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New Mexico Register

The official publication for all official notices of rulemaking
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Volume XXXVI - Issue 2 - January 28, 2025

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The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos

Rey, Santa Fe, NM 87507.

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New Mexico Register

Volume XXXVI, Issue 2

January 28, 2025

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Notices of Rulemaking and Proposed Rules

**HEALTH CARE
AUTHORITY
MEDICAL ASSISTANCE
DIVISION**

NOTICE OF RULEMAKING

The Health Care Authority (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.299.400, *Medicaid Eligibility - Family Planning Services, Recipient Requirements*.

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

Notice Date: January 28, 2025
Hearing Date: February 27, 2025
Adoption Date: Proposed as July 1, 2025
Technical Citations: 42 CFR 435.214

Background

New Mexico had federal approval in its Centennial Care 2.0 1115 waiver to implement age restrictions for family planning Medicaid. The current age restriction is an individual, must be under the age of 51 and not have other health insurance or who is under the age of 65 and only has Medicare coverage. Through our new Turquoise Care 1115 waiver the Centers for Medicare and Medicaid Services (CMS) is requiring that the Department remove the age restrictions. CMS views the age restriction on family planning as a limitation in coverage for individuals who do not meet the age restriction. Therefore, through this proposed register the Department is removing the age restriction for family planning Medicaid.

**The Department is proposing to amend the rule as follows:
8.299.400**

Section 8 is being amended to include

the Department’s current mission statement.

Section 9 HSD is being changed to Health Care Authority.

Section 9 is being amended to delete the age restrictions that are in A and B.

I. RULE

These proposed rule changes will be contained in 8.299.400 NMAC. This register and the proposed rule are available on the HCA website at: <https://www.hca.nm.gov/lookingforinformation/registers/> and <https://www.hca.nm.gov/comment-period-open-2025/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

II. EFFECTIVE DATE

The Department proposes to implement this rule effective July 1, 2025.

III. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held on February 27, 2025, at 9:30 am. The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and via Zoom.

Join Zoom Meeting

<https://us02web.zoom.us/j/88658609318?pwd=MyXTazu8sPapjnURAQlQQOyl2XKBpUX.1> pr by phone 833-548-0282 US Toll-free.

Meeting ID: 886 5860 9318
Passcode: 710219

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 the MAD in Santa Fe at (505) 827-1337. The Department requests at least ten (10) working days advance notice to

provide requested alternative formats and special accommodations.

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

IV. ADDRESS

Interested persons may address written comments to:
New Mexico Health Care Authority
Office of the Secretary
ATTN: Medical Assistance Division
Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HCA-madrules@hca.nm.gov. Written mail, electronic mail and recorded comments must be received **no later than 5:00 p.m. MT on February 27, 2025**. 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 HCA website at <https://www.hca.nm.gov/comment-period-open-2025/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

**REGULATION
AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**NOTICE OF CANCELLATION
OF PUBLIC HEARING**

The public hearing for the Construction Industries Division scheduled for February 17, 2025, for the adoption of new rules adding a new chapter to Title 14 of the Housing

and Construction of the New Mexico Administrative code titled Chapter 15 Elevator Safety Code and adding parts NMAC 14.15.1 General Provisions; 14.15.2 Permitting; 14.15.3 Inspections; 14.15.4 Fees; 14.15.5 Contractor's License Requirements; 14.15.6 Journeyman Certification; 14.15.7 Inspectors 14.15.8 2019 NM Safety Code for Elevator and Escalators is Cancelled.

A public notice for the future hearing will be published in the New Mexico Register when the new hearing date is determined. For more information, contact Lori Chavez 505-469-2728 or lori.chavez1@rld.nm.gov.

**REGULATION
AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

NOTICE OF PUBLIC HEARING

The Construction Industries Division will convene a public hearing for the adoption of rules adding a new chapter to Title 14 of the Housing and Construction of the New Mexico Administrative Code titled Chapter 15 Elevator Safety Code and adding NMAC parts 14.15.1 - General Provisions; 14.15.2 - Permitting; 14.15.3 - Inspections; 14.15.4 - Fees; 14.15.5 - Contractor's License Requirements; 14.15.6 - Journeyman Certification; 14.15.7 - Inspectors 14.15.8 - 2019 NM Safety Code for Elevator and Escalators and deleting Paragraph (7) of Subsection D of 14.6.6.9 NMAC, titled, GS 9 Elevator, escalators, and related machinery (non electrical). The hearing will be held before a hearing officer at which time any interested person is invited to submit data, views or arguments on the proposed rules, either orally or in writing, and to examine witnesses testifying at the hearing. The hearing is scheduled March 24, 2025.

The purpose of this public rule hearing is to receive public comments regarding the adoption of new rules

for the Elevator Safety Act signed into law on April 6, 2023. New rules adopted pursuant to the Elevator Safety Act, NMSA 1978, Sections 60-13B-1 through 15 shall be published under 4.15.1 NMAC through 14.15.8 NMAC - Elevator Safety Codes and deletion of Paragraph (7) of Subsection D of 14.6.6.9 NMAC, titled, GS 9 Elevator, escalators, and related machinery (non electrical) of the Construction Licensing Codes, Classifications and Scopes, that conflict with the new Elevator Safety Act.

The statutory authority for this rulemaking is found in the Elevator Safety Act, Subsection B of Section 60-13B-4 NMSA 1978.

The hearing is scheduled as follows:

An in-person hearing shall be held on March 24, 2025, at the Regulation and Licensing Department located at 5500 San Antonio Drive NE, Albuquerque, NM, starting at 9:30 a.m. The hearing will remain open until 12:00 p.m. or until participants have an opportunity to make public comment, whichever is longer, but no later than 4:30 pm.

Interested persons may obtain copies of the proposed new rule changes by logging onto the Construction Industries Division website (<https://www.rld.nm.gov/construction-industries>) to download the proposed rules or by written request to the Albuquerque CID Office – Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109, attention: Felicia Garcia.

You may send written comments to: Construction Industries Division, – Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109, Attention: Public Comments. Written comments may also be faxed to (505) 765-5670 or submitted to Felicia Garcia at her email address: felicia.garcia@rld.nm.gov. All written comments must be received no later than 5:00 p.m., on Friday, March 21, 2025. You may also review submitted

comments by requesting copies from Felicia at her email address above. Public comments will be posted on the division's website (<https://www.rld.nm.gov/construction-industries>). Written comments may also be received at the in-person hearing until the hearing is closed. All public comments received shall be admitted into the record during the public hearing.

If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs as soon as possible to ensure adequate accommodations. Telephone: (505) 487-3563. Email: Felicia.garcia@rld.nm.gov; Fax No. (505) 765-5670.

Summary of the Proposed Changes to the Administrative Codes:

14.15.1 NMAC adopt general provisions for the administration of the Elevator Safety Act

14.15.2 NMAC adopt rules for permitting the erecting, constructing, installing, altering, servicing, testing, repairing, maintaining, removing or dismantling conveyances contained within a building or structure

14.15.3 NMAC adopt rules of inspecting the erecting, constructing, installing, altering, servicing, testing, repairing, maintaining, removing or dismantling conveyances contained within a building or structure

14.15.4 NMAC adopt rules for fees charged for the administering of the Elevator Safety Act.

14.15.5 NMAC adopt contractor's license requirements

14.15.6 NMAC adopt journeyman certification requirements

14.15.7 NMAC adopt inspector requirements

14.15.8 NMAC adopt 2019 NM Elevator Safety Code Requirements for elevator and escalators

14.6.6.9 NMAC delete classification for GS 9 Elevator, escalators, and related machinery (non electrical) Paragraph (7) of Subsection D.

14.6.6.9 NMAC re-sequence numbering of Subsection D.

**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
HEALTH IMPROVEMENT
DIVISION**

On January 3, 2025, the Health Care Authority repealed 8.370.3 NMAC, Health Facility Licensure Fees and Procedures, filed as emergency rule on 8/1/2024, and replaced it with 8.370.3 NMAC, Health Facility Licensure Fees and Procedures, effective 1/28/2025.

**HEALTH CARE
AUTHORITY
HEALTH IMPROVEMENT
DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 3 HEALTH FACILITY LICENSURE FEES AND PROCEDURES**

8.370.3.1 ISSUING AGENCY: New Mexico Health Care Authority, Division of Health Improvement, Health Facility Licensing and Certification Bureau. [8.370.3.1 NMAC - Rp, 8.370.3.1 NMAC, 01/28/2025]

8.370.3.2 SCOPE: These regulations apply to any health facility as defined by Subsection D of 24-1-2 NMSA 1978, as amended, which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding. [8.370.3.2 NMAC - Rp, 8.370.3.2 NMAC, 01/28/2025]

8.370.3.3 STATUTORY AUTHORITY: The regulations set forth herein have been promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the general authority granted under Subsection E of Section 9-8-6 of the Health Care Authority Act, NMSA 1978, as amended; and the authority granted under Subsection D of Section 24A-1-2, Subsection I of Section 24A-1-3, and Section 24A-1-5 of the Health Care Code, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation. [8.370.3.3 NMAC - Rp, 8.370.3.3 NMAC, 01/28/2025]

8.370.3.4 DURATION: Permanent. [8.370.3.4 NMAC - Rp, 8.370.3.4 NMAC, 01/28/2025]

8.370.3.5 EFFECTIVE DATE: January 28, 2025, unless a later date is cited at the end of a section. [8.370.3.5 NMAC - Rp, 8.370.3.5 NMAC, 01/28/2025]

8.370.3.6 OBJECTIVE: The purpose of these regulations is to set licensing fees for health facilities. Fees are charged in order to partially defray the cost to the state of New Mexico of the licensing process, including the cost of on-site facility surveys by the licensing authority. [8.370.3.6 NMAC - Rp, 8.370.3.6 NMAC, 01/28/2025]

8.370.3.7 DEFINITIONS: For purposes of these regulations the following shall apply:

A. Definitions beginning with “A”:
(1) “amended license” means a license issued by the licensing authority to reflect a non-substantive change which does not result in the voiding of the original license, for example, a change in the name of the facility or a change in the operator or administrator;

(2) “annual license” is a license granting permission to operate a facility for the one-year period stated on the face of the document; the annual license is issued on an initial and renewal basis following submission of an acceptable application for license and survey of the facility;

(3) “application for license” means the forms, attachments and other writings and drawings required by the licensing authority, under the authority of the regulations listed in 8.370.3.14 NMAC, of these regulations to be submitted for review by the licensing authority as part of the process of granting or denying an annual license;

B. Definitions beginning with “B”: **“bed”** means an assembly for sleeping, whether or not the bed is in actual use and for which “bed capacity” the facility is licensed;

C. Definitions beginning with “C”:
(1) “capacity” means the total number of persons or beds for which the facility is licensed;
(2) “change of ownership” licenses are **non-transferable**; a change of ownership licensure will follow the initial application and licensure fee schedule process;

D. Definitions beginning with “D”: **“denial of the license”** means action by the licensing authority refusing to grant

an annual license on the basis of non-compliance with applicable laws and regulations, and specifically under these regulations, nonpayment of the prescribed fee;

E. Definitions

beginning with “E”: [RESERVED]

F. Definitions

beginning with “F”:

(1) “facility

and health facility” means any health facility required to be licensed by the licensing authority by authority of the Health Care Code, Sections 24A-1-1 et. seq. NMSA 1978, as amended, and the regulations listed in 8.370.3.14 NMAC of these regulations;

(2) “facility

inspections or survey and inspection survey” means an entry into a facility and examination of the facility premises, inspection of records and interview of staff and clientele;

G. Definitions

beginning with “G”: [RESERVED]

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”: [RESERVED]

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”:

(1) “license”

means the document issued by the licensing authority which authorizes the operation of a facility. The term license may mean an annual license or a time-limited temporary license;

(2) “licensing

authority” means the division of health improvement of the New Mexico health care authority;

M. Definitions

beginning with “M”: [RESERVED]

N. Definitions

beginning with “N”: [RESERVED]

O. Definitions

beginning with “O”: [RESERVED]

P. Definitions

beginning with “P”: [RESERVED]

Q. Definitions

beginning with “Q”: [RESERVED]

R. Definitions

beginning with “R”: [RESERVED]

S. Definitions

beginning with “S”: [RESERVED]

T. Definitions

beginning with “T”: “temporary license” means a provisional license granting permission to operate a facility for any period of time not to exceed 120 days; not more than two consecutive temporary licenses may be granted by the licensing authority.

U. Definitions

beginning with “U”: [RESERVED]

V. Definitions

beginning with “V”: [RESERVED]

W. Definitions

beginning with “W”: [RESERVED]

X. Definitions

beginning with “X”: [RESERVED]

Y. Definitions

beginning with “Y”: [RESERVED]

Z. Definitions

beginning with “Z”: [RESERVED]

[8.370.3.7 NMAC - Rp, 8.370.3.7 NMAC, 1/28/2025]

8.370.3.8 STANDARD OF COMPLIANCE: Strict compliance

is required of health facilities subject to these regulations. Payment of the licensing fee is a condition precedent to licensure of the health facility by the licensing authority.

[8.370.3.8 NMAC - Rp, 8.370.3.8 NMAC, 1/28/2025]

8.370.3.9 BASIS: Licensing fees for inpatient health facilities providing professional medical or nursing services on a 24 hour basis are based upon a maximum fee per bed set by statute. Licensing fees are based upon the maximum fee for health facilities as set by statute.

[8.370.3.9 NMAC - Rp, 8.370.3.9 NMAC, 1/28/2025]

8.370.3.10 LICENSURE FEE SCHEDULE: Rates shall

be charged, as indicated in the fee schedule shown in this section, upon initial and renewal application for an annual license and prior to issuance of a second temporary license. The fee for the first temporary license is included in the initial application fee. This rule applies to both initial and renewal of health facility licenses.

