes responsibility for the day-to-day care and control of the minor applicant or minor recipient; the determination of whether an

individual functions as the specified relative shall be made by the specified relative unless other information known to the worker clearly indicates otherwise;

(3) a minor applicant or minor recipient considered to be living in the home: a minor applicant or minor recipient is considered to be part of the assistance unit and budget group as evidenced by the minor applicant's or minor recipient's customary physical presence in the home; if [~~a he or she is~~] they are living in more than one household, the following applies:

(a) the custodial parent is the parent with whom the minor applicant or minor recipient lives the greater number of nights; or

(b) if the minor applicant or minor recipient spends equal amounts of time with each household, the minor applicant or minor recipient shall be considered to be living in the household of the parent with the higher modified adjusted gross income (MAGI).

D. For individuals for whom the state must complete a determination of income either based on MAGI or for MAGI-excepted groups:

(1) MAD recognizes same-sex couples as spouses, if they are legally married under the laws of the state, territory, or foreign jurisdiction in which the marriage was celebrated; and

(2) for an applicant or recipient whose MAP category of eligibility is based on the eligibility for any other [~~HSD~~] HCA benefit program and for which income is not used in the eligibility determination, the applicant's or recipient's marital status will not be used in making the eligibility determination; the applicant's or recipient's MAP category of eligibility will continue to be based on the determination of eligibility of the other [~~HSD~~] HCA applicable benefits. [8.291.430.13 NMAC - Rp, 8.291.430.13 NMAC, 11/16/2015; A, 8/1/2024]

8.291.430.14 BASIS FOR DEFINING THE ASSISTANCE UNIT AND BUDGET GROUPS:

At the time of a MAP application, an applicant or recipient and ISD shall identify everyone who is to be considered for inclusion in an assistance unit and budget group. The composition of the assistance unit and budget group is based on the following factors:

A. Assistance group: the assistance unit includes an applicant or recipient who applies and who is determined to meet a MAP category of eligibility found in 8.291.430.10 NMAC.

B. Budget group: the budget group consists of the following types and will be established on an individual basis:

(1) tax filers and dependents: households that submit a MAP application where an applicant or a recipient intends to file for federal taxes or will be claimed as a dependent on federal income taxes for the current year:

(a) the budget group will consist of applicants or recipients who are listed on the MAP application as the taxpayer and tax dependents;

(b) if there are multiple taxpayers listed on a single MAP application, the budget group(s) will be established based on who the taxpayer intends to claim as a dependent (including the taxpayer); only the taxpayer and [~~his or her~~] their child and tax dependent (dependent) listed on the MAP application will be considered as part of the budget group;

(c) in the case of an applicant or recipient married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return, a separate tax return or whether one spouse expects to be claimed as a tax dependent by the other spouse;

(d) exceptions to tax filer rules: the following applicants or recipients will be treated as non-filers:

(i) an applicant or a recipient other than a spouse or a biological, adopted, or step child who expect to be claimed as a tax dependent by another taxpayer outside of the household;

(ii) an applicant or a recipient under 19 who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint tax return; and

(iii) an applicant or a recipient under 19 who expect to be claimed as a tax dependent by a non-custodial parent.

(2) individuals who neither file a tax return nor are claimed as a tax dependent: in the case of applicants or recipients who do not expect to file a federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which a MAP category of eligibility is being made, or meet an exception to tax filer requirements in Paragraph (1) of Subsection B of 8.291.430.14 NMAC, the budget group consists of the applicant or recipient and, if living with the applicant or recipient:

(a) the applicant's or recipient's spouse;

(b) the applicant's and recipient's natural, adopted and step children under the age of 19; and

(c) in the case of applicants or recipients under the age of 19, the applicant's or recipient's natural, adopted and step parents and natural, adoptive and step siblings under the age of 19.

(3) households may submit a MAP application that includes both filer and non-filers as defined in Subsections A and B of 8.291.430.14 NMAC; the budget group(s) will be organized using the filer and non-filer concepts, and eligibility will be established on an individual basis.

[8.291.430.14 NMAC - Rp, 8.291.430.14 NMAC, 11/16/2015; A, 8/1/2024]

8.291.430.15 INCOME STANDARDS: Verification of income, both earned and unearned, is mandatory for all MAP categories of ACA related eligibility. Verification methods can be found at 8.291.410 NMAC.

A. All income will be calculated as defined by Section 36B of the Federal Tax Code to produce a MAGI. This amount is compared to the FPL for the appropriate MAP category of eligibility and household size.

B. MAGI is calculated using the methodologies defined in Section 36B(d)(2)(B) of the Federal Tax Code, with the following exceptions:

(1) an amount received as a lump sum is counted as income only in the month received except for qualified lottery and gambling winnings per Subsection D of 8.291.430.15 NMAC;

(2) scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income;

(3) the following American Indian or Alaska native exceptions are excluded from income:

(a) distributions from Alaska native corporations and settlement trusts;

(b) distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the secretary of the interior;

(c) distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from;

(i) rights of ownership or possession in any lands described in Subsection B of 8.291.430.15 NMAC; or

(ii) federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(d) distributions resulting from real property ownership interests related to natural resources and improvements;

(i) located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(ii) resulting from the exercise of federally-protected rights relating to such real property ownership interests.

(e) payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; and

(f) student financial assistance provided under the bureau of Indian affairs education programs.

C. Certain income of children and tax dependents: The following are not included in household income:

(1) The MAGI-based income of an applicant or recipient who is included in the household of [his or her] their natural, adopted, or step parent and who is not expected to be required to file a tax return under Section 6012(a)(1) of the Internal Revenue Code for the taxable year in which a MAP category of eligibility is being determined, is not included in household income whether or not the applicant or recipient files a tax return.

(2) The MAGI-based income of an applicant's or recipient's dependent who is not expected to be required to file a tax return under Section 6012(a)(1) of the Internal Revenue Code for the taxable year in which a MAP category of eligibility is being determined is not included in the household income of the taxpayer whether or not such dependent files a tax return.

D. Qualified lottery and gambling winnings are included in MAGI-based income based on the following:

(1) Qualified

lottery winnings are defined as winnings from sweepstakes, lottery, or pool described in section 4402 of the internal revenue code (which generally requires that these particular activities be conducted by a state agency or under the authority of state law), or winnings from a lottery operated by a multistate or multijurisdictional lottery association or tribe. Multijurisdictional lotteries include those that include multiple entities of government. Qualified lottery winnings apply to the single payout option. Lottery winnings paid out in installments are not considered qualified lottery winnings and are treated as recurring income that can be prorated over a twelve-month period to determine an average current monthly income for medicaid.

(2) Income that is received as a lump sum from monetary winnings from gambling is included in MAGI-based income. Gambling winnings include betting pools, wagers placed through bookmakers, slot machines, roulette wheels, dice tables, lotteries, bolita or number games, or the selling of chances therein including tribal winnings.

(3) Non-cash prizes, like a car or boat, are not counted as qualified lottery winnings or monetary winnings from gambling and are counted as lump sum income in the month received.

(4) Formula for counting qualified lottery or gambling winnings: For qualified winnings from lotteries or gambling occurring on or after January 1, 2018, the following formula applies for counting income:

(a) winnings less than \$80,000 are counted in the month received;

(b) winnings of \$80,000 but less than \$90,000 are counted as income over two months with an equal amount counted in each month;

(c) for every additional \$10,000 one month is added to the period over which total winnings are divided, in

equal installments, and counted as income;

(d) the maximum period of time over which winnings may be counted is 120 months, which would apply for winnings of \$1,260,000 and above. [HSD] HCA in the notice of case action (NOCA) notifies individuals of the date on which the lottery or gambling winnings no longer will be counted for the purposes of medicaid eligibility; and

(e) the formula for counting winnings is applied separately to each instance of winnings.

