This is an amendment to 8.370.16 NMAC, Sections 1, 7, 35 and 51, effective 9/1/2026.

8.370.16.1 ISSUING AGENCY: New Mexico health care authority (HCA).
[8.370.16.1 NMAC - N, 7/1/2024; A, 9/1/2026]

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

A. Definitions beginning with "A":

(1) "Abuse" means any act or failure to act performed intentionally, knowingly, or recklessly that causes or is likely to cause harm to a resident, including but not limited to:

(a) Physical contact that harms or is likely to harm a resident of a care facility.

(b) Inappropriate use of physical restraint, isolation, or medication that harms or is likely to harm a resident.

(c) Inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order.

(d) Medically inappropriate conduct that causes or is likely to cause physical harm to a resident.

(e) Medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident.

(f) An unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

(2) "Ambulatory" means able to walk without assistance.

(3) "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

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

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

D. Definitions beginning with "D":

(1) "Developmental disability" means [~~mental retardation~~] intellectual disability or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

(a) manifested before the individual reaches age 22;

(b) likely to continue indefinitely; and

(c) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(2) "Dietitian" means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982.

(4) "Direct supervision" means supervision of an assistant by a supervisor who is present in the same building as the assistant while the assistant is performing the supervised function.

E. Definitions beginning with "E": "Exploitation" of a patient/client/resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a patient/client's property, including any form of property, for another persons profit, advantage or benefit.

(1) Exploitation includes but is not limited to:

(a) manipulating the patient/client resident by whatever mechanism to give money or property to any facility staff or management member;

(b) misappropriation or misuse of monies belonging to a resident or the

unauthorized sale, or transfer or use of a patient/client/residents property;

(c) loans of any kind from a patient/client/resident to family, operator or families of staff or operator;

(d) accepting monetary or other gifts from a patient /client/resident or their family with a value in excess of $25 and not to exceed a total value of $300 in one year.

(e) All gifts received by facility operators, their families or staff of the facility must be documented and acknowledged by person giving the gift and the recipient.

(2) **Exception:** Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

F. **Definitions beginning with "F":**

(1) **"Facility"** means a nursing home subject to the requirements of these regulations.

(2) **"Full-time"** means at least an average of 37.5 hours each week devoted to facility business.

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

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

I. **Definitions beginning with "I":**

(1) **"Intermediate care facility"** means a nursing home, which is licensed by the authority as an intermediate care facility to provide intermediate nursing care.

(2) **"Intermediate nursing care"** means a basic care consisting of physical, emotional, social and other rehabilitative services under periodic medical supervision. This nursing care requires the skill of a licensed nurse for observation and recording of reactions and symptoms, and for supervision of nursing care. Most of the residents have long-term illnesses or disabilities which may have reached a relatively stable plateau. Other residents whose conditions are stabilized may need medical and nursing services to maintain stability. Essential supportive consultant services are provided in accordance with these regulations.

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

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

L. **Definitions beginning with "L":**

(1) **"Licensed practical nurse"** means a person licensed as a licensed practical nurse under Section 61-3-1 through Section 61-3-30 NMSA 1978, Nursing Practice Act.

(2) **"Licensee"** means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the long term care facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.

M. **Definitions beginning with "M": "Mobile non-ambulatory"** means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair or a wheeled platform.

N. **Definitions beginning with "N":**

(1) **"Non-ambulatory"** means unable to walk without assistance.

(2) **"Non-mobile"** means unable to move from place to place.

(3) **"Nurse"** means registered nurse or licensed practical nurse.

(4) **"Nurse practitioner (certified)"** means a registered professional nurse who meets the requirements for licensure as established under Sections 61-3-1 through 61-3-30 NMSA 1978, Nursing Practice Act.