Continued Next
Page

A. Hospitals: general hospitals, limited hospitals, children’s psychiatric hospitals, special hospitals to include orthopedic, children’s, psychiatric, alcohol & drug abuse treatment, rehabilitation, and other special hospital as identified;

| Facility Types: | Rate Per License | Term limit |
|-------------------|------------------|------------|
| Hospital bed rate | \$12.00 per bed | Annually |

B. Assisted living facilities:

| Facility Types: | Rate Per License | Term limit |
|--------------------------------------|------------------|------------|
| Assisted living base assessment rate | \$300.00 | Annually |

C. Long-term care facilities:

| Facility Types: | Rate Per License |
|--|------------------|
| skilled nursing facilities | \$12.00 per bed |
| intermediate care facilities | \$12.00 per bed |
| intermediate care facilities for mentally retarded | \$12.00 per bed |

D. Outpatient health facilities:

| Facility Types: | Rate Per License |
|---|------------------|
| Health facilities providing outpatient medical services | \$300.00 |
| community mental health centers | \$300.00 |
| free standing hospice | \$300.00 |
| home health agency | \$300.00 |
| diagnostic and treatment center | \$300.00 |
| limited diagnostic and treatment center | \$300.00 |
| rural health clinic | \$300.00 |
| Infirmery | \$300.00 |
| new or innovative clinic | \$300.00 |
| ambulatory surgical center | \$300.00 |

E. Other health facilities:

| Facility Types: | Rate Per License |
|---|-------------------------------------|
| Facilities providing services for end stage renal disease | \$300.00 |
| services for end state renal disease | \$300.00 |
| renal transplantation center | \$300.00 |
| renal dialysis center | \$300.00 |
| renal dialysis facility | \$300.00 |
| self dialysis unit | \$300.00 |
| special purpose renal dialysis facility | \$300.00 |
| In home and inpatient hospice care | \$300.00 |
| Home health agencies | \$300.00 |
| Rural emergency hospital | \$300.00 |
| Freestanding birth centers | \$300.00 |
| Adult accredited residential treatment center | \$600.00 bi-annually + \$25 per bed |
| Boarding homes: | \$300.00 |

F. Adult Day Care: Facilities providing adult day care and services for less than 24 hours a day for three or more clients in accordance with 8.370.20 NMAC

| Facility Types: | Rate Per License |
|---------------------------|------------------|
| Adult day care facilities | \$300.00 |

[8.370.3.10 NMAC - Rp, 8.370.3.10 NMAC, 1/28/2025]

8.370.3.11 FEES FOR AMENDED LICENSES: The licensing fee for each amended license issued shall be \$300.00 as follows:

| Amendment Type: | Amended License Fee: |
|--|-----------------------------|
| Change of administrator or director | \$300.00 |
| Change of capacity (additional \$25.00 per bed if fee is rate per bed) | \$300.00 |
| Change of facility name | \$300.00 |
| Change of physical address | \$300.00 |

[8.370.3.11 NMAC - Rp, 8.370.3.11 NMAC, 1/28/2025]

8.370.3.12 METHOD OF PAYMENT FOR LICENSE FEES: All applications for license and requests for amended license shall be accompanied by the prescribed fee in the form of a check or money order or state approved electronic payment process payable to the State of New Mexico or the health care authority.

[8.370.3.12 NMAC - Rp, 8.370.3.12 NMAC, 1/28/2025]

8.370.3.13 NON-REFUNDABLE PRE-PAYMENT OF FEES: All fees are prepaid and are not refundable.

[8.370.3.13 NMAC - Rp, 8.370.3.13 NMAC, 1/28/2025]

8.370.3.14 RELATED REGULATIONS: The following is a list of regulations regarding licensure of health facilities within the jurisdiction of the licensing authority.

A. Requirements for acute care, limited services and special hospitals, New Mexico health care authority, 8.370.12 NMAC.

B. Requirements for long term care facilities, New Mexico health care authority, 8.370.16 NMAC.

C. Requirements for facilities providing outpatient medical services and infirmaries, New Mexico health care authority, 8.370.18 NMAC.

D. Requirements for in-home and inpatient hospice care, New Mexico health care authority, 8.370.19 NMAC.

E. Requirements for adult day care facilities, New Mexico health care authority, 8.370.20 NMAC.

F. Requirements for intermediate care facilities for the mentally retarded, New Mexico health care authority, 8.371.2 NMAC.

G. Requirements for end stage renal disease facilities, New Mexico health care authority, 8.370.24 NMAC.

H. Requirements for assisted living facilities for Adults, New Mexico health care authority, 8.370.14 NMAC.

I. Requirements for home health agencies, New Mexico health care authority, 8.370.22 NMAC.

J. Requirements for rural emergency hospitals, New Mexico health care authority, 8.370.13 NMAC.

K. Requirements for boarding homes, New Mexico health care authority, 8.370.15 NMAC.

L. Requirements for clinical laboratory improvement amendments, 42 CFR, Part 493, New Mexico health care authority.

M. Requirements for community mental health centers, New Mexico health care authority, 8.321.6 NMAC.

N. Requirements for freestanding birth centers, New Mexico health care authority, 8.370.17 NMAC.

O. crisis triage centers, New Mexico health care authority, 8.321.11 NMAC.

[8.370.3.14 NMAC - Rp, 8.370.3.14 NMAC, 1/28/2025]

History of 8.370.3 NMAC:

8.370.3 NMAC, Health Facility Licensure Fees and Procedures filed 8/1/2024 was replaced by 8.370.3 NMAC, Health Facility Licensure Fees and Procedures, effective 1/28/2025.

HISTORY OF 7.1.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center: HED-85-7 (HSD), Regulations Governing Licensing Fees for Health Facilities, filed 11/20/1985.

DOH 91-3 (PHD), New Mexico Regulations Governing Licensing Fees for Health Facilities, filed 10/18/1991.

DOH 93-3 (PHD), Regulations Governing Licensing Fees for Health Facilities in New Mexico, filed 4/30/1993.

History of Repealed Material:

7.1.7 NMAC, Health Facility Licensure Fees and Procedures (filed 2/15/2006) repealed 12/01/2010.

7.1.7 NMAC, Health Facility Licensure Fees and Procedures (filed 12/01/2010) repealed 6/30/2024 and replaced by

emergency with 8.370.3.1 NMAC, Health Facility Licensure Fees and Procedures, filed and effective on 8/1/2024.

8.370.3.1 NMAC, Health Facility Licensure Fees and Procedures, emergency filed on 8/1/2024, was Repealed effective 1/28/2025.

Other History:

DOH 93-3 (PHD), Regulations Governing Licensing Fees for Health Facilities in New Mexico (filed 4/30/1993) was renumbered, reformatted, amended and replaced by 7 NMAC 1.7, Health Facility Licensure Fees and Procedures, effective 10/31/1996.

7 NMAC 1.7, Health Facility Licensure Fees and Procedures (filed 10/18/1996) was renumbered, reformatted, amended and replaced by 7.1.7 NMAC, Health Facility Licensure Fees and Procedures, effective 2/28/2006.

7.1.7 NMAC, Health Facility Licensure Fees and Procedures (filed 2/15/2006) was replaced by 7.1.7 NMAC, Health Facility Licensure Fees and Procedures, effective 12/01/2010.

8.370.3.1 NMAC, Health Facility Licensure Fees and Procedures, emergency filed on 8/1/2024, was Replaced by 8.370.3.1 NMAC, Health Facility Licensure Fees and Procedures, effective 1/28/2025.

**HEALTH CARE
AUTHORITY
HEALTH IMPROVEMENT
DIVISION**

This is an amendment to 8.370.5 NMAC Sections 8 and 9, effective 1/28/2025.

**8.370.5.8 CAREGIVER
AND HOSPITAL
CAREGIVER EMPLOYMENT
REQUIREMENTS:**

A. General: The responsibility for compliance with the requirements of the act applies to both the care provider and to all applicants, caregivers and hospital caregivers. All applicants for employment to

whom an offer of employment is made or caregivers and hospital caregivers employed by or contracted to a care provider must consent to a nationwide and statewide criminal history screening, as described in Subsections D, E and F of this section, upon offer of employment or at the time of entering into a contractual relationship with the care provider. Care providers shall submit all fees and pertinent application information for all applicants, caregivers or hospital caregivers as described in Subsections D, E and F of this section. Pursuant to Section 29-17-5 NMSA 1978 (amended) of the act, a care provider's failure to comply is grounds for the state agency having enforcement authority with respect to the care provider to impose appropriate administrative sanctions and penalties.

B. Exception: A caregiver or hospital caregiver applying for employment or contracting services with a care provider within 12 months of the caregiver's or hospital caregiver's most recent nationwide criminal history screening which list no disqualifying convictions shall only apply for a statewide criminal history screening upon offer of employment or at the time of entering into a contractual relationship with the care provider. At the discretion of the care provider a nationwide criminal history screening, additional to the required statewide criminal history screening, may be requested.

C. Conditional employment: Applicants, caregivers, and hospital caregivers who have submitted all completed documents and paid all applicable fees for a nationwide and statewide criminal history screening may be deemed to have conditional supervised employment pending receipt of written notice given by the authority as to whether the applicant, caregiver or hospital caregiver has a disqualifying conviction.

D. Application: In order for a nationwide criminal history record to be obtained and processed, the following shall be

submitted to the authority on forms provided by the authority.

(1) A form containing personal identification which has a photograph of the person and which meets the requirements for employment eligibility in accordance with the immigration and nationality act as amended. A reasonable xerographic copy of a drivers license photograph will suffice under Subsection D of 8.370.5.8 NMAC.

(2) A signed authorization for release of information form.

(3) Three complete sets of readable fingerprint cards or other authority approved media acceptable to the department of public safety and the federal bureau of investigation submitted using black ink.

(4) The fee specified by the authority for the nationwide and statewide criminal history screening investigation [~~shall not exceed \$74. Of which, \$24 shall be applied for the federal bureau of investigation nationwide criminal history screening, seven dollars shall be applied for the statewide criminal history screening. The remaining application fee~~] shall be applied to cover costs incurred by the authority to support activities required by the act and these rules. The fees will not be applied to any other activity or expense undertaken by the authority.

(5) If the applicant, caregiver or hospital caregiver must submit another readable set of fingerprint cards upon notice that the fingerprint cards previously submitted were found unreadable, as determined by the federal bureau of investigation or department of public safety, the submission of a second set of fingerprint cards is required, a separate fee will not be charged. A fee shall be charged for submission of a third and subsequent fingerprint sets.

(6) If the applicant, caregiver or hospital caregiver has a physical or medical condition which prevents the applicant, caregiver or hospital

caregiver from producing readable fingerprints using commonly available fingerprinting techniques, the applicant, caregiver or hospital caregiver shall submit the fingerprint cards with a notarized affidavit signed by the applicant, caregiver, hospital caregiver, returned to the authority within 14 calendar days, as determined by the postmark, which provides:

(a)

identification of the applicant, caregiver or hospital caregiver; and

(b)

an explanation of, or a statement describing, the applicant's, caregiver's or hospital caregiver's good faith efforts to supply readable fingerprints; and

(c)

the physical or medical reason that prevents the applicant, caregiver or hospital caregiver from producing readable fingerprints using commonly available fingerprinting techniques; and

(d)

an applicant, caregiver or hospital caregiver meeting the conditions of this paragraph and who has resided in the state of New Mexico for less than 10 years must also submit a 10 year work history in addition to the required affidavits.

(7) All

documentation submitted to the authority for the purposes of criminal history screening and for the purposes set forth in 8.370.5.9 NMAC and 8.370.5.10 NMAC shall become the sole property of the authority with the exception of fingerprint cards which shall be destroyed upon clearance by both the federal bureau of investigation and department of public safety. All other submitted documentation shall be retained by the authority for a period of one year from the final date of closure and thereafter shall be archived.

E. Fees:

The federal bureau of investigation has a mandatory processing fee with no exceptions. The authority and department of public safety impose a state processing and administrative fee. The fee payment must accompany the fingerprint

application, or otherwise be credited to the authority prior to or at the same time with the authority's receipt of the application documents. The manner of payment of the fee is by bank cashier check or money order payable to the New Mexico health care authority or other method of funds transfer acceptable to the authority. Business checks will be accepted unless the business tendering the check has previously tendered a check to the authority unsupported by sufficient funds.

Neither cash nor personal checks will be accepted. The fee may be paid by the care provider or by the applicant, caregiver or hospital caregiver. The authority will set a fee in addition to the fees imposed by department of public safety and the federal bureau of investigation that will fully and completely cover costs incurred by the authority to support activities required by the act and these rules. The fees will not be applied to any other activity or expense undertaken by the authority.

F. Timely

submission: Care providers shall submit all fees and pertinent application information for all individuals who meet the definition of an applicant, caregiver or hospital caregiver as described in Subsections B, D and K of 8.370.5.7 NMAC, no later than 20 calendar days from the first day of employment or effective date of a contractual relationship with the care provider.

G. Maintenance

of records: Care providers shall maintain documentation relating to all employees and contractors evidencing compliance with the act and these rules.

(1) During

the term of employment, care providers shall maintain evidence of each applicant, caregiver or hospital caregiver's clearance, pending reconsideration, or disqualification.

(2) Care

providers shall maintain documented evidence showing the basis for any determination by the care provider that an employee or contractor performs job functions that do not fall

within the scope of the requirement for nationwide or statewide criminal history screening. A memorandum in an employee's file stating "This employee does not provide direct care or have routine unsupervised physical or financial access to care recipients served by (name of care provider)" together with the employee's job description, shall suffice for record keeping purposes.