(5) Lottery or gambling winnings count as MAGI-based income over multiple months only for the individual receiving the winnings in the household. For other individuals in the household, the winnings count only in the month received in determining their MAGI-based income eligibility.

(6) Verification of lottery winnings: [HSD] HCA requires verification of lottery winnings, but will first access electronic data sources, if available, before requesting documentation.

(7) Hardship exemption: [HSD] HCA allows for an exemption of the counting of lottery winnings if the applicant or recipient with the lottery winnings can demonstrate an undue medical hardship such that the applicant or recipient's health or life would be endangered. An applicant or recipient must submit a written request along with supporting documentation. A decision regarding a medical hardship exemption will be made within 30 calendar days of receipt of the written request. Notice of the exemption decision will be mailed to the applicant or recipient. If an exemption is approved, then an eligibility determination will be made without counting lottery winnings. If an exemption is denied, then the applicant or recipient can request an [HSD] HCA administrative hearing pursuant to 8.352.2 NMAC. Hardship exemption request information is contained in the NOCA.

E. Parent mentor compensation: A parent mentor is a parent or guardian of a medicaid eligible child who is trained to assist families with children who have no health insurance coverage with respect to improving the social determinants of the health of such children. Section 3004 of the HEALTHY KIDS Act excludes certain parent mentor compensation from the MAGI calculation. The disregard of parent mentor income applies only in the case of parent mentors working with a grantee organization under section 2113 of the Social Security Act. Nominal amounts paid as a stipend, wages, or other compensation for participation as a parent mentor in a grant-funded program under section 2113 of the Act are excluded from income. A nominal amount is defined as \$1,600 per month. Parent mentor income above \$1,600 per month is counted in the MAGI calculation.

F. Discharged student loan debt: Student loan debt that is discharged, forgiven or cancelled is taxable income to the borrower, and the amount of discharged debt is included in the MAGI-based income. Discharged student loan debt is not included in income (and not counted in the MAGI-based income) of a borrower for tax years 2018 through 2025 if the debt is discharged on account of the death or the permanent and total disability of the student. The borrower and the student may or may not be the same person. Student loan debt discharged under these circumstances is not counted as income in determining household income for other members of the borrower's household.

G. Alimony received: Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not included in the income of the recipient. For individuals with alimony agreements finalized on or before December 31, 2018, alimony continues to be included in the income of the recipient for the duration of the agreement

unless or until the agreement is modified. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision for alimony.

H. Alimony paid:

Alimony payments under separation or divorce agreements finalized after December 31, 2018, or pre-existing agreements modified after December 31, 2018, are not deductible by the payer. For individuals with alimony agreements finalized on or before December 31, 2018, alimony payments continue to be deductible. Self-attestation is accepted for the verification of the date of execution of separation or divorce agreements that include the provision for alimony.

I. Moving expenses, including expenses incurred by the individual as well as reimbursements from an employer, are not deductible in calculating MAGI for tax years 2018 through 2025. Moving expenses are deductible for active duty members of the military who are ordered to move or change duty station.

J. Tuition and fees deduction: Effective January 1, 2018 the payment of tuition and fees for qualified education expenses for postsecondary education is not an allowable deduction in calculating MAGI.
[8.291.430.15 NMAC - Rp, 8.291.430.15 NMAC, 11/16/2015; A, 12/1/2020; A, 8/1/2024]

NEW MEXICO FINANCE AUTHORITY

This is an amendment to 2.93.1 NMAC, Sections 1, 2, 6, 7, 9, re-numbering 13 to 20, 14, and adding new sections 15 - 19, effective 7/30/2024.

2.93.1.1 ISSUING

AGENCY: New Mexico Opportunity Enterprise and Housing Development Review Board.
[2.93.1.1 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.2 SCOPE: All persons or entities applying for enterprise assistance under the opportunity enterprise revolving fund and housing development assistance under the housing development revolving fund administered by the New Mexico finance authority, Sections 6-34-8, ~~[and] 6-34-12, 6-34-13.1 and 6-34-13.3~~ NMSA 1978.
[2.93.1.2 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.6 OBJECTIVE:

A. Section 6-34-3, NMSA 1978, provides that the authority may adopt separate rules to administer the opportunity enterprise revolving fund and the housing development revolving fund to originate enterprise assistance and housing development assistance for ~~[opportunity enterprise]~~ projects recommended by the board, govern the process through which applicants may apply for enterprise assistance ~~[from the opportunity enterprise revolving fund]~~ and housing development assistance, and collect fees and costs related to providing ~~[enterprise]~~ financing ~~[to each opportunity enterprise financing partner]~~.

B. Section 6-34-5, NMSA 1978 provides that the authority shall provide staff support for necessary administrative services of the board.

C. Section 6-34-6, NMSA 1978 provides that the authority shall upon the recommendation of the board, process, review and evaluate applications for enterprise assistance and housing development assistance received from applicants.

D. Section 6-34-7, NMSA 1978 provides that the opportunity enterprise and housing development review board is required to adopt rules necessary to carry out the provisions of the act and allowing the authority to establish procedures for applying and qualifying for enterprise assistance and housing development assistance, establishing economic development goals for the state in consultation

with the department, governing the application procedures and requirements for enterprise assistance and housing development assistance, determining how to select and prioritize applications for enterprise assistance and housing development assistance to ~~[by]~~ be funded by the authority, prioritizing projects that are in political subdivisions that are implementing zoning reforms that support housing development projects, and providing safeguards to protect public money and other public resources.

E. Sections 6-34-12 and 6-34-13.3, NMSA 1978 provide that the authority shall administer the opportunity enterprise revolving fund and the housing development revolving fund and recover from the ~~[opportunity enterprise revolving fund]~~ funds the costs of administering the ~~[fund]~~ funds and originating enterprise and housing development assistance.

F. Subsection K of Section 6-21-5, NMSA 1978 provides that the authority may fix charges and collect fees and other charges in connection with the making of loans, leases and any other services rendered by the authority.
[2.93.1.6 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.7 DEFINITIONS:

A. “Act” means the Opportunity Enterprise and Housing Development Act, Sections 6-34-1 through ~~[6-34-15]~~ 6-34-15, NMSA 1978, as the same may be amended and supplemented.

B. “Affordable housing infrastructure project” means infrastructure projects needed to support housing for low- or moderate-income residents.

~~[B.]~~ **C.** “Application” means a written document made publicly available by the authority and filed with the authority ~~[for enterprise assistance]~~ for the purpose of evaluating ~~[in consultation with the department,]~~ the applicant’s qualifications and proposed ~~[enterprise development project or]~~ projects for types of ~~[enterprise]~~

assistance which may be provided by the authority under the act.

[~~E~~] **D.** “**Authority**” means the New Mexico finance authority.

[~~D~~] **E.** “**Board**” means the opportunity enterprise and housing development review board created by the act.

[~~E~~] **F.** “**Bylaws**” means the amended and restated bylaws of the board adopted on [~~August 24, 2022~~] May 2, 2024, as amended and supplemented from time to time.

G. “**Commercial development committee**” means a standing committee, appointed by the chairman of the board from members of the board pursuant to the bylaws to review proposed enterprise development projects to be recommended for funding from the opportunity enterprise revolving fund.

[~~F~~] **H.** “**Department**” means the economic development department.

[~~G~~] **I.** “**Economic development opportunities**” means the advancement of an environmentally sustainable economic development goal of the state as determined by the authority, in coordination with the department, and includes the creation of jobs, the provision of needed services and commodities to diverse communities across the state and the increase of tax and other revenue collections resulting from the enterprise development project.

