

at the State Records Center and Archives

Your Access to Public Information

# New Mexico Register

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

# COPYRIGHT © 2025 BY THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

## The New Mexico Register Published by the Commission of Public Records,

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.

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us. The *New Mexico Register* is available free at http://www.srca.nm.gov/new-mexico-register/

## New Mexico Register Volume XXXVI, Issue 14

Volume XXXVI, Issue 14 July 29, 2025

## **Table of Contents**

## **Notices of Rulemaking and Proposed Rules**

| AGING AND LONG-TERM SERVICES DEPARTMENT  Notice of Rulemaking and Public Hearing                 |                           |   |     |  |                      |       |                 |     |
|--|---------------------------|---|-----|--|----------------------|-------|-----------------|-----|
| ·  |                           | Ç   |     |  |                      |       |                 |     |
| FINANCE AND ADMINISTRATION, DEPARTMENT OF  Notice of Additional Rulemaking Hearing (10.6.2 NMAC) |                           |   |     |  |                      |       |                 |     |
| HEALTH CARE AUT  | HORIT                     | Y   |     |  |                      |       |                 |     |
| HEALTH IMPROVEMEN  |                           |   |     |  |                      |       |                 |     |
| Notice of Public Hearing (8.370.8 NMAC)  |                           |   |     |  |                      |       |                 |     |
| INCOME SUPPORT DIVI  |                           |   |     |  |                      |       |                 |     |
| Notice of Public Hearing (FFY2026 DRAFT LIHEAP Model Plan)                                       |                           |   |     |  |                      |       |                 |     |
| Notice of Public Hearing (8.102.461 NMAC)  |                           |   |     |  |                      |       |                 |     |
| Notice of Public Hear  | ring (TAN                 | r)  | 020 |  |                      |       |                 |     |
| MEDICAL BOARD - 1  | PODIAT                    | TRY BOARD   |     |  |                      |       |                 |     |
| Notice of Emergency Rulemaking   |                           |   |     |  |                      |       |                 |     |
|  |                           |   |     |  |                      |       |                 |     |
| REGULATION AND I   |                           | SING DEPARTMENT   |     |  |                      |       |                 |     |
|  | CANNABIS CONTROL DIVISION |   |     |  |                      |       |                 |     |
| Notice of Proposed R   | uiemaking                 | Ţ   | 628 |  |                      |       |                 |     |
| SECRETARY OF STA   | TE, OF                    | FICE OF   |     |  |                      |       |                 |     |
| Notice of Proposed Rulemaking (1.10.13 NMAC)   |                           |   |     |  |                      |       |                 |     |
|  |                           |   |     |  | WODKEODCE COLU       | TIONS | DEDADTMENT OF   |     |
|  |                           |   |     |  | WORKFORCE SOLU       | TIONS | , DEPARTMENT OF | 634 |
|  |                           |   |     |  | Notice of Rulemaking | g     |                 | 034 |
|  |                           | Adopted Rules   |     |  |                      |       |                 |     |
| A = Amende   | ed, $E = E$               | mergency, $N = New$ , $R = Repealed$ , $Rn = Renumbered$      |     |  |                      |       |                 |     |
|  |                           |   |     |  |                      |       |                 |     |
|  |                           | NATURAL RESOURCES DEPARTMENT                                  |     |  |                      |       |                 |     |
| OIL CONSERVATION CO  |                           |   | (2) |  |                      |       |                 |     |
| 19.15.2 NMAC   | A                         | General Provisions for Oil and Gas Operations                 |     |  |                      |       |                 |     |
| 19.15.7 NMAC<br>19.15.14 NMAC  | A<br>A                    | Forms and Reports   |     |  |                      |       |                 |     |
| 19.15.14 NMAC<br>19.15.16 NMAC   | A                         | Drilling and Production                                       |     |  |                      |       |                 |     |
| 19.15.25 NMAC  | A                         | Plugging and Abandonment of Wells                             |     |  |                      |       |                 |     |
| 17.13.23 14111110  | 11                        |   |     |  |                      |       |                 |     |
|  |                           | ATION, DEPARTMENT OF  |     |  |                      |       |                 |     |
| COLONIAS INFRASTRU   |                           |   |     |  |                      |       |                 |     |
| 2.91.3 NMAC  | N                         | Review and Selection for Animal Welfare Fund Program Projects | 639 |  |                      |       |                 |     |