[8.370.5.8 NMAC - N, 7/1/2024, A, 01/28/2025]

8.370.5.9 CAREGIVERS OR HOSPITAL CAREGIVERS AND APPLICANTS WITH DISQUALIFYING CONVICTIONS:

A. Prohibition on

employment: A care provider shall not hire or continue the employment or contractual services of any applicant, caregiver or hospital caregiver for whom the care provider has received notice of a disqualifying conviction, except as provided in Subsection B of this section.

(1) In cases

where the criminal history record lists an arrest for a crime that would constitute a disqualifying conviction and no final disposition is listed for the arrest, the authority will attempt to notify the applicant, caregiver or hospital caregiver and request information from the applicant, caregiver or hospital caregiver within timelines set forth in the authority's notice regarding the final disposition of the arrest. Information requested by the authority may be evidence, for example, a certified copy of an acquittal, dismissal or conviction of a lesser included crime.

(2) An

applicant's, caregiver's or hospital caregiver's failure to respond within the required timelines regarding the final disposition of the arrest for a crime that would constitute a disqualifying conviction shall result in the applicant's, caregiver's or hospital caregiver's temporary disqualification from employment as a caregiver or hospital caregiver pending written documentation submitted to the authority evidencing

the final disposition of the arrest. Information submitted to the authority may be evidence, for example, of the certified copy of an acquittal, dismissal or conviction of a lesser included crime. In instances where the applicant, caregiver or hospital caregiver has failed to respond within the required timelines the authority shall provide notice by ~~[eertified]~~ mail or electronic communication that an employment clearance has not been granted. The care provider shall then follow the procedure of Subsection A of 8.370.5.9 NMAC.

(3) The authority will not make a final determination for an applicant, caregiver or hospital caregiver with a pending potentially disqualifying conviction for which no final disposition has been made. In instances of a pending potentially disqualifying conviction for which no final disposition has been made, the authority shall notify the care provider, applicant, caregiver or hospital caregiver by ~~[eertified]~~ mail or electronic communication that an employment clearance has not been granted. The care provider shall then follow the procedure of Subsection A of 8.370.5.9 NMAC.

B. Employment pending reconsideration determination: At the discretion of the care provider, an applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction and who has requested administrative reconsideration may continue conditional supervised employment pending a determination on reconsideration.

C. Notice of final determination of disqualification: Upon receipt of a notice of final determination of disqualification a care provider shall:

(1) immediately and permanently remove an applicant, caregiver or hospital caregiver from any position of employment that meets the definition of an applicant, caregiver or hospital caregiver as set forth in Subsections D and K of 8.370.5.7 NMAC; and

(2) notify the authority by letter within 14 calendar days, as determined by the postmark, of the date and type of action taken to satisfy the removal requirements of as set forth in Paragraph (1) of Subsection C of this section via written documentation signed by an authorized agent of the care provider. [8.370.5.9 NMAC - N, 7/1/2024; A, 01/28/2025]

HEALTH CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC, Sections 1, 8, and 10-15, effective 2/1/2025.

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

[8.200.400.1 NMAC - Rp, 8.200.400.1 NMAC, 1/1/2019; A/E, 10/1/2024; A, 2/1/2025]

8.200.400.8 MISSION: [~~For 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.~~

[8.200.400.8 NMAC - Rp, 8.200.400.8 NMAC, 1/1/2019; A, 1/1/2022; A/E, 10/1/2024; A, 2/1/2025]

8.200.400.10 BASIS FOR DEFINING GROUP - MEDICAID CATEGORIES:

A. Except where noted, the [~~HSD]~~ HCA income support division (ISD) determines eligibility in the categories listed below:

(1) other adult (Category 100);

(2) parent caretaker (Category 200);
 (3) pregnant women (Category 300);
 (4) pregnancy-related services (Category 301);
 (5) loss of parent caretaker due to earnings from employment or due to spousal support (Categories 027 and 028);
 (6) newborn (Category 031);
 (7) children under age 19 (Categories 400, 401, 402, 403, 420, and 421);
 (8) children, youth, and families department medicaid (Categories 017, 037, 046, 04, 066, and 086); and
 (9) family planning (Category 029).

B. Medicare savings program (MSP): MSP assists an eligible recipient with the cost of medicare.

(1) Medicare is the federal government program that provides health care coverage for individuals 65 or older; or under 65 who have a disability. Individuals under 65 who have a disability are subject to a waiting period of 24 months from the approval date of social security disability insurance (SSDI) benefits before they receive medicare coverage. Coverage under medicare is provided in four parts.

(a) Part A hospital coverage is usually free to beneficiaries when medicare taxes are paid while working.

(b) Part B medical coverage requires monthly premiums, co-insurance and deductibles to be paid by the beneficiary.

(c) Part C advantage plan allows a beneficiary to choose to receive all medicare health care services through a managed care organization.

(d) Part D provides prescription drug coverage.

(2) The following MSP programs can assist an eligible recipient with the cost of medicare.

(a)
Qualified medicare beneficiaries (QMB) - Categories 041 and 044: QMB covers low income medicare beneficiaries who have or are conditionally eligible for medicare Part A. QMB benefits are limited to the following:

(i) cost for the monthly medicare Part B premium;

(ii) cost of medicare deductibles and coinsurance; and

(iii) cost for the monthly medicare Part A premium (for those enrolling conditionally).

(b)
Specified low-income medicare beneficiaries (SLIMB) - Category 045: SLIMB medicare covers low-income medicare beneficiaries who have medicare Part A. SLIMB is limited to the payment of the medicare Part B premium.

(c)
Qualified individuals 1 (QI1s) - Category 042: QI1 medicare covers low-income medicare beneficiaries who have medicare Part A. QI1 is limited to the payment of the medicare part B premium.

(d)
Qualified disabled working individuals (QDI) - Category 050: QDI medicare covers low income individuals who lose entitlement to free medicare Part A hospital coverage due to gainful employment. QDI is limited to the payment of the monthly Part A hospital premium.

(e)
Medicare Part D prescription drug coverage - low income subsidy (LIS) - Category 048: LIS provides individuals enrolled in medicare Part D with a subsidy that helps pay for the cost of Part D prescription premiums, deductibles and co-payments. An eligible recipient receiving medicaid through QMB, SLMB or QI1 is automatically deemed eligible for LIS and need not apply. Other low-income medicare beneficiaries must meet an income and resource test and submit an application to determine if they qualify for LIS.

C. **Supplemental security income (SSI) related medicaid:**

(1) **SSI - Categories 001, 003 and 004:** Medicaid for individuals who are eligible for SSI. Eligibility for SSI is determined by the social security administration (SSA). This program provides cash assistance and medicaid for an eligible recipient who is:

(a) aged (Category 001);

(b) blind (Category 003); or

(c) disabled (Category 004).

(2) **SSI medicaid extension - Categories 001, 003 and 004:** MAD provides coverage for certain groups of applicants or eligible recipients who have received supplemental security income (SSI) benefits and who have lost the SSI benefits for specified reasons listed below and pursuant to 8.201.400 NMAC:

(a) the pickle amendment and 503 lead;

(b) early widow(er);

(c) disabled widow(er) and a disabled surviving divorced spouse;

(d) child insurance benefits, including disabled adult children (DAC);

(e) nonpayment SSI status (E01);

(f) revolving SSI payment status “ping-pongs”; and

(g) certain individuals who become ineligible for SSI cash benefits and, therefore, may receive up to two months of extended medicaid benefits while they apply for another MAD category of eligibility.

(3) **Working disabled individuals (WDI) and medicare wait period - Category 074:** There are two eligibility types:

(a) a disabled individual who is employed; or

(b) a disabled individual who has lost SSI

medicaid due to receipt of SSDI and the individual does not yet qualify for medicare.

D. **Long term care medicaid:**

(1) medicaid for individuals who meet a nursing facility (NF) level of care (LOC), intermediate care facilities for the intellectually disabled (ICF-ID) LOC, or acute care in a hospital. SSI income methodology is used to determine eligibility. An eligible recipient must meet the SSA definition of aged (Category 081); blind (Category 083); or disabled (Category 084).

(2) **Institutional care (IC) medicaid - Categories 081, 083 and 084:** IC covers certain inpatient, comprehensive and institutional and nursing facility benefits.

(3) **Program of all-inclusive care for the elderly (PACE) - Categories 081, 083 and 084:** PACE uses an interdisciplinary team of health professionals to provide dual medicaid/medicare enrollees with coordinated care in a community setting. The PACE program is a unique three-way partnership between the federal government, the state, and the PACE organization. The PACE program is limited to specific geographic service area(s). Eligibility may be subject to a wait list for the following:

(a) the aged (Category 081);

(b) the blind (Category 083); or

(c) the disabled (Category 084).

(4) **Home and community-based 1915 (c) waiver services (HCBS) - Categories 090, 091, 092, 093, 094, 095 and 096:** A 1915(c) waiver allows for the provision of long term care services in home and community based settings. These programs serve a variety of targeted populations, such as people with mental illnesses, intellectual disabilities, or physical disabilities. Eligibility may be subject to a wait list.

(a) **There are two HCBS delivery models:**

(i) traditional agency delivery where HCBS are delivered and managed by a MAD enrolled agency; or

(ii) mi via self-directed where an eligible recipient, or their representative, has decision-making authority over certain services and takes direct responsibility to manage the eligible mi via recipient’s services with the assistance of a system of available supports; self-direction of services allows an eligible mi via recipient to have the responsibility for managing all aspects of service delivery in a person-centered planning process.

(b) **HCBS waiver programs include:**

(i) elderly (Category 091), blind (Category 093) and disabled (Category 094);

(ii) medically fragile (Category 095);

(iii) developmental disabilities (Category 096); and

(iv) self-directed model for Categories 090, 091, 093, 094, 095, 096 and 092).

E. Emergency medical services for non-citizens (EMSNC): EMSNC medicaid covers certain non-citizens who either are undocumented or who do not meet the qualifying non-citizen criteria specified in 8.200.410 NMAC. Non-citizens must meet all eligibility criteria for one of the medicaid categories noted in 8.285.400 NMAC, except for citizenship or qualified non-citizen status. Medicaid eligibility for and coverage of services under EMSNC are limited to the payment of emergency services from a medicaid provider.

F. Refugee medical assistance (RMA) - Categories 049 and 059: RMA offers health coverage to certain low-income refugees during the first twelve months from their date of entry to the United States (U.S.) when they do not

qualify for other medicaid categories of eligibility. An RMA eligible refugee recipient has access to a benefit package that parallels the full coverage medicaid benefit package. RMA is funded through a grant under Title IV of the Immigration and Nationality Act (INA). An RMA applicant who exceeds the RMA income standards may “spend-down” below the RMA income standards for Category 059 by subtracting incurred medical expenses after arrival into the U.S.

G. Breast and cervical cancer (BCC) - Category 052: BCC medicaid provides coverage to an eligible uninsured woman, under the age of 65 who has been screened and diagnosed by the department of health (DOH) as having breast or cervical cancer to include pre-cancerous conditions. The screening criteria are set forth in the centers for disease control and prevention’s national breast and cervical cancer early detection program (NBCCEDP). Eligibility is determined using DOH notification and without a separate medicaid application or determination of eligibility.

[8.200.400.10 NMAC - Rp, 8.200.400.10 NMAC, 1/1/2019; A, 1/1/2022; A, 1/1/2023; A, 2/1/2025]

8.200.400.11 PRESUMPTIVE ELIGIBILITY FOR BREAST AND CERVICAL CANCER: PE provides immediate access to health services when an individual appears to be eligible for Category 052.

A. Breast and cervical cancer (BCC) (Category 052): PE provides temporary medicaid coverage for an uninsured woman, under the age of 65 who has been screened and diagnosed by the DOH as having breast or cervical cancer to include pre-cancerous conditions. Only one PE period is allowed per calendar year.

B. PE is determined by a qualified entity certified by [HSD] HCA. Qualified entities may include community and rural health centers, hospitals, physician offices, local health departments, family planning agencies and schools.

C. The PE period begins on the date the provider determines presumptive eligibility and terminates at the end of the following month.

D. Providers shall notify the MAD claims processing contractor of the determination within 24-hours of the PE determination.

E. For continued medicaid eligibility beyond the PE period, a completed and signed application for medicaid must be submitted to [HSD/ISD] HCA/ISD. An eligible PE provider must submit the application to ISD within 10 calendar days from the receipt of the application.

[8.200.400.11 NMAC - Rp, 8.200.400.11 NMAC, 1/1/2019; A/E, 10/1/2024; A, 2/1/2025]

8.200.400.12 CONTINUOUS ELIGIBILITY FOR CHILDREN (42 CFR 435.926):

A. [HSD] HCA provides continuous eligibility for the period specified in Subsection B and C of 8.200.400.12 NMAC for an individual who is:

- (1) Under age 19 and
- (2) Eligible and enrolled for mandatory or optional coverage under the state plan.

B. The continuous eligibility period is up to six years for children from birth until turning age six. A child enrolled for less than 12 months before turning age six is eligible for 12 months of continuous eligibility. The continuous eligibility period begins on the effective date of the individual’s eligibility or most recent redetermination or renewal of eligibility.

C. The continuous eligibility period is 12 months for children age six until turning age 19. The continuous eligibility period begins on the effective date of the individual’s eligibility or most recent redetermination or renewal of eligibility.

D. A child’s eligibility may not be terminated during a continuous eligibility

period, regardless of any changes in circumstances, unless:

- (1) the child attains the maximum age of 19;
- (2) the child or child's representative requests a voluntary termination of eligibility;
- (3) the child ceases to be a resident of New Mexico;
- (4) the agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or
- (5) the child dies.

[8.200.400.12 NMAC - Rp, 8.200.400.12 NMAC, 1/1/2019; A, 9/1/2024; A/E, 10/1/2024; A, 2/1/2025]

8.200.400.13 AUTHORIZED REPRESENTATIVE: [HSD]

HCA must permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications.