[~~H~~] **J.** “**Enterprise assistance**” means opportunity enterprise financing, an opportunity enterprise lease or an opportunity enterprise loan.

[~~H~~] **K.** “**Enterprise development project**” means a commercial real estate development project primarily occupied by businesses unrelated to the opportunity enterprise partner that involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure to create or expand economic development opportunities within the state.

[~~J~~] **L.** [~~Fund means the~~

opportunity enterprise revolving fund] **“Housing development assistance”** means a loan for workforce development housing projects or affordable housing infrastructure projects.

M. “**Housing development committee**” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review proposed housing development projects to be recommended for funding from the housing development revolving fund.

N. “**Housing development partner**” means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or any other private business entity or combination thereof that the authority determines is or will be engaged in a project that creates or expands housing within the state and is eligible for housing development assistance pursuant to the act.

O. “**Housing development project**” means an affordable housing infrastructure project or a workforce development housing project.

P. “**Middle income workers**” means families with incomes that fall between the lesser of a local jurisdiction’s upper limit for housing assistance by relevant housing type or by the New Mexico mortgage finance authority’s upper limit for housing development assistance, and three hundred percent of the US housing and urban development area median income for the county.

[~~K~~] **Q.** “**Opportunity enterprise partner**” means a domestic corporation, a general partnership, a limited liability company, a limited partnership, a public benefit corporation, a nonprofit entity or other private business entity or combination thereof that the authority determines is or will be engaged in an enterprise that creates or expands economic development opportunities within the state and is eligible for enterprise assistance

pursuant to the act.

[~~L~~] “**Project review committee**” means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review proposed enterprise development projects to be recommended for funding from the fund.]

[~~M~~] **R.** “**State**” means the state of New Mexico.

S. “**Workforce development housing**” means below-market housing addressing demand for workforce housing for middle income workers in proximity to employment centers as determined by board policy.

T. “**Workforce development housing project**” means a residential real estate development project that involves the purchase, planning, designing, building, surveying, improving, operating, furnishing, equipping or maintaining of land, buildings or infrastructure that provides housing, including housing that provides the option of home ownership.

U. “**Zoning reforms**” means policies, procedures and regulations implemented by political subdivisions intended to decrease the costs and timing of constructing affordable housing and workforce housing, including expedited permitting, high density zoning, and other criteria as determined by policies of the board. [2.93.1.7 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.9 ENTERPRISE DEVELOPMENT PROJECT PROPOSAL, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:

A. The board and the department will administer an outreach program to local governments and potential opportunity enterprise partners for the purpose of making recommendations to the authority regarding enterprise assistance, and to notify applicants that enterprise development project proposals are being accepted

for review by the project review committee and the board for prioritization and recommendation for funding to the authority.

B. The authority will provide forms and guidelines for enterprise development project proposals and applications for enterprise assistance. The authority may consider the recommendations and priorities of the board.

C. Applications for enterprise assistance shall describe the scope and plans of the enterprise development project or proposed use of leased property, demonstrate that the enterprise development project or lease will create or expand economic development opportunities within the state, demonstrate that the enterprise project or lease will contribute to the diversification of the state’s economy, demonstrate that the enterprise development project or lease will comply with all applicable state and federal law, provide sufficient evidence that other means of financing a proposed enterprise development project are unavailable or insufficient, and include any other documentation or certifications that the authority deems necessary.

D. Department staff will complete an initial evaluation of the application for enterprise assistance and enterprise development project proposals promptly following receipt in consideration of information provided by applicants according to the factors listed in Subsection C of 2.93.1.9.NMAC. Such evaluation will include recommendations regarding suitability for enterprise assistance. The department may obtain input and information relevant to carrying out the purposes of the act from outside consultants in evaluating enterprise development project proposals and applications for enterprise assistance. The department will then forward to the [project review] commercial development committee for review, the relevant application and the corresponding recommendation of the department, along with all third-party input and information compiled by the department.

E. The [project review] commercial development committee will consider the proposed enterprise development project and may confer with outside parties, including any person familiar with the proposed enterprise development project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed enterprise development project. The [project review] commercial development committee will make a recommendation to the board on each enterprise development project proposal.

F. Upon the recommendation of the [project review] commercial development committee, the board will prioritize the proposed enterprise development projects for recommendation to the authority for consideration of enterprise assistance.

G. After completion of the review process by the [project review] commercial development committee and the board and receipt of a favorable recommendation on the enterprise development project proposal, the prioritized enterprise development projects will be recommended by the board to the authority for consideration of enterprise assistance.

H. NMFA may request an additional application from recommended enterprise assistance projects.

I. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to enterprise assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.

[2.93.1.9 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.13 [RESERVED]
[2.93.1.13 NMAC – N, 4/25/2023; Rn. 2.93.1.20 NMAC, 7/30/2024]

2.93.1.14 ENTERPRISE ASSISTANCE CONTRACT:

A. The authority

and opportunity enterprise partner awarded enterprise assistance will enter into a contract to establish the terms and conditions of enterprise assistance from the authority. The contract to provide enterprise assistance shall:

(1) define the roles and responsibilities of the authority and the opportunity enterprise partner;

(2) provide clawback or recapture provisions, if applicable, that protect the public investment in the event of a default on the contract;

(3) provide a finance plan detailing the financial contributions and obligations of the authority and opportunity enterprise partner;

(4) require an opportunity enterprise partner to provide guarantees, letters of credit or other acceptable forms of security, as determined by the authority;

(5) specify how rents, if applicable, will be collected and accounted for;

(6) specify how debts incurred on behalf of the opportunity enterprise partner will be repaid; and

(7) provide that, in the event of a default, the authority may (a) elect to take possession of the property, including the succession of all right, title and interest in the enterprise development project; and (b) terminate the lease or cease any further funding and exercise any other rights and remedies that may be available.

B. The interest rate on any enterprise assistance extended, if applicable, shall be determined by the authority

C. The contract will contain provisions which require enterprise assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. The authority will monitor terms of the contract and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection. In the event of default

under an enterprise assistance contract by an applicant, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

E. [AH] A list of contracts for enterprise assistance shall be provided to the board by the authority no later than thirty days from the execution of that contract. The board shall review contracts from time to time and determine whether the use of enterprise assistance is a prudent expenditure of public funds and report to the legislature annually on that determination. The board [shah] may also make recommendations to the authority of potential rulemaking, application or lending changes to ensure transparent and efficient processes for carrying out the provisions of the act. [2.93.1.14 NMAC – N, 4/25/2023; A, 7/30/2024]

2.93.1.15 ELIGIBILITY AND PRIORITIZATION POLICIES FOR HOUSING DEVELOPMENT PROJECTS:

The board will determine which housing development projects to recommend to the authority for housing development assistance from the housing development revolving fund. Board policies shall give priority to projects that:

- A.** demonstrate local support and need,
- B.** create or expand attainable housing units within the state,
- C.** are located in political subdivisions that have implemented zoning reforms, and
- D.** other means of financing a proposed housing development project are unavailable or insufficient. The board shall establish policies to consider in prioritizing housing development projects. [2.93.1.15 NMAC – N, 7/30/2024]

2.93.1.16 HOUSING DEVELOPMENT PROJECT PROPOSAL, REVIEW, PRIORITIZATION AND APPROVAL PROCESS:

A. The board will administer an outreach program to local governments and potential housing development partners for the purpose of making recommendations to the authority regarding housing assistance, and to notify applicants that housing development project proposals are being accepted for review by the housing development committee and the board for prioritization and recommendation for funding to the authority.