O. **Definitions beginning with "O": [RESERVED]**

P. **Definitions beginning with "P":**

(1) **"Personal care"** means personal assistance, supervision and a suitable activities program. In addition:

(a) the services provided are chiefly characterized by the fact that they can be provided by personnel other than those trained in medical or allied fields. The services are directed toward personal assistance, supervision, and protection;

(b) the medical service emphasizes a preventive approach of periodic medical supervision by the resident's physician as part of a formal medical program that will provide required consultation services and also cover emergencies; and

(c) the dietary needs of residents are met by the provision of adequate general diet or by therapeutic, medically prescribed diets.

(2) **"Pharmacist"** means a person registered as a pharmacist under Section 61-11-1 NMSA 1978, the Pharmacy Act.

(3) **"Physical therapist"** means a person licensed to practice physical therapy under

Sections 61-12D-1 to Section 61-12D-19 NMSA 1978, the Physical Therapy Act.

(4) "Physician" means a person licensed to practice medicine or osteopathy as defined by Section 61-6-1 NMSA 1978, the Medical Practice Act, and Sections 61-10-1 through 61-10-21 NMSA 1978, the Osteopathic Medicine Act.

(5) "Physician's extender" means a person who is a physician's assistant or a nurse practitioner acting under the general supervision and direction of a physician.

(6) "Physician's assistant" means a person licensed under Section 61-6-7 through 61-6-10 NMSA 1978, the Physician Assistant Act, to perform as a physician's assistant.

(7) "Practitioner" means a physician, dentist or podiatrist or other person permitted by New Mexico law to distribute, dispense and administer a controlled substance in the course of professional practice.

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

R. Definitions beginning with "R":

(1) "Registered nurse" means a person who holds a certificate of registration as a registered nurse under Section 61-3-1 to 61-3-30 NMSA 1978, the Nursing Practice Act.

(2) "Resident" means a person cared for or treated in any facility on a 24-hour basis irrespective of how the person has been admitted to the facility.

S. Definitions beginning with "S":

(1) "Skilled nursing facility" means a nursing home which is licensed by the authority to provide skilled nursing services.

(2) "Skilled nursing care" means those services furnished pursuant to a physician's orders which:

(a) require the skills of professional personnel such as registered or licensed practical nurses; and

(b) are provided either directly by or under the supervision of these personnel;

(c) in determining whether a service is skilled nursing care, the following criteria shall be used:

(i) the service would constitute a skilled service where the inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of professional personnel;

(ii) the restoration potential of a resident is not the deciding factor in determining whether a service is to be considered skilled or unskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities; and

(iii) a service that is generally unskilled would be considered skilled where, because of special medical complications, its performance or supervision or the observation of the resident necessitates the use of skilled nursing personnel.

(3) "Specialized consultation" means the provision of professional or technical advice, such as systems analysis, crisis resolution or in-service training, to assist the facility in maximizing service outcomes.

(4) "Supervision" means at least intermittent face-to-face contact between supervisor and assistant, with the supervisor instructing and overseeing the assistant, but does not require the continuous presence of the supervisor in the same building as the assistant.

T. Definitions beginning with "T": "Tour of duty" means a portion of the day during which a shift of resident care personnel are on duty.

U. Definitions beginning with "U": "Unit dose drug delivery system" means a system for the distribution of medications in which single doses of medications are individually packaged and sealed for distribution to residents.

V. Definitions beginning with "V": "Variance" means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of residents or staff of a long term care facility, and is at the sole discretion of the licensing authority.

W. Definitions beginning with "W": "Waive/waivers" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of residents and staff are not in danger. Waivers are issued at the sole discretion of the licensing.

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

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

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

[8.370.16.7 NMAC - N, 7/1/2024; A, 9/1/2026]

8.370.16.35 OTHER LIMITATIONS ON ADMISSION:

A. Persons requiring unavailable services: Persons who require services which the facility does not provide or make available shall not be admitted or retained.

B. Communicable diseases:

(1) Restriction: No person suspected of having a disease in a communicable state shall be admitted or retained unless the facility has the means to manage the condition.

(2) Isolation techniques: Persons suspected of having a disease in a communicable state shall be managed according to isolation techniques for use in hospitals, published by the U.S. department of health and human services, public health services, center for disease control, or with comparable methods as developed by facility policies.