A. Such a designation must be in writing including the applicant's signature, and must be permitted at the time of application and at other times. Legal documentation of authority to act on behalf of an applicant or beneficiary under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in the place of written authorization by the applicant or beneficiary.

B. Representatives may be authorized to:

- (1) sign an application on the applicant's behalf;
- (2) complete and submit a renewal form;
- (3) receive copies of the applicant or beneficiary's notices and other communications from the agency; and
- (4) act on behalf of the applicant or beneficiary in all other matters with the agency.

C. The power to act as an authorized representative is valid until the applicant or beneficiary modifies the authorization or notifies the agency that the representative is no longer authorized to act on their behalf, or the authorized representative informs the agency that they are no longer acting in such capacity, or there is a change in the legal authority upon which the individual's or organization's authority was based. Such notice must be in writing and should include the applicant or authorized representative's signature as appropriate.

D. The authorized representative is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual they represent, and must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the applicant or beneficiary provided by the agency.

E. As a condition of serving as an authorized representative, a provider, staff member or volunteer of an organization must sign an agreement that they will adhere to the regulations relating to confidentiality (relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf), as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information (42 CFR 435.923).

[8.200.400.13 NMAC - Rp, 8.200.400.13 NMAC, 1/1/2019; A, 1/1/2023; A/E, 10/1/2024; A, 2/1/2025]

8.200.400.14 RETROACTIVE MEDICAID:

A. [HSD] HCA must make eligibility for medicaid effective no later than the first or up to the third month before the month of application if the individual:

- (1) Requested coverage for months prior to the application month;

(2) received medicaid services, at any time during that period, of a type covered under the plan and;

(3) would have been eligible for medicaid at the time they received the services, if they had applied (or an authorized representative has applied for ~~him or her~~ them) regardless of whether the individual is alive when application for medicaid is made.

B. Eligibility for medicaid is effective on the first day of the month if an individual was eligible at any time during that month.

C. Eligibility for each retroactive month is determined separately. Retroactive medicaid must be requested within 180 days of the date of the medicaid application.

D. Retroactive medicaid is allowed for up to three months prior to the application month for the following medicaid categories:

- (1) other adults (COE 100);
- (2) parent caretaker (COE 200);
- (3) pregnant women (COE 300);
- (4) pregnancy-related services (COE 301);
- (5) children under age 19 (COEs 400, 401, 402, 403, 420, and 421);
- (6) family planning (COE 029);
- (7) children, youth and families department (CYFD COEs 017, 037, 046, 047, 066, and 086);
- (8) supplemental security income (SSI COEs 001, 003, and 004);
- (9) SSI (COEs 001, 003, and 004, e.g. 503s, disabled adult children, ping pongs, and early widowers);
- (10) working disabled individuals (COE 074);
- (11) breast and cervical cancer (BCC COE 052);
- (12) specified low income beneficiaries (SLIMB COE 045);
- (13) qualified individuals (QI1 COE 042);

(14) qualified disabled working individuals (COE 050);

(15) refugees (COE 049); and

(16) institutional care medicaid (COEs 081, 083, and 084) excluding the program for all-inclusive care for the elderly (PACE).

E. The following categories do not have retroactive medicaid:

- (1) emergency medical services for non-citizens EMSNC (COE 085). EMSNC provides coverage for emergency services, which may be provided prior to the application month, but is not considered retroactive medicaid. Eligibility is determined in accordance with 8.285.400, 8.285.500, and 8.285.600 NMAC;
- (2) home and community based-services waivers (COEs 091, 093, 094, 095, and 096);
- (3) PACE (COEs 081, 083, and 084);
- (4) qualified medicare beneficiaries (COEs 041 and 044); and
- (5) transitional medicaid (COEs 027 and 028).

F. Newborns (COE 031) are deemed to have applied and been found eligible for the newborn category of eligibility from birth through the month of the child’s first birthday. This applies in instances where the labor and delivery services were furnished prior to the date of the application and covered by medicaid based on the mother applying for up to three months of retroactive eligibility.

[8.200.400.14 NMAC - Rp, 8.200.400.14 NMAC, 1/1/2019; A, 2/1/2020; A, 1/1/2022; A/E, 10/1/2024; A, 2/1/2025]

**8.200.400.15 [RESERVED]
AUTOMATIC ENROLLMENT OF
SSI RECIPIENTS IN THE QMB
GROUP:**

A. SSI recipients entitled to premium-free part A: Effective October 1, 2024, the HCA shall automatically deem SSI

recipients into QMB the first month they are eligible for SSI Medicaid and entitled to premium-free part A. The start of the part B buy-in coverage is the first month of entitlement to premium-free part A and the QMB eligibility group coverage is the first day of the following month.

B. SSI recipients enrolled in part B only: Effective upon the centers for medicare and medicaid services (CMS) and HCA systems’ capacity, the HCA shall automatically deem individuals enrolled in SSI medicaid eligible for the QMB eligibility group the first month they are both enrolled in part B and eligible for a medicare enrollment period, bypassing the need for actual or conditional part A enrolment at the social security administration.

C. Effective January 1, 2024, the HCA’s liability for retroactive part B premiums for full-benefit medicaid beneficiaries, including individuals receiving SSI medicaid, is limited to a period of no greater than 36 months prior to the date of the medicare enrollment determination.

D. For SSI medicaid recipients deemed eligible for the QMB group, renewal for QMB is required only to the extent to verify that an individual continues to receive SSI medicaid and has continued medicare part A coverage. The regular renewal process for QMB applies when an individual loses their SSI medicaid.

[8.200.400.15 NMAC - N/E, 10/1/2024; A, 2/1/2025]

**PUBLIC EDUCATION
DEPARTMENT**

This is an amendment to 6.29.1 NMAC, Sections 3, 7, 9, and 11 effective January 28, 2025.

6.29.1.3 STATUTORY

AUTHORITY: This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, 22-2-2, 22-2-2.1, 22-2C-3, 22-2C-4, 22-5-13, 22-2-8.13, 22-13-1, 22-13-1.1, and 22-13-14 NMSA 1978.

[6.29.1.3 NMAC - Rp, 6.30.2.3 NMAC, 6/30/2009; A, 12/15/2020; A, 7/31/2023; A, 1/28/2025]

6.29.1.7 DEFINITIONS:

A. **“Accreditation”** means the official recognition that a school or school district meets required standards. Schools are accredited by voluntary regional accrediting associations or by state government. Accreditation also refers to the process of certifying that institutions of higher education meet certain standards in relation to such matters as the qualifications of their faculty, the condition of their facilities, and the appropriateness of their curriculum.

B. **“Advanced placement (AP)”** means a course taught by high school teachers trained in advanced placement course delivery provided through the college board. These courses are more difficult and involve more work than a standard class. AP courses are considered college-level courses and may allow a student to earn college credit, depending on college or university policies.

C. **“Bilingual multicultural education”** means a program of instruction using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process.

D. **“Career and technical education”** means organized programs offering a sequence of courses, including technical education and applied technology education, which are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate, or degree. [This phrase is also referred to as “vocational education” at Section 22-14-1 NMSA 1978.]

E. **“Career cluster”** means a grouping of occupations in industry sectors based on recognized commonalities. Career clusters provide an organizing tool for developing instruction within the educational system.

F. “Career pathways” means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations or career specialties that share a set of common knowledge and skills for career success.

G. “Caseload” means the total number of students receiving special education and speech-only services as special education, for whom a special education teacher or speech language pathologist has responsibility for developing and monitoring the students’ IEPs. “Caseload” may also mean the number of students for which individual support services staff members are responsible.

H. “Certified district reviewer” means an LEA employee who is certified to review and approve an LEA’s NM School DASH plans.

I. “Chartering authority” means a local school board or the commission that approves and oversees a charter school.

J. “Class load” means the number of students for whom a teacher structures activities at a given time.

K. “Commission” means the public education commission.

L. “Content standard” means a statement about performance that describes what students should know and be able to do in content areas at each grade level.

M. “Correspondence course” means a form of distance learning conducted via traditional mail. A correspondence course is used to teach non-resident students by mailing them lessons and exercises, which upon completion, are returned to the correspondence school for grading.

N. “Distance learning” means the technology and the educational process used to provide instruction for credit or for a grade when the course provider and the distance learning student are not physically present at the same time or place. Distance learning does not

include educational software that utilizes only on site teaching.

[N] Q. “Dual credit program” means a program that allows high school students to enroll in college-level courses offered by a post-secondary educational institution that may be academic or career-technical but not be remedial or developmental, and simultaneously to earn credit toward high school graduation and a post-secondary degree or certificate.

[O] P. “Education plan” is the strategic plan written by all school districts, locally chartered and state-chartered charter schools to improve student performance.

[P] Q. “English language learner” means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level comparable to grade-level English proficient peers and native English speakers.

R. “English language proficiency assessment (ELPA)” means an assessment administered only to identified English learners that measures students’ progress towards English language proficiency that is aligned to the state’s English language development standards.

[Q] — “Free appropriate public education (FAPE)” means special education and related services that are provided at public expense, under public supervision and direction without charge, which meet the standards of the department in providing appropriate preschool, elementary or secondary education in New Mexico; and which are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR Sections 300.320 through 300.324.

[R] S. “Family Educational Rights and Privacy Act (FERPA)” means rights, pursuant to 20 U.S. Code 1232(g) and 34 CFR Part 99, afforded to parents and students over 18 years of age with respect to the student’s education records, that include: the right to inspect and review the student’s education records within 45 days,

the right to request amendment to the student’s education records for various reasons, the right to consent or refuse to consent to disclosures of personally identifiable information in the student’s records (except for those records that FERPA authorizes for disclosure without consent) and the right to file a complaint with the U.S. department of education concerning non-compliance with FERPA.

T. “Final next-step plan” means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job.

U. “Free appropriate public education (FAPE)” means special education and related services that are provided at public expense, under public supervision and direction without charge, which meet the standards of the department in providing appropriate preschool, elementary, or secondary education in New Mexico; and which are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR Sections 300.320 through 300.324.

V. “Graduate profile” means a document that a school district or charter school creates and uses to specify the cognitive, personal, and interpersonal competencies that students should have when they graduate. The core academic competencies and subjects identified in a school district’s or charter school’s graduate profile shall align with required graduation units.

[S] W. “Heritage language” means a language other than English that is inherited from a family, tribe, community, or country of origin.

[F] X. “Home language” means a language other than English that is the primary or heritage language spoken at home or in the community.

[U] Y. “Individualized education program (IEP)” means a written statement for a child with a

disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

[W] Z. “Individuals with Disabilities Education Improvement Act of 2004 (IDEA)” means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 U.S. Code Secs. 1401 et seq., including future amendments.

AA. “Interim next-step plan” means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals.

[W] AB. “**Laboratory component**” means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students should have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results, and discuss their findings.

[X] AC. “**Local educational agency (LEA)**” means a local educational agency as defined in 34 CFR Sec. 300.28. The LEA may be a public school district, a state-chartered charter school, or a state educational institution.

[Y] AD. “**MLSS Self-assessment**” means analysis of MLSS implementation that each school shall submit in a form and by a due date determined by the department. The MLSS Self-assessment shall contribute to a school’s NM School DASH, but it shall not be a component in the evaluation of a school by the department.

[Z] AE. “**Multi-layered system of supports (MLSS)**” means a coordinated and comprehensive framework that uses increasingly intensive evidence-based academic and behavioral supports that address student needs as evidenced by student data. It is a model for holistic school improvement that provides progress measures for additional supports

such as school-based team structures, professional development, health and wellness, and family and community engagement. MLSS satisfies the definition of “multi-tiered system of supports” contained within the ESSA.

AF. “Next-step plan” means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student’s parent and school counselor or other school official charged with coursework planning for the student, which includes one or more of the following:

- (a)** advanced placement, international baccalaureate, or honors courses;
- (b)** dual-credit courses offered in cooperation with an institution of higher education;
- (c)** distance learning courses;
- (d)** career technical education or work-based learning courses; and
- (e)** pre-apprenticeship programs.

[AA] AG. “**NM School DASH**” means the strategic plan written by schools to improve student outcomes. It contains the annual plan, both 90-day plans, and functions as a school site improvement plan.

[AB] AH. “**Performance standard**” means the statement of a standard that describes the specific level of mastery expected in achieving the New Mexico content standards with benchmarks.

[AC] AI. “**Prior written notice (PWN)**” means the written notice that goes to parents from the school district, informing them the district proposes or refuses to initiate or change the identification, evaluation or educational placement of their child, or the provision of FAPE to the child, and which meets the requirements of 34 CFR Sections 300.503 and 300.504.

[AD] AJ. “**Short-cycle assessment**” is a formative assessment that is regularly used to assess student performance over a short time period.

[AE] AK. “**Small group setting**” means a planned intervention group containing no more than 15 students.

[AF] AL. “**Socioeconomic status**” means the stratification of groups of people by status ascribed through social constructs such as race, gender, ethnicity, educational attainment, economic resources, language, and national origin.

AM. “**Standards-based assessments**” means assessments that are aligned to the New Mexico content standards.

[AG] AN. “**State educational institution**” means a school that is under the direction of a state agency other than the department or a separate board of regents.

[AH] AO. “**Student assistance team (SAT)**” means a school-based group of people whose purpose is to provide additional educational support to students experiencing difficulties preventing them from benefitting from general education.

[AI] AP. “**System of assessments**” means the collection of formative, interim, and summative instruments that assess student academic performance annually and the students’ progress toward meeting the New Mexico content standards [with benchmarks and performance standards:].