B. The authority will provide forms and guidelines for housing development project proposals and applications for housing development assistance. The authority may consider the recommendations and priorities of the board.

C. Applications for housing development assistance shall describe the scope and plans of the housing development project, demonstrate that the housing development project will create or expand attainable housing within the state, and provide sufficient evidence that other means of financing a proposed housing development project are unavailable or insufficient, and include any other documentation or certifications that the authority deems necessary.

D. Authority staff will complete an initial evaluation of the application for housing assistance and housing development project proposals promptly following receipt in consideration of information provided by applicants according to the factors listed in Subsection C of 2.93.1.16. Such evaluation will include recommendations regarding suitability for housing development assistance. The authority may obtain input and information relevant to carrying out the purposes of the act from outside consultants in evaluating housing development project proposals and applications for housing assistance. The department will then forward to the housing development committee for review, the relevant application, and the corresponding recommendation of the department, along with all third-party input and information compiled by the department.

E. The housing development committee will consider the proposed housing development project and may confer with outside parties, including any person familiar with the proposed housing development project, as necessary to obtain more information on the feasibility, merit, and cost of the proposed housing development project. The housing development committee will make a recommendation to the board on each housing development project proposal.

F. Upon the recommendation of the housing development committee, the board will prioritize the proposed housing development projects for recommendation to the authority for consideration of housing assistance.

G. After completion of the review process by the housing development committee and the board and receipt of a favorable recommendation on the housing development project proposal, the prioritized housing development projects will be recommended by the board to the authority for consideration of housing assistance.

H. NMFA may request an additional application from recommended housing development assistance projects.

I. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to housing development assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict. [2.93.1.16 NMAC – N, 7/30/2024]

2.93.1.17 HOUSING DEVELOPMENT PROJECTS AND ELIGIBLE COSTS:

A. The board may recommend to the authority that housing development assistance from the housing development revolving fund should be made available for housing development projects as provided by Section 6- 34-13.3, NMSA 1978.

B. Housing

development assistance from the housing development revolving fund shall be made only for eligible items, as determined by the authority, which includes:

- (1) housing development assistance;
 - (2) paying the reasonably necessary administrative costs and other costs and fees incurred by the authority in carrying out the provisions of the act.
- [2.93.1.17 NMAC – N, 7/30/2024]

2.93.1.18 HOUSING DEVELOPMENT PROJECT FINANCING:

The authority may recommend structured housing development assistance packages that include housing development loans. The structure, terms and conditions will be determined by the authority.

[2.93.1.18 NMAC – N, 7/30/2024]

2.93.1.19 FINANCING APPROVAL REQUIREMENTS:

Based on the priority and evaluation factors set forth in Sections 15, 16, and 17 above, as well as the requirements of the act, the board may recommend to the authority housing development projects for consideration of housing development assistance. Board recommendations may be considered by the authority but shall not be binding on the authority. A member of the board or employee of the authority with an interest, either direct or indirect, in an application or contract relating to housing assistance, shall disclose his or her interest to the authority and the board in writing and shall not participate in actions by the board or the authority with respect to that conflict.

[2.93.1.19 NMAC – N, 7/30/2024]

2.93.1.20 RECONSIDERATION OF BOARD DECISIONS:

Any applicant affected by a decision of the board may request reconsideration of the decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting

of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless of whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chair of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[2.93.1.20 NMAC – N, 7/30/2024]

HISTORY OF 2.93.1 NMAC: [RESERVED]

REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD

The New Mexico Counseling and Therapy Practice Board approved the repeal of Rule 16.27.17 NMAC – Fees, filed on 6/15/2001 and replaced it with Rule 16.27.17 NMAC – Fees, adopted on 7/15/2024 and effective 7/30/2024.

REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL

LICENSING

CHAPTER 27 COUNSELORS AND THERAPISTS PART 17 FEES

16.27.17.1 ISSUING

AGENCY: Regulation and Licensing Department Counseling and Therapy Practice Board
[16.27.17.1 NMAC – Rp, 16.27.17.1 NMAC, 7/30/2024]

16.27.17.2 SCOPE: All applicants applying for licensure as professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, licensed mental health counselors, associate marriage and family therapists, alcohol and drug abuse counselors, and substance abuse associates.

[16.27.17.2 NMAC- Rp, 16.27.17.2 NMAC, 7/30/2024]

16.27.17.3 STATUTORY AUTHORITY:

These parts are promulgated pursuant to the Counselor and Therapist Practice Act, Sections 61-9A-9 and 61-9A-24 NMSA 1978.

[16.27.17.3 NMAC- Rp, 16.27.17.3 NMAC, 7/30/2024]

16.27.17.4 DURATION:

Permanent
[16.27.17.4 NMAC - Rp, 16.27.17.4 NMAC, 7/30/2024]

16.27.17.5 EFFECTIVE DATE: July 30, 2024 unless a later date is cited at the end of a section.
[16.27.17.5 NMAC - Rp, 16.27.17.5 NMAC, 7/30/2024]

16.27.17.6 OBJECTIVE:

The objective of Part 17 is to outline fees for application, licensure, license renewal and administrative fees.
[16.27.17.6 NMAC - Rp, 16.27.17.6 NMAC, 7/30/2024]

16.27.17.7 DEFINITIONS: [RESERVED]

16.27.17.8 APPLICATION FEE: Applicants for licensure

or certification shall pay a \$75.00 application fee for each level of licensure, which is due at the time of initial application and is non-refundable. There is an additional re-review fee of \$25.00 for review of applications which have been denied at the initial level requested and as defined in Subsection D of 16.27.3.8 NMAC.

[16.27.17.8 NMAC - Rp, 16.27.17.8 NMAC, 7/30/2024]

16.27.17.9 INITIAL

LICENSE FEE: Individuals accepted for licensure shall pay an initial licensure fee. This fee is based on the biennial cost of the license and must be paid in full before a license can be issued and is non-refundable.

A. Fee for initial licensure as a mental health counselor and associate marriage and family therapist is \$75. This fee must be paid in full before a license can be issued and is non-refundable.

B. Fee for initial licensure as a professional mental health counselor is \$150. This fee must be paid in full before a license can be issued and is non-refundable.

C. Fee for initial licensure as a clinical mental health counselor, a marriage and family therapist or an art therapist is \$220. This fee must be paid in full before a license can be issued and is non-refundable.

D. Fee for initial licensure as an alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor is \$150. This fee must be paid in full before a license can be issued and is non-refundable.

E. Fee for initial licensure as a substance abuse associate is \$75. This fee must be paid in full before a license can be issued and is non-refundable.

F. Fee for initial licensure as a CEU Provider is \$100. This fee must be paid in full before a license can be issued and is non-refundable.

[16.27.17.9 NMAC - Rp, 16.27.17.9 NMAC, 7/30/2024]

16.27.17.10 RENEWAL FEES:

The fees are as listed below and are non-refundable:

A. Licensed mental health counselor, \$75.00.

B. Registered independent mental health counselor, \$150.00.

C. Professional mental health counselor, \$150.00.

D. Clinical mental health counselor, \$220.00.

E. Marriage and family therapist, \$220.00.

F. Professional art therapist, \$220.00.

G. Alcohol and drug abuse counselor, \$150.00.

H. Alcohol abuse counselor, \$150.00.

I. Drug abuse counselor, \$150.00.

J. Substance abuse associate, \$75.00.

K. Licensed associate marriage and family therapist, \$75.00.

L. Late continuing education unit (CEU) extension request fee, \$300.00.

M. CEU provider, \$100.

N. Inactive License, \$100.

[16.27.17.10 NMAC- Rp, 16.27.17.10 NMAC, 7/30/2024]

16.27.17.11 [RESERVED]

[16.27.17.11 NMAC- Rp, 16.27.17.11 NMAC, 7/30/2024]

16.27.17.12 LICENSURE

UPGRADE: Individuals who are currently licensed or registered by the board may, upon approval, upgrade the category of licensure or registration by submitting a new application and required documentation, accompanied by the application fee.