(3) Reportable diseases: Suspected diseases reportable by law shall be reported to the local public health agency and the division of health, bureau of community health and prevention within time frames specified by these agencies.

C. Destructive residents: Residents who are known to be destructive of property, self-destructive, disturbing or abusive to other residents, or suicide, shall not be admitted or retained, unless the facility has and uses sufficient resources to appropriately manage and care for them.

D. Developmental disabilities: No person who has a primary diagnosis of developmental disability may be admitted to a facility unless the facility is certified as in intermediate care facility for [~~the mentally retarded~~] individuals with intellectual disabilities, except that a person who has a developmental disability and who requires skilled nursing care services may be admitted to a skilled nursing facility if approved for such level of care by the state developmental disability authority.

E. Mental illness: No person with a primary diagnosis of mental illness may be admitted to long term care facilities except that a person who has a diagnosis of mental illness and who requires skilled nursing care services may be admitted to a long term care facility if approved for such level of care by-the state mental illness authority.

F. Admission seven days a week: With prior approval, facilities shall take reasonable steps to admit residents seven days a week.

[8.370.16.35 NMAC - N, 7/1/2024; A, 9/1/2026]

8.370.16.51 NURSING STAFF: In addition to the requirements of 8.370.16.50 NMAC, the following conditions shall be met:

A. Assignments: There shall be sufficient nursing service personnel assigned to care for the specific needs of each resident on each tour of duty. Those personnel shall be briefed on the condition and appropriate care of each resident prior to beginning hands-on care of residents.

B. Relief personnel: Facilities shall obtain qualified relief personnel.

C. Records, weekly schedules: Weekly time schedules shall be planned at least one week in advance, shall be posted and dated, shall indicate the names and classifications of nursing personnel and relief personnel assigned on each nursing unit for each tour of duty, and shall be updated as changes occur.

D. Staff meetings: Meetings shall be held at least quarterly for the nursing personnel to brief them on new developments, raise issues relevant to the service, and for such other purposes as are pertinent.

E. [~~Twenty-four (24)~~] 24 hour coverage: All facilities shall have at least one nursing staff person on duty at all times.

F. Staffing patterns: The assignment of the nursing personnel required by this subsection to each tour of duty shall be sufficient to meet each resident's needs and implement each resident's comprehensive care plan.

(1) Nursing department personnel means, the director of nursing, the assistant director of nursing, nursing department directors, licensed nursing personnel, certified nursing assistants, nursing assistants who have completed 16 hours or more of orientation and demonstrated competency and restorative nursing assistants.

(2) The director of nursing, the assistant director of nursing, and nursing department directors may be counted towards the minimum staffing requirements only for the time spent on the shift providing direct resident care services.

(a) A skilled nursing facility or facility that offers intermediate and skilled nursing shall maintain a nursing department minimum staffing level of two and a half hours per patient day calculated on a seven day average.

(b) An intermediate care facility shall maintain a nursing department minimum staffing level of two and three-tenths (2.3) hours per patient day calculated on a seven day average.

(c) Within one hour of shift change, facilities shall post the number of nursing personnel on duty in a conspicuous and consistent location for public review. Shifts are informally defined as the day shift, evening shift, and night shift. Employees working variations of these shifts shall be included within the shift count where a majority of the hours fall. Example: For a facility with 100 patients, two and three-tenths (2.3) hours per patient day averages one nursing department employee on duty for approximately every 10 to 11 patients. For a facility with 100 patients, two and five tenths (2.5) hours per patient day averages one nursing department employee for every nine to 10 patients. These are daily averages that will vary from shift to shift so that actual staffing might approximate:

	2.3 Hours per patient day	2.5 Hours per patient day
Day Shift	One staff for eight patients	One staff for seven patients
Evening Shift	One staff for 10 patients	One staff for 10 patients
Night Shift	One staff for 13 patients	One staff for 12 patients

[8.370.16.51 NMAC - N, 7/1/2024; A, 9/1/2026]