[AJ] AQ. “**Transition plan**” means a coordinated set of activities for a student with a disability, which specifies special education and related services designed to meet a student’s unique needs and to prepare the student for future education, employment, and independent living. The use of individualized educational program (IEP) transition planning, graduation planning and post-secondary transitions is described in Subparagraph (a) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. [6.29.1.7 NMAC - Rp, 6.30.2.7 NMAC, 6/30/2009; A, 10/31/2011; A, 12/15/2020; A, 1/28/2025]

6.29.1.9 PROCEDURAL REQUIREMENTS:

A. Duties and powers of the local school board [of education or charter school governing body]. The local school board [of education or charter school governing body] shall:

(1) review, approve, and support each school site-level department-approved NM School DASH and *MLSS Self-assessment* for each school site in improvement status;

(2) employ and evaluate the local superintendent [or charter school administrator];

(3) develop a planned program of training annually, in which each member of the board participates, to assist in the performance of specified duties; this planned program shall align with the LEA's Education Plan; training shall include the following requirements and procedures.

(a) Local school board members shall attend a department training course that explains department rules, policies and procedures, statutory powers and duties of local school boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department.

(b) All local school board members shall receive [a total of five hours of annual] training provided by the department, the New Mexico school boards association (NMSBA), or other department-approved providers, [and] which shall include a minimum of one hour of training during each term in office on equity and culturally and linguistically responsive practices.

(c) [Newly elected or appointed local school board members, who are in office for less than a year, shall receive three of the five hours from attending a training course developed by the department and sponsored by the NMSBA. The additional two hours of annual training for new board members shall consist of sessions

sponsored by the NMSBA and approved by the department.] Elected or appointed school board members in their first term shall complete at least ten hours of mandatory training during their first year serving on the board. Training for new local school board members shall include:

(i) at least two hours covering laws and department policies and procedures affecting local school boards or public schools, including ethics and school personnel;

(ii) at least two hours covering public school finance, budgeting, and fiduciary responsibilities of local school boards;

(iii) at least two hours covering legal concepts pertaining to local school boards and school districts, including the Open Meetings Act and the Inspection of Public Records Act;

(iv) at least two hours covering effective governance practices and effective methods of supporting and supervising the local superintendent; and

(v) at least two hours covering student achievement and student support services.

(d) [All local school board members who have been in office for one or more years shall attend five hours of annual training sponsored by the NMSBA and approved by the department.] Mandatory training for all other local school board members shall include at least five hours per year and shall cover:

(i) laws and department policies and procedures affecting local school boards or public schools, including ethics and school personnel;

(ii) public school finance, budgeting, and fiduciary responsibilities of local school boards and performance-based budgeting;

(iii) a local school board's role in evaluating and improving student

academic achievement and using data to set individual school goals for student academic achievement in each of the school district's public schools;

(iv) a local school board's role in providing a safe learning environment conducive to improving student outcomes;

(v) legal concepts pertaining to local school boards and school districts, including the Open Meetings Act and the Inspection of Public Records Act;

(vi) effective governance practices and effective methods of supporting and supervising the local superintendent; and

(vii) other matters deemed relevant by the department.

(e) [In order to] To be credited with attendance at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to [September] January 1 of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's accountability report shall include [the names of those local school board members who failed to attend annual mandatory training] the number of hours of training attended by local school board members and whether each member met statutory training requirements (see Subsection E of Section 22-2C-11 NMSA 1978);

(4) delegate administrative and supervisory functions to the local superintendent [or charter school administrator];

(5) refrain from involvement in delegated administrative functions;

(6) review district [or charter school] policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of district [or charter

school] curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that district [~~or charter school~~] funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual district [~~or charter school~~] budget;

(11) be responsible for oversight of revenue and expenditures within the district [~~or charter school budget~~]; and

(12) coordinate with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

(13) broadcast, through the school district's website, live audio and video webcasts of local school board meetings and make available a user interface that allows members of the public to submit written or verbal comments. A webcast shall:

(a) begin as soon as practicable after the chair has called the meeting to order;

(b) terminate as soon as practicable after the local school board has adjourned;

(c) be recorded and posted, along with an electronic copy of any minutes approved at the meeting, on the school district's website within one week of the meeting's conclusion; and

(d) be publicly available for at least three years following the date of the meeting unless the state records retention schedule, as established in 1.21.2 NMAC, provides otherwise.

B. Duties and powers of the governing body of a charter school. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the governing body of a charter school shall:

(1) review, approve and support the district's

department-approved improvement plan and each school site-level *MLSS Self-assessment* and department approved improvement plan, or the charter school's department approved improvement plan;

(2) employ and evaluate the charter school administrator;

(3) develop a planned program of training annually, in which each member of the governing body participates, to assist in the performance of specified duties; this planned program shall align with all requirements of statute and any other department regulations; training shall include the following requirements and procedures.

(a) Governing body members in their first term shall complete at least ten hours of mandatory training during their first year serving on the governing body. Training for new members shall include:

(i) at least two hours covering laws and department policies and procedures affecting governing bodies or charter schools, including ethics and school personnel;

(ii) at least two hours covering public school finance, budgeting, and fiduciary responsibilities of governing bodies;

(iii) at least two hours covering legal concepts pertaining to governing bodies and charter schools, including the Open Meetings Act and the Inspection of Public Records Act;

(iv) at least two hours covering effective governance practices and effective methods of supporting and supervising a charter school leader; and

(v) at least two hours covering student achievement and student support services.

(b) Mandatory training for all other governing body members shall include at least five hours per year and shall cover:

(i) laws and department policies and procedures affecting governing bodies or charter schools, including ethics and school personnel;

(ii) public school finance, budgeting and fiduciary responsibilities of governing bodies, and performance-based budgeting;

(iii) a governing body's role in evaluating and improving student academic achievement and using data to set individual school goals for student academic achievement in charter schools;

(iv) a governing body's role in providing a safe learning environment conducive to improving student outcomes;

(v) legal concepts pertaining to governing bodies and charter schools, including the Open Meetings Act and the Inspection of Public Records Act;

(vi) effective governance practices and effective methods of supporting and supervising charter school leaders; and

(vii) other matters deemed relevant by the department.

(4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain from involvement in delegated administrative functions;

(6) review [~~district or~~] charter school policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of [~~district or~~] charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that [~~district or~~] charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual [~~district or~~] charter school budget;

(11) be responsible for oversight of revenue and expenditures within the [~~district or~~] charter school budget; and

(12) coordinate with the [~~district's superintendent~~] charter school's administrator to establish the procedures for discharging and terminating school employees pursuant to the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

(13) broadcast, through the charter school's website, live audio and video webcasts of governing body meetings and make available a user interface that allows members of the public to submit written or verbal comments. A webcast shall:

(a) begin as soon as practicable after the chair has called the meeting to order;

(b) terminate as soon as practicable after the governing body has adjourned;

(c) be recorded and posted, along with an electronic copy of any minutes approved at the meeting, on the charter school's website within one week of the meeting's conclusion; and

(d) be publicly available for at least three years following the date of the meeting unless the state records retention schedule, as established in 1.21.2 NMAC, provides otherwise.

C. Duties and powers of the district superintendent or the administrator of a charter school. In addition to the powers and duties set out in Section 22-5-14 NMSA 1978 of the Public School Code, the local superintendent (or charter school administrator, where relevant) shall:

(1) administer local board's (or governing body of a charter school's) policies, state and federal requirements and applicable laws, including the Public School Code;

(2) be accountable for student achievement; budget management; expenditure

of funds; dissemination of information; district or charter school communications; development, implementation and evaluation of the Education Plan and all other district or charter school business;

(3) review, approve and support the district Education Plan and each school site-level *MLSS Self-assessment* and NM School DASH or the charter school's *MLSS Self-assessment* and NM School DASH;

(4) attend all local board or governing body of a charter school's meetings or, when necessary, designate a licensed administrator to attend;

(5) ensure that school patrons and the public are informed and involved in the acquisition, planning and development of school facilities and that students are provided with adequate facilities which conform to state and federal mandates;

(6) be accountable for student safety (see 6.12.6 NMAC - *School District Wellness Policy*):

(a) ensure that all students are supervised while on school property and while attending or traveling to school events or activities on school-provided transportation;

(b) ensure that all buildings, grounds and facilities provide a safe and orderly environment for public use (see Subsection P of 6.29.1.9 NMAC - *School Facilities and Grounds*; Paragraph (8) of Subsection D of 6.12.6.8 NMAC - *School District Wellness Policy* and 6.19.3 NMAC - *Unsafe School Choice Option*);

(7) administer and implement the district's or charter school's approved staff accountability plan and procedures;

(8) ensure that a process is in place to identify, train, assign and support the use of unlicensed content-area experts as resources in classrooms, team teaching, online instruction, curriculum development and other purposes as determined by the

superintendent, which shall include, but not be limited to, the following:

(a) establish the specific expertise of the person;

(b) obtain a background check and fingerprint records;

(c) provide the person with a three-hour training, prior to entering a classroom, about how the school operates, appropriate teaching methods and expectations of principal and assigned teacher;

(d) establish a start date and ending date for the person;

(e) ensure that the person is under the direct supervision of the teacher assigned when students are present; and

(f) provide for an evaluation of services upon completion of the assignment;

(9) shall issue the following notifications in accordance with Section 22-10A-16 NMSA 1978, in addition to any other parental notification requirements contained in the federal Elementary and Secondary Education Act of 1965, as amended; a school district or charter school shall issue these notifications in English and, to the extent possible, in the language of the parent or guardian (if it is known that the parent or guardian's home or heritage language is not English); the district or charter school shall retain a copy of all notifications and shall ensure that information required under this paragraph is available to the public upon request.

(a) Within 60 calendar days from the beginning of each school year, a school district or charter school shall issue a notice to parents informing them that they may obtain written information regarding:

(i) the professional qualifications of their child's teachers, instructional support providers and school principals or charter school administrators;

(ii) other descriptive information, such as whether their teacher has met all qualifications for licensure for the grade level and subjects being taught;

(iii) whether their child’s teacher is teaching under a teaching or assignment waiver;

(iv) the teacher’s degree major and any other license or graduate degree held by the teacher;

(v) the qualifications of any instructional support providers that serve their child.

(b) When, by the end of a consecutive four-week period, a child is still being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement, the school district or charter school shall provide written notice to the parent or guardian that the child is being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement.

(c) No class may be taught by a substitute teacher, in lieu of a licensed teacher under contract, for more than 45 school days during a school year.

(d) The secretary shall consider deviations from the requirements of Subparagraph (c) of Paragraph (9) of Subsection C of 6.29.1.9 NMAC when a written request by a local superintendent or charter school administrator is submitted. The request shall include:

- (i) the size of the school district;
- (ii) the geographic location of the district;
- (iii) demonstrated efforts to employ an appropriately licensed person in the area(s) of need;
- (iv) the historical use of substitutes in the district; and
- (v) an estimation of the number of days that a substitute will be utilized that exceed the 45 day limit.

D. Licensed staff and administrators.

(1) The licensed staff shall exercise duties specified in law and those assigned by the local district or charter school.

(2) As required by state and federal law, all licensed staff and administrators shall be evaluated on an annual basis.

(3) The detection and reporting of child abuse or neglect is required by both the Children’s Code (Section 32A-4-3 NMSA 1978) and the Public School Code (Section 22-5-4.2 NMSA 1978). Abuse of a child under the Children’s Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children’s Code, failure to report abuse or neglect of a child is a misdemeanor. The terms “abuse” and “neglect” are defined in detail in Section 32A-4-2 NMSA 1978 of the Children’s Code. There is also the crime of child abuse, which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation of endangerment to the child’s life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and reporting of child abuse or neglect in public schools:

- (a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;
- (b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land;

(c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described in Subparagraph (a) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;

(e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately - i.e., the same day - report their observations to one of the offices designated in Subparagraph (b) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(f) all licensed school personnel, including substitute teachers, educational assistants, school nurses, school counselors, school psychologists and other instructional service providers shall complete training provided by the department in the detection and reporting of child abuse or neglect, within their first year of employment by, or providing services to, a school district or charter school;

(g) all persons who have never received training required under Subparagraph (f) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC shall make arrangements to receive training before the end of their current school year;

(h) the department shall develop a training program to detect child abuse or neglect, in coordination with the New Mexico human services department and the New Mexico department of health. This program shall be made available to all colleges, school districts and charter schools in the state offering teacher preparation courses;

(i) nothing in Paragraph (3) of Subsection D of 6.29.1.9 NMAC shall be interpreted as preventing

a school district or charter school from developing and providing its own training for all staff to detect and report suspected child abuse or neglect, in addition to the training offered by the department.

E. Student intervention system. The school and school district shall follow the multi-layered system of supports (MLSS), which is a three-layer model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior or for students who demonstrate a need for advanced instruction. All students shall have access to layer-1, -2, and -3 interventions without a need to convene a SAT team or a referral to special education or related services. At any layer, a parent may request initial evaluation to determine whether a student is a child with a disability requiring special education and related service, in accordance with 6.31.2.10 NMAC. There are no additional documentation requirements under the MLSS outside of what is already required for education professionals.

(1) In layer 1, the school and school district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status, and academic levels of proficiency has been completed for each student enrolled. If data from universal screening and progress monitoring suggests that a particular student is in need of additional behavioral and academic supports, then teacher teams shall make a determination on whether or not the student would benefit from layer-2 interventions. Teacher teams, when making a determination for moving a student up or down a layer may consult with non-teacher staff such as counselors, paraprofessionals, administrators, and ancillary personnel to inform the teacher team on how to plan and implement relevant learner interventions in the general education environment.

(2) In layer 2, a properly constituted teacher

team shall conduct the student study process and consider, implement, and document the effectiveness of appropriate evidence-based interventions utilizing curriculum-based measures. As part of this process, the teacher team shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties.