[16.27.17.12 NMAC- Rp, 16.27.17.12 NMAC, 7/30/2024]

16.27.17.13 DUPLICATE OR REPLACEMENT LICENSE OR CERTIFICATE FEE:

A duplicate or replacement fee of \$25.00 must be paid at the time of request and must include an affidavit of need and is

non-refundable.

[16.27.17.13 NMAC - Rp, 16.27.17.13 NMAC, 7/30/2024]

16.27.17.14 LATE FEE:

Any renewal application, with the exception of CEU providers, including fee, not postmarked by the license expiration date is considered expired. Renewal after the expiration date, but during the 30-day period, is subject to a late fee of \$100.00 which is non-refundable. CEU provider renewals received after the expiration date, but during the 30-day period, is subject to a late fee of \$150.00 which is non-refundable.

[16.27.17.14 NMAC - Rp, 16.27.17.14 NMAC, 7/30/2024]

16.27.17.15 [RESERVED]

[16.27.17.15 NMAC - Rp, 16.27.17.15 NMAC, 7/30/2024]

16.27.17.16

ADMINISTRATIVE FEES: The board will charge the following administrative fees, which are non-refundable:

A. \$10.00 for file copies.

B. \$10.00 for written license verification.

C. \$300.00 for electronic list of New Mexico licensed counselors and therapists.

D. \$25.00 charge for returned checks.

E. \$100.00 for pre-approved continuing education provider number.

F. \$25.00 administrative NCE, NCMHCE, marriage and family therapist, art therapist, and NCAC examinations fees.

G. \$25.00 (twenty-five dollars) per CEU credit hour fee for CEU credit hours incorrectly issued by the CEU provider.

[16.27.17.16 NMAC - Rp, 16.27.17.16 NMAC, 7/30/2024]

HISTORY OF 16.27.17 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

Rule 2, Definitions, 3/24/1994
 Rule2, Definitions, 3/20/1995
 Rule 11, Fees, 3/24/1994
 Rule 10, Fees; 3/20/1995

HISTORY OF REPEALED MATERIAL:

16 NMAC 27.10, Fees - Repealed 6/15/2001

OTHER HISTORY OF 16.27.17 NMAC:

16.27.17 NMAC – Fees, filed 6/15/2001 was repealed and replaced by 16.27.17 NMAC – Fees, effective 7/30/2024.

REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD

This is an amendment to 16.27.3 NMAC, Sections 8, 12 & 13, effective July 30, 2024.

16.27.3.8 APPLICATIONS FOR LICENSURE BY EXAMINATION:

A. All applicants for licensure by examination must submit the following documentation to the board:

- (1) a completed application, [~~signed~~ attested] by the applicant;
- ~~[(2) a 2" x 2" photograph of the applicant taken within the preceding six months;~~
- ~~(3)] (2) an application fee of \$75;~~
- ~~[(4)] (3) an official transcript in their original and sealed envelope, uploaded directly into the online application, or electronically sent directly to the board's e-mail address from each institution where the applicant completed an appropriate degree for the license type sought;~~
- (4) if required, a statement from each supervisor on a form provided by the board verifying the applicant's supervised experience and setting forth the nature and extent of each supervision; the

forms must be submitted in a sealed envelope to the board office, uploaded directly into the online application, or electronically sent directly to the board's email address from the applicant or the supervisor;

(5) other documentation required in 16.27.4 NMAC through 16.27.8 NMAC, and 16.27.18 NMAC through 16.27.23 NMAC, to document supervision, any additional training or coursework, work experience and client contact hours.

B. Applications will be valid for a period not to exceed 12 months from the date it is received at the board's office. An applicant wishing to re-apply after 12 months must submit a new application, including the application fee and all documentation.

C. Applicants who are deemed ineligible because of experience or educational deficiencies may request licensure at a lower level. This request from the applicant shall be in writing and include a \$25 application re-review fee as provided for in 16.27.17 NMAC.

[16.27.3.8 NMAC - Rp, 16.27.3.8 NMAC, 11/30/2021; A, 1/18/2023; A, 7/30/2024]

16.27.3.12 INACTIVE STATUS:

A. A licensee may request inactive status by [~~notifying the board in writing~~] requesting the change in the online portal before the expiration of the active or retirement status of the license.

B. An inactive license must be renewed every two years and pay the requisite fee. No continuing education courses are required while the license remains inactive.

C. To be restored to active status, the licensee shall complete the renewal application and comply with current continuing education requirements pursuant to 16.27.16.8 NMAC.

[16.27.3.12 NMAC - Rp, 16.27.3.12 NMAC, 11/30/2021; A, 07/30/2024]

16.27.3.13 RENEWAL REQUIREMENTS:

A. All licenses must be renewed biennially by September 30 by completing the following requirements:

- (1) A completed renewal application provided by the board office;
- (2) submission of the renewal license fee;
- (3) completion of the mandatory University of New Mexico health professions survey;
- (4) completion of 40 CEUs with 12 of those hours being in ethics related to counseling and therapy obtained between October 1 and September 30 of the current licensing period, or, if renewing for the first time, completion of 20 CEU's with six of those hours being in ethics related to counseling and therapy obtained from license issue date and September 30 of the current license period; and

(5) completion of nine CEUs specific to counseling and therapy supervision if providing supervision to licensees obtained between October 1 and September 30 of the current licensing period.

B. A grace period of 30 days ending October 31 of the renewal year will be available for late renewal and will require completion of all requirements outlined in Subsection A of 16.27.3.13 NMAC and the submission of an additional \$100 late penalty fee as required under 16.27.17.14 NMAC.

C. Failure to renew a license by the end of the grace period will result in the license expiring and will require submission of the following documentation in order to obtain licensure again, pursuant to Subsection D of Section 61-9A-23 NMSA 1978:

- (1) Submission of a new and complete application packet, to include all required supplemental documentation;
- (2) meeting the current requirements for licensure at the time of completion of the new application packet; and
- (3) submission of the application fee and initial license fees as outlined under

16.27.17 NMAC.
 [16.27.3.13 NMAC - N, 11/30/2021;
 A, 7/30/2024]

**REGULATION
 AND LICENSING
 DEPARTMENT
 COUNSELING AND THERAPY
 PRACTICE BOARD**

This is an amendment to 16.27.18 NMAC, Sections 16 & 17 effective July 30, 2024

16.27.18.16 PROFESSIONAL COMPETENCE, CONDUCT & INTEGRITY:

A. Licensees or registrants shall not misrepresent his credentials, degrees, or competencies either through spoken word, written, or electronically transmitted material.

B. Licensees or registrants who has provided professional services to a client or former client within the previous 60 months shall not:

- (1) engage in sexual intercourse, contact or other physical intimacies with the client;
- (2) enter into a financial or other potentially exploitive relationship with the client; or
- (3) seek to obtain client access to counselor or therapist personal information in social networking sites.

C. The prohibitions set out in Paragraphs (1), (2) and (3) of Subsection B of this section shall not be limited to the 60 month period but shall extend indefinitely if the client is proven to be clearly vulnerable, by reason of emotional or cognitive disorder, to exploitive influence by the counselor or therapist. The counselor or therapist who engages in such activity after the 60 month period following cessation or termination of treatment bears the burden of providing proof that there has been no exploitation, in light of all relevant factors, including:

- (1) the amount of time that has passed since therapy terminated;

(2) the nature and duration of the therapy;

(3) the circumstances of termination;

(4) the patient’s or client’s personal history;

(5) the patient’s or client’s mental status;

(6) the likelihood of adverse impact on the patient or client and others; and

(7) any statements or actions made by the counselor or therapist during the course of therapy suggesting or inviting the possibility of a post termination relationship with the patient or client.