| FINANCE AND ADMIN       | ISTR <i>A</i> | ATION, DEPARTMENT OF (Continued)                             |     |
|-------------------------|---------------|--|-----|
| LOCAL GOVERNMENT DI     | VISION        |  |     |
| 2.110.2 NMAC            | R             | Small Cities Community Development Block Grant               | 641 |
| 2.110.2 NMAC            | N             | Small Cities Community Development Block Grant               |     |
| 2.42.2 NMAC             | A             | Regulations Governing the Per Diem and Mileage Act           |     |
| HEALTH CARE AUTHO       | ORITY         |  |     |
| INCOME SUPPORT DIVISION | ON            |  |     |
| 8.139.520 NMAC          | A             | Eligibility Policy/Income and Deductions                     | 654 |
| MEDICAL ASSISTANCE DI   | VISION        |  |     |
| 8.200.400 NMAC          | A             | General Medicaid Eligibility                                 | 657 |
| 8.249.400 NMAC          | A             | Recipient Requirements                                       |     |
| 8.249.600 NMAC          | A             | Benefit Description  |     |
| MEDICAL BOARD - PO      | DIAT          | RY BOARD   |     |
| 16.21.1 NMAC            | R/E           | General Provisions   | 661 |
| 16.21.2 NMAC            | R/E           | Fees   |     |
| 16.21.3 NMAC            | R/E           | License by Exam  |     |
| 16.21.4 NMAC            | R/E           | Expedited License by Reciprocity                             |     |
| 16.21.5 NMAC            | R/E           | Temporary License and Emergency License                      |     |
| 16.21.6 NMAC            | R/E           | Licensure for Military Service Members, Spouses and Veterans |     |
| 16.21.7 NMAC            | R/E           | License Expiration and Renewal                               |     |
| 16.21.8 NMAC            | R/E           | Continuing Education   |     |
| 16.21.9 NMAC            | R/E           | Management of Pain With Controlled Substances                |     |
| 16.21.10 NMAC           | R/E           | Lapse of License and Reinstatement                           |     |
| 16.21.11 NMAC           | R/E           | Disciplinary Proceedings                                     |     |
| 16.21.12 NMAC           | R/E           | Management of Medical Records                                |     |
| 16.10.23 NMAC           | N/E           | General Provisions.  |     |
| 16.10.24 NMAC           | N/E           | Fees.  |     |
| 16.10.25 NMAC           | N/E           | License by Exam  |     |
| 16.10.29 NMAC           | N/E           | License Expiration and Renewal                               |     |
| 16.10.30 NMAC           | N/E           | Continuing Education   |     |
| 16.10.32 NMAC           | N/E           | Lapse of License and Reinstatement                           |     |
|                         |               |  |     |
| PUBLIC REGULATION       | COM           |  |     |
| 17.11.10 NMAC           | A             | State Rural Universal Service Fund                           | 673 |
| STATE PERSONNEL O       | FFICE         |  |     |
| 1.7.4 NMAC              | A             | Pay  | 676 |
| HIGHER EDUCATION        | DEPA          | erial Related to Administrative Law RTMENT Correction        | 682 |