(3) In layer 3, students are provided with intensive academic and behavioral supports that are progress-monitored on a bi-weekly basis. At the end of each progress monitoring cycle, the teacher team shall evaluate the efficacy of the supports provided using all available data. At that time, the teacher team may decide whether to continue with the current support, change the intensity, or nature of support. If progress monitoring data suggests that the learner has benefited from provided layer-3 supports and does not show concern for regression, then the teacher team may decide to move the student out of receiving layer-3 supports.

(4) All students shall have access to the MLSS layers of screening and support. Nothing in this section prevents a school district from evaluating a student during the provision of any layer of MLSS to determine whether the student is a child with a disability requiring special education and related services. A parent may request an initial special education evaluation at any time during the public agency's implementation of MLSS, and a school or school district may determine a referral to special education is necessary at any time during the implementation of MLSS if the student is suspected of having a disability. If a school district rejects a request for initial special education evaluation, the parent may use the IDEA procedural safeguards in 34

CFR Secs. 300.506 through 5007 to dispute the rejection of the request to evaluate.

(5) The department's manual, *Multi-layered System of Supports*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

(6) Schools shall complete the *MLSS Self-assessment* annually.

(7) Schools shall include a report on intervention systems in NM School DASH.

(8) Schools shall provide time embedded within the regular school schedule for all students to access targeted and intensive learner interventions or advanced instruction described as follows:

(a) in small group settings;

(b) aligned with New Mexico standard; and

(c) not to exceed twenty-five percent of instructional hours.

(9) Student placement in embedded intervention or advanced instruction shall be reviewed each quarter and students shall be moved in or out of embedded intervention or advanced instruction based on quantitative and qualitative MLSS data.

(10) Embedded intervention or advanced instruction time shall be provided to students without forgoing instruction in art, music, theater, dance, computer science, physical education, library, or other enrichment or experiential learning activities or courses.

(11) Equitable access. Students in any layer shall have access to grade-appropriate, standards-aligned instruction seventy-five percent or more of their instructional hours unless instructional time is allocated differently in an IEP of a student receiving special education or gifted education services.

F. Records and reports.

(1) Each district and charter school shall maintain and treat all personally identifiable educational records in accordance with the Family Educational Rights and Privacy Act (FERPA), the implementing regulations set forth at 34 Code of Federal Regulations, Part 99 and Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) All records shall be safe from fire and theft and stored in a retrievable manner. All student records, including disciplinary and grading records, shall be retained and disposed of pursuant to 1.20.2 NMAC.

(3) Transcripts and copies of pertinent records of students transferring from one school to another, including disciplinary records with respect to suspension and expulsion, shall be forwarded promptly upon written request by the receiving school.

(4) Local school boards and governing bodies of charter schools shall establish policies providing for inspection of education records by students and parents.

~~(5) After the administration of the high school system of assessments, school districts and charter schools are required to record test results on each student's official transcript. The information recorded shall include the following:~~

~~(a) district and high school administering the examination;~~

~~(b) date of examination administration;~~

~~(c) results of the examination for each subject area tested; and~~

~~(d) reports of the results in a format and language that is understandable to parents.]~~

G. Organization of grade levels and establishing/closing schools. Any change in a school district or charter school's organizational pattern, including the establishment or closing of a school,

shall have the secretary's approval prior to implementation. Requests for change shall be submitted using the department's *organization of grade levels and establishing/closing school waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. The waiver request shall outline the expected educational benefits.

H. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

(1) The individual class load for elementary school teachers shall not exceed 20 students for kindergarten, provided that any teacher in kindergarten with a class load of 15 to 20 students shall be entitled to the assistance of an educational assistant.

(2) The average class load for elementary school teachers at an individual school shall not exceed 22 students when averaged among grades one, two and three, provided that any teacher in grade one with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant.

(3) The average class load for an elementary school teacher at an individual school shall not exceed 24 students when averaged among grades four, five and six.

(4) The daily teaching load per teacher for grades seven through 12 shall not exceed 160 students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed 135, with a maximum of 27 students per class; and the daily teaching load for teachers of required English courses in grades nine through 12 shall not

exceed 150 students, with a maximum of 30 students per class. The teaching load for teachers assigned to laboratories and shops shall adhere to the current workplace safety codes of the industry.

(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

(6) The secretary may waive the individual school class load requirements established in this section. Waivers shall be applied for annually, and a waiver shall not be granted for more than two consecutive years. Requests for class load waivers shall be submitted using the department's *class size waiver request form*.

This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Waivers may only be granted if a school district or charter school demonstrates:

(a) no portable classrooms are available;

(b) no other available sources of funding exist to meet the need for additional classrooms;

(c) the district or charter school is planning alternatives to increase building capacity for implementation within one year; and

(d) the parents of all children affected by the waiver have been notified in writing of the statutory class load requirements; that the school district or charter school has made a decision to deviate from these class load requirements; and of the school district's or charter school's plan to achieve compliance with the class load requirements.

(7) If a waiver is granted pursuant to Paragraph (6) of Subsection H of 6.29.1.9 NMAC to an individual school, the average class load for elementary school teachers at that school shall not exceed 20 students in kindergarten and grade one, and shall not exceed 25 students when averaged among grades two, three, four, five and six.

(8) Each school district or charter school shall report to the department the size and composition of classes subsequent to the 40th day report and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's or charter school's budget by the secretary.

(9) The department shall report to the legislative education study committee by November 30 of each year regarding each school district's or charter school's ability to meet class load requirements imposed by law.

(10) Notwithstanding the provisions of Paragraph (6) of Subsection H of 6.29.1.9 NMAC, the secretary may waive the individual class load and teaching load requirements established in this section upon demonstration of a viable alternative curricular plan and a finding by the department that the plan is in the best interest of the school district or charter school; and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee. Requests for alternative curricular

plans shall be submitted using the department's *collaborative school improvement programs waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request.

I. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed ten percent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than fifty percent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the

plan. (An extensive amount of special education services shall be provided fifty percent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP.

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs.

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

J. Graduation requirements.

(1) [The New Mexico high school system of assessments.] The district or charter school shall [be in compliance] comply with requirements as specified in Section 22-13-1.1 NMSA 1978 and Subsection L of Section 66-7-

506 NMSA 1978 (offering driver education, service learning and financial literacy as electives). The department specifies that students shall meet all graduation requirements to be eligible to receive a diploma. [This includes the requirement of passing the high school system of assessments.]

(2) The next step plan. Each student shall complete a next step plan for each high school year. The plan shall be aligned to the graduate profile of the student's school district or charter school and shall be completed on a department-approved template. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan. The next step plan requires that:

(a) each grade-level next step plan shall be completed within the last 60 school days of the preceding school year (for example, the 9th grade interim next step plan shall be made before the end of the 8th grade year);

(b) only one grade-level next step plan shall be completed for a student each year;

(c) the development of the next step plan shall include the student, the student's parent or guardian and the advisor, but may include additional relevant parties;

(d) [to write the next step plan,] the advisor shall [consult] collaborate with the student and the student's parent or guardian on academic choices that target the student's interests and meet graduation requirements;

(e) the next step plan shall address career clusters in career and technical education, academic support and study skills, extracurricular experiences and out-of-school activities, exposure to post-secondary education and career options, family and social supports, assessments, credentials and any other relevant information; as part of the next step plan, the advisor shall disseminate

and share information concerning advanced placement, honors, dual-credit and distance learning programs;

(f) the next step plan determines whether or not the student is on track with graduation requirements; the plan ensures that gaps in courses and test-taking are filled;

(g) the next step plan may be made in large-group, small-group or individual student settings;

(h) the advisor has the responsibility to see that the student is reasonably informed about curricular and course options, opportunities available that lead to broader post-high school options, and alternative opportunities available if the student does not finish a planned curriculum;

(i) the next step plan shall be signed by the student, the student's parent or guardian and the advisor;

(j) the completed next step plan shall be filed with the school principal or charter school administrator and only the final next step plan shall be filed in the student's cumulative file upon graduation;

~~[(k) during the development of the student's next step plan for the eleventh grade, a plan allowing the student to complete a fourth mathematics course other than algebra 2 may be developed using data from the student's high school short-cycle assessments, the student's most recent system of assessments score in mathematics, other relevant assessment scores and coursework grades and educational career plans recorded in the student's next step plan;~~

~~[(l) for the student to take four mathematics courses that contain a lesser content than that recommended for inclusion in algebra 2 or its equivalent, the student's parent shall provide written, signed permission on the student's next step plan; parental signature on the next step plan for the eleventh grade indicating the mathematics courses the student will~~

~~take shall serve as the required signed permission.]~~

(3) Transfer of credits. For students enrolling or re-enrolling in public schools, local school boards or governing bodies of charter schools will establish policies as follows.

(a) Credits shall be transferable with no loss of value between schools that are accredited by a state board of education in the United States, United States territories, Puerto Rico, the freely associated states and outlying areas of the United States, department of defense schools or other authorized body.

(b) Policies of the local school board or the governing body of a charter school, for students transferring from home schools, private schools, or foreign schools to the public schools, will be in accordance with Subsection D of Section 22-1-4 NMSA 1978.

(c) Acceptance of credits earned through correspondence extension study, foreign study, home study courses or non-department accredited, non-public schools is determined by the policy of the local school board or the governing body of a charter school.

(4) Correspondence courses. For students currently enrolled in public schools, local school boards or governing bodies of charter schools will establish policies addressing the use of correspondence courses to meet graduation requirements.

(a) Policies should be based on the following circumstances:

(i) when road conditions or distance from access to school transportation prohibit regular daily attendance;

(ii) when a student cannot attend school due to prolonged illness or recovery from injury, as part of the individual plan to address the student's educational needs developed in accordance with applicable state and federal regulations governing the education of students with disabilities;

(iii) when the occupation of the parent or student requires prolonged periods of time away from the school district;

(iv) when a student is housed in a long-term residential facility; or

(v) to enhance or supplement graduation requirements based on a student's individual need(s).

(b) Schools counting credit for correspondence courses for enrolled students shall ensure that such courses are part of the student's individual plan for graduation. If applicable, such courses are part of the IEP developed in accordance with applicable state and federal regulations governing the education of students with disabilities, and schools shall ensure that assistance is available to students as needed to complete the correspondence courses.

(c) Correspondence courses used to provide graduation credit to currently enrolled students shall be provided by:

(i) a school accredited by the state board of education of the state in which the school is located, or

(ii) a college or university with regional accreditation to perform such function.

(5) Dual credit program. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

(6) Distance learning courses. [~~"Distance learning" means the technology and the educational process used to provide instruction for credit or for a grade when the course provider and the~~

~~distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching.]~~

Any program involving distance learning shall be governed by the department's distance learning rule, found at 6.30.8 NMAC.

(7) Standardized grading system. A standardized grading system is required to be implemented by each district and charter school. The system shall include the following components:

~~[(a) a written report to parents regarding the performance of their children tested with the New Mexico standards-based assessments;~~

~~(b) for grades 3-12, a standardized alphabetic grading system, based on the 4.0 scale (i.e., a minimum of 4.0 or higher=A, 3.0=B, 2.0=C, 1.0=D); certain courses may be assigned a weighted score according to local policy;~~

~~(c) alignment of all district and school curriculum to the New Mexico content standards with benchmarks and performance standards; and~~

~~(d) school report cards [shall include the results of standards-based assessments and] may augment the standardized grading system with a narrative or other method that measures a student's academic, social, behavioral or other skills.~~

(8) Final examination. A final examination shall be administered to all students in all courses offered for credit.

(9) Credit. Credit cannot be earned twice for the same course.

(10) Other elective credit. Elective credit courses shall meet all New Mexico content standards with benchmarks and performance standards, and shall:

(a) include a written, sequential curriculum;

(b) be taught by an instructor who is appropriately licensed and endorsed to teach the course;

(c) include a final examination; and

(d) be reviewed and approved by the local board of education or governing body of a charter school.

(11) Alternative credit. Local districts, charter schools or state educational institutions may design elective courses, known as alternative credit courses, to satisfy any of the specified credits required for graduation.

(a) The process includes:

(i) review of the licensure and endorsements of affected staff;

(ii) review of required course content standards with benchmarks and performance standards with the proposed elective course, and summary of alignment between the two courses;

(iii) determination of the amount of credit that will be generated;

(iv) publication of information regarding what course is available for alternative credit and identification of course number;

(v) inclusion of the availability of alternative credit in all next-step plans;

(vi) note on the student transcript that the graduation requirement course was completed using the named alternative credit course;

(vii) review and preliminary approval by the local board of education or governing body of a charter school.

(b) Once the process has been completed, the district superintendent or administrator of a charter school or state educational institution shall submit a written request, with appropriate documentation, to the secretary for approval.

(12) Excuses from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department's *physical education waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation, district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.

(13) Graduation requirements for issuance of a conditional certificate of transition or a diploma for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

(a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's

strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. Receipt of a conditional certificate of transition shall not end a student's right to FAPE. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of Paragraph (b).

(b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) ~~[through the]~~ in accordance with the requirements of the following programs of study described in Items (i) through ~~[(iii)]~~ (iv). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

(i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection J of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods, ~~[In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Subsection I of Section 22-13-~~

~~1.1 NMSA 1978 under standard administration or with state-approved accommodations and shall meet] as well as~~ all other standard graduation requirements of the district or charter school. A diploma obtained through the standard program of study is considered a "regular high school diploma" as defined in 34 C.F.R. § 300.102(a)(3)(iv). Pursuant to 34 C.F.R. § 300.102(a)(3)(i), students with disabilities who graduate from high school with a regular diploma through the standard program of study are no longer entitled to FAPE or continued receipt of special education and related services.

(ii) A modified program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state standards-based assessments required for high school students, under standard administration or with state-approved accommodations as determined by the [SEA] department. ~~[Once the student has attempted the state-required high school assessments, the student shall achieve a level of competency pre-determined by the student's IEP team on the current state-approved demonstration of competency options for graduation.]~~ The student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices.

Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate. A diploma obtained through the modified program of study is not considered a "regular high school diploma" as defined in 34 C.F.R. § 300.102(a)(3)(iv). Pursuant to 34 C.F.R. § 300.102(a)(3)(ii), a student's right to FAPE does not end upon obtaining an alternative diploma through the modified program of study and a student may continue to receive special education and related services until student either meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

(iii)

An ability program of study ~~[was developed for students who have a significant cognitive disability or severe mental health issues.]~~ is for students with disabilities who are determined to have the most significant cognitive disabilities as the term is defined by the department. A student's IEP team has the sole discretion to determine that a student has the most significant cognitive disabilities before placing the student on the ability program of study. The IEP goals and functional curriculum course work shall be based on the New Mexico alternate standards with benchmarks and performance standards ~~[and employability and career development standards with benchmarks and performance standards]~~. Students in this program of study shall earn the minimum number of credits ~~[or~~

~~be provided equivalent educational opportunities required by the district or charter school,] aligned with state requirements for a diploma obtained through the standard program of study with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student on the ability program of study shall take [either the current state standards-based assessments required for high school students, under standard administration or with state-approved accommodations, or] the state-approved alternate assessment. [Once the student has participated in the state-required high school assessments, the student shall achieve a level of competency pre-determined by the student's IEP team on the current state-approved demonstration of competency options for graduation and meet all other graduation requirements established by the IEP team.]~~ A diploma obtained through the ability program of study is not considered a "regular high school diploma" as defined in 34 C.F.R. § 300.102(a)(3)(iv), but it is considered a state-defined alternate diploma for students with the most significant cognitive disabilities as defined in 20 U.S.C. § 7801(25)(A)(ii)(I)(bb). Pursuant to 34 C.F.R. § 300.102(a)(3)(ii), a student's right to FAPE does not end upon obtaining a diploma through the ability program of study and a student may continue to receive special education and related services until student either meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

(iv)

The modified program of study shall only be available to students with disabilities that began the ninth grade before the 2025-2026 school year. Students with disabilities entering the ninth grade in or after the 2025-2026 school year may not be placed on the modified program of study. Students with disabilities that began the ninth grade before the 2025-2026 school year currently assigned to the ability

program of study that do not meet the definition of a student with the most significant cognitive disability must be moved to the modified or standard program of study within the first 20 days of the start of the 2025-2026 school year. The appropriate program of study shall be determined by the student's IEP team.

(c)

Students receiving a diploma through any of the programs of study are permitted to participate in all graduation activities.

(d)

Any special education student who obtains a diploma through the modified or ability programs of study may choose to exit high school after receiving the diploma but continues to have an entitlement to FAPE. A student may elect to resume their high school education at the school district or charter school that they are attending when they receive the diploma or at their school district of residence until student either meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

(e)

[By the end of the eighth grade,] Not later than the first IEP to be in effect when a student turns 14, or younger, if determined appropriate by the IEP team, each student's IEP shall contain a proposed individual program of study for grades nine through 12. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits ~~[and passing the current graduation examination].~~

(f) A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

~~(g) Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.~~

(h) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a modified program of study or ability program of study, IEP teams shall review the student's performance on the first attempt and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical

~~or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.~~

~~(j) (g) Changes in programs of study.~~

(i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. ~~[Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team.]~~ Districts and charter schools are obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team.

(ii) Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the modified or ability programs of study, shall notify parents and students of the potential consequences that may delay or otherwise affect the student from completing the requirements for a regular high school diploma and limit the student's post-secondary options [and]. The IEP team shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii) The IEP team shall not change the program of study for a student

entering the final year of high school (not the cohort with which the student entered high school) from the standard program of study to the modified program of study, nor from the modified program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the modified program of study, or from the modified program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(j) (h) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i) the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii) prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii) the district or charter school ensures that a conditional certificate of transition is not a program of study leading to a diploma and does not end the student's right to a FAPE;

(iv) the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v) the district or charter school ensures that, prior to receiving a conditional

certificate of transition, the ~~[student has a continuing or transition IEP]~~ student's IEP has been reviewed and revised to include measures, resources, and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma through an appropriate program of study for the student.

~~the student's continuing or transition IEP outlines measures, resources, and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.~~

~~_____~~ ~~(k)~~ **(i)**
A student who receives a certificate of transition but does not return to complete the program of study as outlined in the ~~[continuing or transition]~~ IEP will not be considered a dropout.

~~(h)~~ **(i)**
A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.

~~(m)~~ **(k)**
Graduation plans shall be a part of all IEPs:

(i)
by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;

(ii)
when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

(iii)
when evaluations warrant the need for a different program of study at any time after development of an initial graduation plan.

~~(n)~~ **(l)**
Graduation plans shall be a part of all of all IEPs and annual reviews and shall follow the student in all educational settings. Receiving

institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

~~(o)~~ **(m)**
At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) – ~~(iii)~~ **(iv)** of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition ~~[with a continuing or transition IEP]~~, pursuant to Subparagraph (i) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports, or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a modified or ability program of study to the local superintendent or charter school administrator, using the students' identification numbers. This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential ~~[in accordance with]~~ to the extent required by FERPA.

~~(p)~~ **(n)**
Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

~~(q)~~ **(o)**
All diplomas awarded by a school district or charter school shall be identical in appearance and content, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students. ~~[(14) Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.]~~

K. Statewide accountability program.

(1)
Educational accountability. The local board of education or charter school governing body and the district superintendent or charter school administrator are responsible for providing educational services that support student learning. Educational accountability has two mechanisms and three indicators which impact the approval of the district's budget and accreditation status. The accountability mechanisms are accreditation and the program/budget review process. These two mechanisms shall align directly with the district or charter school's Education Plan. The indicators are community representation, local accountability indicators and statewide accountability indicators.

(2)
Accountability mechanisms.

(a)
Accreditation. Accreditation will be conducted in accordance with Subsection F of Section 22-2-2 NMSA 1978 and 6.19.4 NMAC. Verification of the district or charter school's Education Plan and student progress will occur on a regular basis. State and federal regulations which fall within the scope of accreditation will also be monitored.

(b)
Program/budget review and approval. The program/budget review and approval process, including assessment and evaluation, occurs annually. Its purpose is to link the district or charter school's program needs directly with budgetary resources. In order for a district or charter school to obtain an approved budget, the district shall:

| | | | |
|---|-------|--|--|
| <p>document the local board or charter school governing body’s determination of needs as defined in its Education Plan (Section 22-8-18 NMSA 1978);</p> | (i) | <p>identified NM School DASH process goals and desired outcomes;</p> | <p>for the assessment of English language learners and students with IEPs.]</p> |
| <p>document minimum budget requirements (Section 22-8-9 NMSA 1978);</p> | (ii) | <p>be included as an integral part of the accreditation and program/budget review processes; and</p> | <p>(a) English language learners. Students who have limited English language skills (i.e., students who are “English language learners”) as determined by the department-approved English language proficiency screening assessment shall participate in the statewide assessment program. The following considerations specify how assessment shall be conducted.</p> |
| <p>document parent involvement in budget preparation (Section 22-8-11 NMSA 1978);</p> | (iii) | <p>use any other indicators the district or charter school shall choose for its students.</p> | <p>(i)</p> |
| <p>complete the annual program/budget questionnaire; and</p> | (iv) | <p>Statewide student performance indicators. Statewide student performance indicators shall:</p> | <p>Length of enrollment in U.S. schools.</p> |
| <p>comply with requirements specified in Section 22-8-5 NMSA 1978.</p> | (v) | <p>be included as an integral part of the accreditation and program/budget review processes;</p> | <p>The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U.S. public schools. For students who are new to U.S. schools, the following applies: Students who are enrolled for the first year in a U.S. school may receive an exemption from the system of assessments for English language arts, including all subtests therein <u>but shall participate in the state’s English language proficiency assessment (ELPA), administered only to English learners.</u> In all other content areas of the system of assessments, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school’s team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection L of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that are provided, if any, shall be indicated in the student information system. Students who have been in U.S. schools for at least 12 months and less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the English-language version of the assessment without accommodations; the student may participate in</p> |
| <p>Accountability indicators.</p> | (3) | <p>be part of the local Education Plan evaluation and NM School DASH monitoring;</p> | <p>(i)</p> |
| <p>Community representation. Community representatives shall be involved in the budget preparation process, the Education Plan process, the NM School DASH process, Education Plan evaluation (including the establishment of local student performance indicators) and the accreditation process. Community representatives include parents, students and other community members who reflect the composition of the student population. Evidence shall be provided to verify different forms of representation.</p> | (a) | <p>measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;</p> | <p>(ii)</p> |
| <p>Local student performance indicators. Local student performance indicators shall:</p> | (b) | <p>communicate clearly to parents and the general public the students’ progress toward meeting the goals established by the district and school, or charter school; and</p> | <p>(iii)</p> |
| <p>be identified by the local school district or charter school in conjunction with students, parents, community members and businesses;</p> | (i) | <p>describe performance levels across the grade levels and across the curriculum.</p> | <p>(iv)</p> |
| <p>be part of the local Education Plan evaluation;</p> | (ii) | <p>L. Statewide student assessment system. As stated in Section 22-2-8.13 NMSA 1978, students’ knowledge and skills are assessed and evaluated though the New Mexico content standards with benchmarks and performance standards, the system of assessments, and local measures.</p> | <p>(v)</p> |
| <p>measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;</p> | (iii) | <p>(1) The statewide student assessment system. All public-school students, with the exceptions indicated below, shall participate in the system of assessments, which includes standards-based assessments in [3-through] kindergarten through grade 8 and high school.</p> | <p>(2)</p> |
| <p>demonstrate student progress toward</p> | (iv) | <p>Exceptions. [Exceptions include special provisions and requirements</p> | <p>(v)</p> |

the English-language version of the assessment with appropriate accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate.

(ii)

Waivers for home language assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations unless a request based on the determination of the local education agency to continue the testing of the student in the home language of Spanish and the request is approved by the [secretary] department. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the [secretary] department to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the [secretary] department for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall include: student name, student state identification number, school in which the student is currently enrolled, student's grade level, student's most recent department-approved English language proficiency, assessment date and overall composite score, length of enrollment in U.S. schools, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

Accommodations. Districts and charter schools shall provide accommodations to English language learners after consideration of their appropriateness for the individual student. To determine the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL- endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English

(iii)

proficiency, student's current English language proficiency, including the student's experience and time in U. S. schools, student's expected date for exiting English language learner accommodations, student's familiarity with the accommodation under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

(b)

Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments if the students have been identified as having a most significant cognitive disability as documented in the IEP. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a) (6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

[(e) —

~~Waiver of the high school system of assessments (graduation requirement assessment).~~

(f)

~~With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request written approval from the secretary to award a diploma to a student who has not passed the high school system of assessments. The district or charter school shall document student~~

~~attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's high school system of assessments waiver request form. This form shall include: name of superintendent; district/ school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy; list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.~~

~~(ii) With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the high school system of assessments.]~~

M. Indigent identification and guidelines.

(1) A student who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

N. Emergency drills and practiced evacuations.

(1) Emergency drills shall be conducted in each public school and private school in the state, as follows:

(a) at least once per week during the first four weeks of the school year;

(i) one of these drills shall be a shelter-in-place drill, which includes preparation to respond to an active shooter;

(ii) one of these drills shall be an evacuation drill;

(iii) two of these drills shall be fire drills;

(b) during the rest of the school year, each school shall conduct at least four more emergency drills, at least two of which shall be fire drills;

(c) in locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism;

(d) it shall be the responsibility of the person in charge of a school to carry out the provisions related to emergency drills.

(2) Requirements to comply and penalties for non-compliance:

(a) It shall be the responsibility of the superintendent of a school district, a charter school administrator or private school counterpart(s) to ensure that each school under the person's authority follows the requirements set forth in Subsection N of 6.29.1.9 NMAC.

(b) In the event that the person responsible for complying with Subsection N of 6.29.1.9 NMAC fails or refuses to comply with this subsection, the department may, in the case of a public school, take any action designed to ensure prompt corrective action or future compliance, including reporting the non-compliance to either the state fire marshal or to a local fire department. In the case of a private school, the department will report the non-compliance to either the state fire marshal or to a local fire department and may consider adverse licensure action.

(c) Failure or refusal to comply with

the requirements in Subsection N of 6.29.1.9 NMAC for holding emergency drills shall constitute grounds to suspend or revoke the license of the person responsible for compliance. The due process procedures under the Uniform Licensing Act (Sections 61-1-1 through 61-1-31 NMSA 1978) shall apply.

O. School facilities and grounds. Pursuant to Subsection C of 6.29.1.9 NMAC (*Duties of the Superintendent*); Subsection D of 6.12.6.8 NMAC (*School District Wellness Policy*) [~~and 6.19.3 NMAC (*Unsafe School Choice Option*)~~], each school district or charter school shall ensure that all buildings, facilities and grounds provide a safe and orderly environment for public use; i.e., that they shall be:

(1) safe, healthy, orderly, clean and in good repair;

(2) in compliance with the Americans with Disabilities Act-Part III and state fire marshal regulations, Sections 59A-52-1 through 59A-52-25 NMSA 1978;

(3) safe for conducting experiments and school projects in all school laboratories and shops, as established in written school safety procedures which are reviewed annually; these procedures include, but are not limited to:

(a) personal protective equipment;

(b) adequate ventilation and electrical circuitry;

(c) material safety data sheets;

(d) body and eye washes; and

(e) training appropriate for each teaching situation;

(4) the maximum number of occupants in a laboratory or shop teaching space shall be based on the following:

(a) the number of work stations;

(b) the building and fire safety codes;

(c) the design of the laboratory or shop teaching facility;

(d) appropriate supervision and the special needs of students; and

(e) all applicable OSHA regulations;

(5) appropriate procedures for the storing, handling and removal of toxic or dangerous substances shall be established and implemented; all school programs (including those areas noted above and custodial areas, art room, library and cafeteria) shall comply with standard safety practices and all applicable state and federal regulations;

(6) use of pesticides by districts and charter schools will be governed by the following standards:

(a) Definitions as used in this section:

(i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(ii) "Pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, which is declared to be a pest pursuant to the Pesticide Control Act, Sections 76-4-1 through 76-4-39 NMSA 1978.