D. Licensees or registrants shall not undertake or continue a professional relationship with a client when the counselor or therapist is impaired due to mental, emotional, physiological, or substance abuse conditions.

E. Licensees or registrants violate the code and are subject to loss of licensure or other disciplinary action if:

- (1) convicted of a felony or misdemeanor related to their qualifications or functions;
- (2) disciplined by other state licensing boards for acts which would be a violation under this code of ethics, statutes or regulations;
- (3) no longer competent to practice, or;
- (4) they fail to cooperate with an investigation or disciplinary action taken by the state .

F. Licensees or registrants shall only perform counseling or therapy services within the scope of practice for their license. Licensees or registrants shall only perform testing and assessment services for which they are authorized under the act.

G. Licensees or registrants shall not use advertising, which is misleading, deceptive or false. All and any announcements of services shall include state designation, [~~and licensed number~~] license number(s), and expiration date(s). Inactive and retired licensees or registrants shall not advertise using their license.

H. Licensees or registrants individual shall inform the client of the innovative nature and the known risks associated with the services, so that the client can exercise freedom of choice concerning the services when developing competency in a service or technique that is either new to the counselor or therapist, or new to the profession, shall engage in ongoing consultation with other relevant professionals and shall seek appropriate education and training in the new area.

I. Licensees or registrants shall make every effort to offer the client or former client the names of at least three referral sources, or refer the client to an organization that can provide referrals, upon request by a client or former client (e.g. physician, attorney, therapist, financial planner, etc.).

J. Licensees or registrants shall not offer or accept kickbacks, rebates, bonuses or other remuneration of referrals; fee-for-service arrangements are not prohibited.

K. Bartering for professional services may be conducted only if:

- (1) the supervisee or client requests it;
- (2) the relationship is not exploitive; or
- (3) the professional relationship is not distorted; and

(4) a clear written contract is agreed upon and signed by both parties.

[16.27.18.16 NMAC- Rp 16.27.18.16 NMAC, 11/30/2021; A, 7/30/2024]

16.27.18.17 CONFIDENTIALITY AND DATA PRIVACY:

A. The counselor or therapist shall safeguard confidential information obtained in the course of practice, teaching, research or other professional services. This includes a counselor or therapist’s employees and professional associates as defined by law. The counselor or therapist shall disclose confidential information to others only with the

informed written consent of the client or as outlined in Subsection B of this section.

B. Licensees or registrants shall inform a client of limitations of confidentiality. These limitations include, but are not limited to:

(1) Limitations mandated by the law.

(2) Disclosure when necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person(s).

(3) Court orders in civil, criminal, or disciplinary actions arising from the therapy.

(4) Written waiver. Disclosure is limited to the terms of the waiver. If there is more than one party involved in the therapy, the waiver must be signed by all members legally competent to execute such a waiver (e.g. couples, marital couples, family, or group). When release of information pertaining to a client under the age of consent is requested, it must be signed by a parent or legal guardian. The counselor or therapist, to the extent the client can understand, shall inform the minor client of the limit the law imposes on his right of confidentiality.

(5) Reporting abuse of children and vulnerable adults, the counselor or therapist shall be familiar with any relevant law..

(6) Restrictions mandated by employing agencies.

C. Licensees or registrants shall ensure that all reasonable security measures are taken to ensure records and written data are protected from access by unauthorized persons.

D. Licensees or registrants shall ensure that the content and disposition of all records is in compliance with relevant state laws.

E. Licensees or registrants shall treat client information as confidential after the professional relationship between the

counselor or therapist and the client has ceased.

F. Licensees or registrants shall exercise reasonable care to ensure that confidential information is appropriately disguised to prevent client identification when used as a case study, basis of supervision, teaching, research or other published reports.

G. Licensees or registrants shall explain to the client the limitations and foreseeable uses of confidential information.

H. Record retention
(1) Licensees or registrants rendering professional services to a client or billed to a third party, shall maintain professional records that include:

(a) the presenting problem(s) or purpose or diagnosis;

(b) the fee arrangement;

(c) the date and substance of each billed service;

(d) any test results or other evaluative results obtained and any basis test data from which they were derived;

(e) notation and results of formal consultations with other providers; and

(f) a copy of all tests or other evaluative reports prepared as part of the professional relationship.

(2) Licensees, registrants or agencies that employ licensed or registered counselors or therapists shall assure that all client records are maintained and secured for a period of not less than six years after the last date that professional services was rendered.

(3) Licensees or registrants shall store and dispose of written or electronic data and other recorded information in such a manner as to ensure client confidentiality.

(4) Licensees or registrants shall not withhold records under their control that are requested for a client's treatment

solely because payment has not been received or otherwise provided by law.

(5) ~~[Subsequent to the licensee or registrant moving from the area, closing the practice, or upon the death of the counselor or therapist, a licensee or registrant shall arrange for the storage, transfer, or disposal of client records that ensure confidentiality and safeguards the welfare of clients]~~ Licensees or registrants shall maintain on file a written plan in place that arranges for the storage, transfer, or disposal of client records that ensure confidentiality and safeguards the welfare of clients in the event of licensee or registrant incapacitation or death.

(6) In the event of the incapacitation or death of a licensee or registrant, the counselor or therapist's personal representative shall adhere to the written plan on file to assure that the deceased's clinical records are maintained and secured for a period of not less than six years after the last date that professional services were rendered. The decedent's personal representative shall store and eventually dispose of written or electronic data and other recorded information [~~is~~] in such a manner as to ensure confidentiality and safeguards the welfare of the clients.

(7) Licensees or registrants shall provide clients with that client's summary of their clinical record upon receipt of a written request.

[16.27.18.17 NMAC- Rp 16.27.18.17 NMAC, 11/30/2021; A, 7/30/2024]

TAXATION AND REVENUE, DEPARTMENT OF

The New Mexico Taxation and Revenue Department approved, at its 05/23/2024 hearing, to repeal its rule 3.6.6 NMAC - Provisions for Imposition of Tax Applicability filed 8/19/1996 and replace it with a new rule 3.6.6 NMAC - Provisions

for Imposition of Tax Applicability, adopted 07/15/2024 and effective 07/30/2024.

**TAXATION
AND REVENUE,
DEPARTMENT OF**

**TITLE 3 TAXATION
CHAPTER 6 PROPERTY
TAXES
PART 6 PROVISIONS
FOR IMPOSITION OF TAX -
APPLICABILITY**

3.6.6.1 ISSUING
AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.6.6.1 NMAC - Rp, 3 NMAC 6.6.1, 07/30/2024]

3.6.6.2 SCOPE: The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county officials and personnel of the taxation and revenue department charged with administration of the Property Tax Code.
[3.6.6.2 NMAC - Rp, 3 NMAC 6.6.2, 07/30/2024]

3.6.6.3 STATUTORY
AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.6.6.3 NMAC - Rp, 3 NMAC 6.6.3, 07/30/2024]

3.6.6.4 DURATION:
Permanent.
[3.6.6.4 NMAC - Rp, 3 NMAC 6.6.4, 07/30/2024]

3.6.6.5 EFFECTIVE
DATE: July 30,2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.6.6.5 NMAC - Rp, 3 NMAC 6.6.5, 07/30/2024]

3.6.6.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.
[3.6.6.6 NMAC - Rp, 3 NMAC 6.6.6, 07/30/2024]

3.6.6.7 DEFINITIONS:
[RESERVED]

3.6.6.8 [RESERVED]

3.6.6.9 [RESERVED]

3.6.6.10 APPLICATION
OF TAX RATIO: The tax ratio is applied to the value of property determined for property taxation purposes by dividing that value by three. The quotient resulting from this division is the “taxable value” of the property.
[3.6.6.10 NMAC - Rp, 3 NMAC 6.6.10, 07/30/2024]

3.6.6.11 HEAD OF
FAMILY EXEMPTION:
A. Claiming the exemption: Exemptions are claimed by filing proof of eligibility for the head of family exemption with the county assessor.
B. Special benefit assessments and certain taxes - exemption inapplicable: The head of family exemption is not effective against impositions or levies of taxes on specific classes of property outside the Property Tax Code and special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.