(b) Districts and charter schools will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to, the following:

(i) No pesticide may be applied to public school property and no pest control device, as defined in the New Mexico Pesticide Control Act, may be used on public school property except those pesticides and devices currently

registered for legal use in the state by the New Mexico department of agriculture.

(ii) No pesticide may be applied to public school property except by those persons certified in the applicable category and currently licensed by the New Mexico department of agriculture or by employees under their direct supervision.

(iii) Pesticides will only be applied in or on the outside of school buildings when a pest is present and will not be applied on a regular or calendar basis unless it is to treat an infestation and is a part of a pest management system being implemented to address a particular target pest. A pest is considered to be present when it is observed directly or can reasonably be expected to be present based on finding evidence, such as droppings, body parts, or damage that is typically done by the pest. This section of the regulation does not apply to pre-construction termite treatments or the use of outdoor herbicides.

(iv) Pesticides that are applied in a liquid, aerosolized or gaseous form through spraying, aerosol cans, bombs, fumigation or injections into the ground, foundation or plants will not be applied on public school property when students, staff or visitors are present, or may reasonably be expected to be present within 6 hours of the application. In emergency cases, where a pest infestation threatens the health or safety of the occupants of public school property, and which requires the immediate application of a pesticide to remediate, students, staff and other school occupants will be removed from the treatment area prior to the application. Small amounts of gel or liquid pesticides applied to cracks and crevices or baits used to treat pest infestation are exempt from this section.

(v) At the beginning of each year, and when new students register, schools will develop a list of parents and guardians who wish to be notified

prior to pesticide application during the school year. These parents/ guardians will be notified in writing prior to pesticide application. General notification of anticipated pesticide applications will occur by posting or dissemination of notices, by oral communication or other means of communication. In emergency cases where a pest infestation threatens the health or safety of the occupants of public school property, no pre-notification is required. Immediately following the application of a pesticide in emergency cases, signs will be posted indicating an application was made.

(vi) Written records of pesticide applications will be kept for three years at each school site and be available upon request to parents, guardians, students, teachers and staff.

(vii) If any part of Paragraph (6) of Subsection O of 6.29.1.9 NMAC is found to be in conflict with the provisions of the Pesticide Control Act, the remainder of the regulation will remain in full force and effect.

P. School district budgeting. Section 22-8-4 NMSA 1978 requires the department to prescribe forms for, supervise and control the preparation of all budgets of all public schools and school districts, and to compile accurate information concerning public school finance and administration. Sections 22-8-5 through 22-8-12.1 NMSA 1978 set out specific budget preparation and submission requirements for the department, public schools and public school districts. Regulations governing budgeting and accounting for New Mexico public schools and school districts are set out in 6.20.2 NMAC.

Q. Final course and other student grade changes. Any changes to students' course or other grades shall be governed by the state rule, "Final Course and Other Student Grade Changes" (6.30.10 NMAC).

[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6/30/2009; A, 02/12/2010; A, 10/31/2011; A, 2/28/2017; A,

07/25/2017; A, 12/15/2020; A, 5/24/2022; A, 1/28/2025]

6.29.1.11 PROGRAM REQUIREMENTS:

A. Curriculum.
(1) Local curricula shall be aligned with the applicable New Mexico content standards with benchmarks and performance standards. In accordance with Section 22-13-1.6 NMSA 1978, each school district shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area.

(2) Adopted instructional materials shall support the aligned local curricula. The state standards revision cycle, the local curriculum cycle and the instructional materials cycle shall be aligned and sequenced to provide standards-based curricula that are supported by aligned instructional materials. At the completion of each standards revision cycle, the standards-based state assessment program shall be reviewed to determine the need for realignment.

(3) All courses offered for credit shall have written, delivered, assessed and sequential curriculum.

(4) Written and delivered curricula shall be congruent, state what students should know and be able to do, and include an assessment process.

(5) The curricula shall support the Education Plan and NM School DASH.

B. Subject areas. The district or charter school shall ~~[be in compliance]~~ comply with subject area requirements as specified in Section 22-13-1 NMSA 1978.

(1) The department shall require instruction in specific subject areas as provided in Paragraphs (2) through (7) of Subsection B of 6.29.1.11 NMAC. Any public school or school district failing to meet these minimum requirements shall not be accredited by the department.

(2) All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics, and comprehension; and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

(3) All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content standards, benchmarks and performance standards shall be provided in science, social studies, physical education and health education.

(4) In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

(a) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;

(b) mathematics;

(c) a language other than English;

(d) communication skills;

(e) science;

(f) art;

(g) music;

(h) social studies;

(i) New Mexico history;

(j) United States history;

(k) geography;

(l) physical education; and

(m) health education.

(5) In eighth grade, algebra I shall be offered in regular classroom settings, through online courses or agreements with high schools.

(6) Units earned in health, algebra I, and geometry prior to enrolling in high school shall satisfy unit requirements required to earn a New Mexico diploma of excellence.

~~[(6)]~~ **(7)** In fourth through eighth grades, school districts and charter schools shall offer electives that contribute to academic growth and skill development and provide career and technical education.

~~[(7)]~~ **(8)** In ninth through 12th grades, instruction that meets academic content and performance standards shall be provided in health education, including:

(a) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proved to be effective;

(b) lifesaving skills training that follows nationally recognized guidelines for hands-on, compression only, psychomotor skills (skills that use hands-on practice to support cognitive learning) cardiopulmonary resuscitation training including:

(i) use of a course curriculum, which allows for demonstration of competency in performing cardiopulmonary resuscitation and associated skills;

(ii) training that conforms to the most recent, national, evidence-based guidelines established by the American heart association, the American red cross, or another nationally recognized, NM public education department-approved non-profit organization;

(iii) training to recognize the signs of a heart attack;

(iv) training on use of an automated external defibrillator; and

(v) training on how to perform the Heimlich maneuver for choking victims;

(c) lifesaving skills training that may use the following instructors if qualified to teach hands-on psychomotor skills cardiopulmonary resuscitation training:

(i) school nurses;

(ii) health teachers;

(iii) athletic department personnel as instructors; and

(iv) any qualified volunteers, as defined by 6.50.18.8 NMAC, providing training at no cost to the school district that the school district determines to be eligible to offer instruction as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC including, but not limited to, emergency medical technicians, paramedics, police officers, firefighters, representatives of the American heart association or the American red cross, or other similarly qualified individuals;

(d) training and instructional materials related to Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC in both English and Spanish to include:

(i) materials, equipment, and services that are needed as part of the instruction obtained on loan from state-recognized organizations, such as the New Mexico heart institute; and

(ii) materials, equipment, and services received by schools as in-kind donations; and

(e) combined instruction, whereby school districts and charter schools may work

with other school districts and charter schools to provide the training or with a regional education cooperative to provide or facilitate the training.

~~[(8)]~~ (9) The requirements as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education shall not be required for students in grades nine through 12 who are enrolled in a virtual charter school.

~~[(9)]~~ (10) A school district or charter school may submit a waiver request to the department for the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education for a student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act in grades nine through 12 with a disability as documented through an individualized education program (IEP) if the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC cannot be reasonably met with accommodations for a given student.

~~[(10)]~~ (11) In every grade, inquiry-based laboratory components are at the core of the science program and shall be woven into every lesson and concept strand. For required science units in grades nine through twelve, "laboratory component" means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students shall have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results and discuss their findings.

The laboratory component comprises at least 40 per cent of the unit's instructional time. All science classes that include dissection activities as part of the curriculum shall provide virtual dissection techniques as alternative activities for any student

who is opposed to real dissections for ethical, moral, cultural or religious reasons. Alternative techniques shall approximate the experience of real dissection activities as closely and appropriately as possible. A virtual dissection technique means carrying out dissection activities using computer two-dimensional or three-dimensional simulations, videotape or videodisk simulations, take-apart anatomical models, photographs or anatomical atlases.

C. Bilingual multicultural education. Bilingual multicultural education programs shall be provided to meet the identified educational and linguistic needs of linguistically and culturally different students, including Native American children, and other students who may wish to participate, in grades K-12, with priority to be given to programs in grades K-3. These programs shall:

(1) provide services in accordance with the Bilingual Multicultural Education Act (Sections 22-23-1 through 6 NMSA 1978) and the Bilingual Multicultural Education Program Regulation (Sections 6.32.2.7 through 6.32.2.11 NMAC);

(2) be implemented in accordance with the identified needs of qualifying culturally and linguistically different students and ensure equal educational opportunities;

(3) be assessed as part of the Education Plan process; and

(4) support the local curriculum and Education Plan and NM School DASH.

D. Career and technical education (CTE). Career and technical education programs for both elementary and secondary levels shall:

(1) be in accordance with Section 22-14-1 through 22-14-30 NMSA 1978 and the Carl Perkins Act;

(2) provide exploratory and skill development program offerings;

(3) ensure students' mastery of the New Mexico career and technical education content standards with benchmarks and performance standards;

(4) include competency-based applied learning; and

(5) support the local curriculum and the NM School DASH.

E. School health. School health programs provide opportunities for all students to develop healthy behaviors. Districts and charter schools shall provide or make provisions for school health programs that address the health needs of students and staff. Districts and charter schools shall provide the following programs: health education, physical education, health services and school counseling. Additional programs may include: nutrition, staff wellness, family-school-community partnerships, healthy environment and psychological services. These programs shall:

- (1) be in accordance with Section 22-10A-34 and Section 24-5-1 through 24-5-6 NMSA 1978;
- (2) provide education and skill development program offerings;
- (3) provide community partnerships which help to achieve the goal of healthy students and staff; and
- (4) support the local curriculum Education Plan, and NM School DASH.

F. Special education. Special education is specially designed instruction that is provided at no cost to parents to meet the unique needs of a student with a disability, as defined in the IDEA regulations (34 CFR Part 300 and state special education regulations (6.31.2 NMAC). Special education programs shall:

- (1) provide specially designed instruction in career and technical education and travel training for students whose IEPs require such services;

(2) provide instruction to students placed on homebound services as per their IEP; and

(3) provide instruction in state-supported educational programs, hospitals, institutions and other settings. As set forth in the state special education regulations at Paragraph (15) of Subsection C of 6.31.2.7 NMAC, special education may include speech-language pathology services consisting of specially-designed instruction that is provided to enable a student with a disability, as recognized under IDEA, to have access to the general curriculum and to meet the educational standards of the public agency that apply to all children;

(4) be assessed as part of the Education Plan process; and

(5) support the local curriculum, Education Plan, and NM School DASH.

G. Supplemental programs. Programs which supplement, but do not replace, state operational programs may include, but are not limited to: Title I - Improving the Academic Achievement of the Disadvantaged; Title II - Preparing, Training and Recruiting High Quality Teachers and Principals; Title III - Language Instruction for Limited English Proficient and Immigrant Students; Title IV, Part A - Safe and Drug Free Schools and Communities; Title V - Promoting Informed Parental Choice and Innovative Programs; Title VI - Flexibility and Accountability; Title VII - Indian, Native Hawaiian and Alaska Native Education; Title VIII - Impact Aid Program; the Johnson-O'Malley Act; and Individuals with Disabilities Education Improvement Act (IDEA). Supplemental programs shall:

- (1) provide services as required by federal laws and assurances, including Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA) of 1974;

(2) be assessed as part of the Education Plan process; and

(3) support the local curriculum, Education Plan, and NM School DASH.

H. Support services. Districts and charter schools shall provide support service programs which strengthen the instructional program. Required support service programs are library media, school counseling and health services. Support services shall:

(1) have a written, delivered and assessed program, K-12;

(2) provide licensed staff to develop and supervise the program; and

(3) support the local curriculum, Education Plan, and NM School DASH.

I. Technology in education. The Technology for Education Act establishes a fund and a system for equal distribution of funds based upon final funded student membership within each school district and charter school. The Technology for Education Act requires annual review and approval of each school district and charter school's educational technology plan, through which every school district and charter school reports to the department the fiscal distributions received, expenditures made and educational technology obtained by the district or charter school, and other related information. As districts and charter schools develop, refine and implement strategic long-range plans for utilizing educational technology, each plan shall:

(1) be in accordance with Section 22-15A-10 NMSA 1978; and

(2) support the local curriculum, Education Plan, and NM School DASH.

J. Gifted education. Gifted education is specially designed instruction to meet the individual needs of gifted students pursuant to 6.31.3 NMAC. Gifted education programs shall:

(1) provide gifted students appropriate instruction in required subject areas, in accordance with Article 13 of Chapter 22 NMSA 1978;

(2) be assessed as part of the Education Plan process; and

(3) support the local curriculum, Education Plan, and NM School DASH.

[6.29.1.11 NMAC - Rp, 6.30.2.11 NMAC, 6/30/2009; A, 2/28/2017; A, 12/15/2020; A, 1/28/2025]

End of Adopted Rules

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Submittal Deadlines and Publication Dates

Volume XXXVI, Issues 1-24

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|-----------------|---------------------------|-------------------------|
| Issue 1 | January 3 | January 14 |
| Issue 2 | January 16 | January 28 |
| Issue 3 | January 30 | February 11 |
| Issue 4 | February 13 | February 25 |
| Issue 5 | February 27 | March 11 |
| Issue 6 | March 13 | March 25 |
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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