C. Dependents not required: A claimant is not required to have dependent children or other dependents to be entitled to the benefits of the head-of-family exemption.

D. Absence from state: Mere absence from state does not deprive a taxpayer who is head of a family of the exemption. The qualifying taxpayer may claim the head of family exemption as long as the taxpayer does not establish residence elsewhere and intends to return to New Mexico.

E. Nonresident property owner: A property owner who is not a resident of New Mexico is not entitled to claim head of family exemption on property subject to property tax within New Mexico. A New Mexico resident is a person who is domiciled in New Mexico with a bona fide intention of continuing to reside in New Mexico even though the person may be temporarily absent from New Mexico.

F. Military person claiming legal residence in another state: If a military person claims legal residence in another state for voting and other purposes although he or she physically resides in this state, the person may not claim the head of family exemption because the claim of residence in another state indicates an intent to depart New Mexico.
[3.6.6.11 NMAC - Rp, 3 NMAC 6.6.11, 07/30/2024]

3.6.6.12 VETERAN
EXEMPTION:
A. Property taxes authorized by laws outside the property tax code and special benefit assessments: The veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978; the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978; the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978; and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978. The veteran exemption is not effective against impositions or levies of taxes on specific classes of property authorized by laws outside the property tax code or impositions of special benefit assessments authorized by laws outside the Property Tax Code.

B. Application of veteran exemption - general:
(1) Married persons. Where both persons are veterans within the meaning of

Subsection C of Section 7-37-5 NMSA 1978, they may each claim the exemption allowed in Subsection A of Section 7-37-5 NMSA 1978.

(2) Military

relationship:

(a)

The veteran’s exemption contained in Section 7-37-5 NMSA 1978 requires that claimant has been honorably discharged from membership in the armed forces of the United States. A person has been “honorably discharged” if he or she has been discharged and has not received either a dishonorable discharge or a discharge for misconduct.

(b)

Any veteran who did not serve at least 90 continuous days on active duty is not entitled to the exemption; except for failure to have served in the armed forces continuously for 90 days is considered to have met that qualification if the reason for not having served for that period was a discharge brought about by service-connected disablement.

(c)

A veteran does not lose their right to a veteran’s exemption by re-enlisting immediately after receiving his or her honorable discharge.

(d)

A person whose civilian service has been recognized as service in the armed forces of the United States under federal law as determined under Title 32, Part 47 of the Code of Federal Regulations, as amended, shall be considered to have serviced in the armed forces of the United States.

(3) Residency.

Pursuant to Section 7-37-5 NMSA 1978, it is required that a person be a current New Mexico resident to qualify for the veteran’s exemption.

(4) Veteran’s

interest in property:

(a)

A veteran who qualifies under Section 7-37-5 NMSA 1978, who is a life tenant of real estate, is entitled to exemption on taxation on the property in which the veteran is a life tenant.

(b) A

veteran cannot claim exemption from

taxation on land where the veteran holds no title to the land, either legal or equitable.

(c)

If a veteran entitled to claim the exemption owns property on January 1, it remains exempt even though the veteran sells it during the year.

(d)

A veteran who has purchased property on an executory contract with legal title remaining in escrow pending the final payment under the purchase contract is the beneficial owner of the property and is the owner for purposes of taxation and may apply the exemption to the property.

(e)

A veteran cannot claim exemption from taxation for his or her spouse’s separate property or his or her spouse’s portion of community property.

(f)

A veteran cannot claim exemption from taxation when the veteran is one of the partners in a partnership, and the partnership owns the property on which the exemption is claimed.

(5) Surviving

spouse:

(a) A

resident unmarried surviving spouse of a veteran who died in service is entitled to the veteran’s exemption.

(b) If

a veteran’s surviving spouse remarries and thereafter obtains a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the exemption.

(c)

A surviving spouse of an eligible veteran is not, if a subsequent marriage is annulled, entitled to the exemption.

(d)

An unmarried surviving spouse of a deceased veteran who is also a veteran may receive a tax exemption as veteran and also as a surviving spouse of a veteran.

(e)

An unmarried surviving spouse of a veteran who at the time of the veteran’s death was legally separated from the veteran is entitled to the exemption.

C. Application of veteran exemption - certain taxes and fees outside property tax code:

(1) Aircraft

registration fees: The veteran’s exemption may not be applied to aircraft registration fees.

(2) Motor

vehicle registration fees: Under Section 66-6-7 NMSA 1978, a veteran who has claimed any portion of the veteran’s exemption on real or personal property for the year in which the veteran may be liable for the payment of a registration fee for a motor vehicle is not entitled to the reduction in rate for the motor vehicle registration fee. However, if the exemption for motor vehicle registration fees is taken prior to the claiming of the exemption on real and personal property, both exemptions may be claimed to the extent permitted by Section 7-37-5 NMSA 1978.

D. Activities which

are not service in the armed forces: Medical laboratory technician. A medical laboratory technician, subject to orders of the war department, but not in uniform and not given a formal discharge when terminated from hospital service, is a civilian employee and not entitled to the veteran’s exemption.

[3.6.6.12 NMAC - Rp, 3 NMAC 6.6.12, 07/30/2024]

3.6.6.13 DISABLED VETERAN EXEMPTION:

A. Property taxes

authorized by laws outside the property tax code and special benefit assessments.

(1) The

disabled veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978; the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978; the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978; and, the general ad valorem tax on all property subject to

taxation within a solid waste authority Section 74-10-27 NMSA 1978.

(2) The disabled veteran exemption applies to special benefit assessments. Special benefit assessments are assessments or levies on specific classes of property that are specially benefited by the assessment or levy, rather than general property taxes on all property benefiting all property owners and residents of the taxing district. Special benefit assessments include assessments and levies outside the Property Tax Code, which consists of Articles 35 through 38 of Chapter 7 NMSA 1978.

B. Residency: Section 7-37-5.1 NMSA 1978 requires that the property for which the exemption is claimed must be occupied by the disabled veteran (or the disabled veteran's surviving spouse) as his or her principal place of residence. Therefore, a person claiming the disabled veteran exemption must be a current New Mexico resident to qualify for the exemption.

C. Surviving spouse:
(1) A surviving spouse of a disabled veteran may apply for the exemption even if the disabled veteran did not apply for the exemption during his or her lifetime if the surviving spouse meets the requirements of Subsection C of Section 7-37-5.1 NMSA 1978.

(2) After the disabled veteran's death, his or her resident unmarried surviving spouse is entitled to the disabled veteran exemption if he or she continuously occupies the property, on which the disabled veteran exemption was claimed, as the surviving spouse's principal place of residence.

(3) If a disabled veteran's surviving spouse remarries and thereafter obtains an annulment of the marriage or a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the disabled veteran exemption.

(4) An unmarried surviving spouse of a disabled veteran who at the time

of the disabled veteran's death was legally separated from the veteran is entitled to the disabled veteran exemption.

D. Continuously occupies principal place of residence. Subsection B of Section 7-37-5.1 NMSA 1978 provides for an exemption from property tax of a disabled veteran's principal place of residence when it is occupied by the disabled veteran. Subsection C of Section 7-37-5.1 NMSA 1978 allows the surviving spouse of a disabled veteran to claim the exemption is the surviving spouse continues to occupy the property continuously as the surviving spouse's principal place of residence. "Principal place of residence" means the dwelling owned and occupied by the disabled veteran and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built. "Occupy the property continuously" means that the individual is physically present in the residence for a total of 185 days or more in aggregate during the prior year and is domiciled in New Mexico as of January 1 of the property tax year for which the exemption is claimed. The definition of "domicile" in Subsections C and D of 3.3.1.9 NMAC is incorporated herein by reference.

[3.6.6.1.13 NMAC - Rp, 3 NMAC 6.6.13, 07/30/2024]

3.6.6.14 TAX RATES AUTHORIZED - LIMITATIONS:

A. Ceding prohibited: Ceding of authorized rates by one governmental unit to another is prohibited.

B. Rates subject to yield control:

(1) Every rate or imposition authorized under Paragraph (2) or (3) of Subsection C of Section 7-37-7 NMSA 1978 and every benefit assessment authorized by law is subject to the provisions of Section 7-37-7.1 NMSA 1978 except for:

(a) any rate, imposition or benefit assessment specifically exempted by law from the provisions of Section 7-37-7.1 NMSA 1978;

(b) any rate or imposition of an assessment for the payment of a definite amount for a specific benefit;

(c) any rate not imposed against the value of the property.

(2) Example 1: The following rates, impositions and benefit assessments are some of the rates subject to the provisions of Section 7-37-7.1 NMSA 1978:

(a) the rates for general operating purposes authorized under Subsection B of Section 7-37-7 NMSA 1978;

(b) the municipal flood control rate authorized by Section 3-41-2 NMSA 1978;

(c) the special hospital district rate authorized by Section 4-48A-16 NMSA 1978;

(d) the rates for branch community colleges authorized by Sections 21-14-6 and 21-14-6.1 NMSA 1978;

(e) the rate for technical and vocational institutes authorized by Section 21-16-12 NMSA 1978; and

(f) the portion of an assessment for general operations of a conservancy district authorized by Items 3 and 4 of Subsection A of Section 73-18-8 NMSA 1978 to be imposed against Class B property.

(3) Example 2: The following rates, impositions and benefit assessments are not subject to the provisions of Section 7-37-7.1 NMSA 1978 because they are specifically exempted:

(a) rates used to pay principal and interest on public general obligation debt, which includes rates authorized to guarantee payment of indebtedness such as the rate authorized by Section 73-16-42 NMSA 1978 for a "guarantee fund"; and

(b) the portion of the rate authorized for Class A counties in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 to meet the requirements of the Statewide Health Care Act but the rest of the rate is subject to Section 7-37-7.1 NMSA 1978.

(4) Example 3: Some rates are imposed to pay, or to reimburse a public entity the amount of, a specific sum for a benefit to the persons upon whom the rate is levied. Such impositions are not subject to the provisions of Section 7-37-7.1 NMSA 1978 because the rate necessary is calculated by dividing the fixed amount to be raised by the net taxable value or taxable value of the property against which the rate is imposed. The necessary rate varies inversely with changes in net taxable value or taxable value. Thus the result achieved by yield control is achieved without its application. Further, application of the provisions of Section 7-37-7.1 NMSA 1978 in such cases would produce a revenue insufficient to meet the purposes of the imposition, possibly impairing contracts. Examples of such rates are:

(a) the assessment for county improvement districts authorized by Section 4-55A-17 NMSA 1978;

(b) the assessment for drainage districts authorized by Section 73-7-14 NMSA 1978; and

(c) the assessment for conservancy districts authorized by Item 2 of Subsection A of Section 73-18-8 NMSA 1978 for amounts due under contract with the United States.

(5) Example 4: Rates not subject to the provisions of Section 7-37-7.1 NMSA 1978 because they are imposed on a basis other than the value of the property include:

(a) an assessment for business improvement districts authorized by Section 3-63-13 NMSA 1978 when imposed on a square footage, street frontage or similar basis; and

(b) the portion of an assessment for

general operations of a conservancy district authorized by Items 3 and 4 of Subsection A of Section 73-18-8 NMSA 1978 to be imposed against Class A property when assessed on a per acre basis.

[3.6.6.1.13 NMAC - Rp, 3 NMAC 6.6.13, 07/30/2024]

HISTORY 3.6.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

PTD Rule No. 82, Regulations Pertaining to the Property Tax Code, filed 3/23/1983.

TRD Rule No. PTC-95, Regulations Pertaining to the Property Tax Code, Sections 7-35-1 to 7-38-90 NMSA 1978, filed 12/29/1994.

History of Repealed Material: 3 NMAC 6.6, Provisions for Imposition of Tax - Applicability, filed 8/19/1996 Repealed 07/30/2024.

Other History:

3 NMAC 6.6, Provisions for Imposition of Tax - Applicability, filed 8/19/1996 was recompiled 4/17/2001. 3.6.6 NMAC, Provisions for Imposition of Tax - Applicability, filed 4/17/2001 Replaced by 3.6.6 NMAC, Provisions for Imposition of Tax - Applicability effective 07/30/2024.

End of Adopted Rules

Other Material Related to Administrative Law

**EDUCATIONAL
RETIREMENT BOARD**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Educational Retirement Board gives Notice of a Minor, Nonsubstantive Correction to 2.82.5 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

Section 5: The effective date was incorrectly listed as “Month, day, year” when it should have been “July 1, 2024”. That incorrect, placeholder language was corrected.

A copy of this Notification will be filed with the official version of the above rule.

**REGULATION
AND LICENSING
DEPARTMENT
COUNSELING AND THERAPY
PRACTICE BOARD**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Counseling and Therapy Practice Board Educational Retirement Board gives Notice of a Minor, Nonsubstantive Correction to 16.27.18 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made

to all electronic copies of the above rule, as follows:

Section 17: In Subsection B, paragraphs (6) and (7) were corrected to paragraphs (5) and (6).

A copy of this Notification will be filed with the official version of the above rule.

**SUPERINTENDENT OF
INSURANCE, OFFICE OF**

**Notice of Rule Filing Errata and
Correction**

The Superintendent of Insurance (OSI) gives Notice of Rule Filing Errata and Correction to 13.14.17 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the OSI published in issue 13, Volume XXXV of the REGISTER that there was an amendment to 13.14.17.15 NMAC that made, what was thought to be an emergency amendment, permanent. In fact, due to an error in history note, the section that was properly noticed and was heard at the rule hearing of April 30, 2024 was on making an emergency amendment to Section 12 permanent. OSI has filed its corrected transmittal form and the correct Section 12. This notice is being published to inform the public that the publication of Section 15 in issue 13 was extraneous and that the corrected filing of Section 12 shall have full force and effect of the earlier filing, nunc pro tunc.

A copy of this Notification will be filed with the official version of the above rule.

**End of Other Material
Related to Administrative
Law**

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Submittal Deadlines and Publication Dates

Volume XXXV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
Issue 10	May 9	May 21
Issue 11	May 23	June 11
Issue 12	June 13	June 25
Issue 13	July 8	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 8
Issue 20	October 10	October 22
Issue 21	October 24	November 5
Issue 22	November 7	November 19
Issue 23	November 26	December 10
Issue 24	December 12	December 23

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. The *New Mexico Register* is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941