## **Notices of Rulemaking and Proposed Rules**

## AGING AND LONG-TERM SERVICES DEPARTMENT

## NOTICE OF RULEMAKING AND PUBLIC HEARING

Notice is hereby given that the Aging & Long-Term Services Department (ALTSD) will hold a public hearing in person and via video conference regarding proposed changes to the New Mexico Administrative Code (NMAC) rules. ALTSD proposes to amend the following rules: 9.2.2 NMAC and 9.2.20 NMAC; to repeal and replace the following rules: 9.2.1 NMAC, 9.2.3 NMAC, 9.2.4 NMAC, 9.2.5 NMAC, 9.2.6 NMAC, 9.2.7 NMAC, 9.2.11 NMAC, 9.2.13 NMAC, 9.2.14 NMAC, 9.2.15 NMAC, 9.2.16 NMAC, 9.2.17 NMAC, 9.2.18 NMAC, 9.2.19 NMAC, 9.2.21 NMAC, 9.2.22 NMAC, and 9.2.23 NMAC; and to repeal the following NMAC rules: 9.2.8 NMAC and 9.2.9 NMAC.

Legal Authority: Authority for the amendment of the rules is provided by Subsection E of Section 9-23-6 NMSA 1978, which states the following: "The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions."

Public Rule Hearing: The Department will hold a public hearing in person and via Microsoft Teams on August 29, 2025 at 9:00 a.m. to take comments regarding the proposed amendments to the rules. To participate virtually, please use the meeting ID below to attend the hearing on August 29, 2025 at 9:00 am MST.

Hearing Date and Time: August 29, 2025 at 9:00 am Physical Location: Willie Ortiz Auditorium, 2600 Cerrillos Rd. Santa Fe, NM 87505. To join Virtually: Microsoft Teams Meeting ID: 250 285 104 629 6 Passcode: TN3jd9yr

Dial in by phone: +1 505-312-4308,,228532417# United States, Albuquerque (888) 506-1357,,228532417# United States (Toll-free)

Copies of the notice of rulemaking and proposed rule are available on the New Mexico Sunshine Portal at <a href="https://ssp.nm.gov/">https://ssp.nm.gov/</a> and on the ALTSD website at <a href="https://www.aging.nm.gov/">https://ssp.nm.gov/</a> admin/admin-rules/

Public Comments: Interested parties may submit written comments to: Aging & Long-Term Services Department, Office of the Secretary, ATTN: NMAC Revisions Public Comments, 2550 Cerrillos Rd., Santa Fe, New Mexico 87505. Interested persons may also send comments via e-mail to: kathryn. farquhar@altsd.nm.gov. Written mail and electronic mail must be received no later than 5:00 p.m. MST on August 29, 2025. Written comments will be given the same consideration as oral comments made at the public hearing. All written comments received will be posted as they are received on the ALTSD website at https://www.aging.nm.gov/ admin/admin-rules/ along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter. All written comments will be posted on the Department's website within (3) three days of receipt.

If you are a person with a disability and you require this information in an alternative format or require an auxiliary aid or a special accommodation to participate in the public hearing or to provide comments, please contact ALTSD in Santa Fe at (505) 476-4799 or send your request via email to: kathryn.farquhar@altsd.nm.gov. The Department requests at least ten

(10) days advance notice to provide requested alternative formats and special accommodations.

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

**Summary:** The proposed amendments to the rules clarify federal and state requirements and address issues that have emerged since the March 15, 2024 update of the federal Older Americans Act regulations, 45 C.F.R. §1321 and §1324. The amended rules will provide guidance and aim to promote the appropriate stewardship of resources in the administration of the Older Americans Act and in accordance with New Mexico and federal law. The purpose of the proposed rules is to ensure that agencies and service providers comply with the Older Americans Act and the federal regulations promulgated under that Act. The proposed rules govern the administration and processes required to provide services and programs for older individuals in New Mexico in alignment with the Older Americans Act and the mission of the New Mexico Aging and Long-Term Services Department.

In addition to the revisions described below, changes have been made to comply with current NMAC formatting requirements.

9.2.1 NMAC: The rule will be repealed and replaced with an updated version containing a new "Definitions" section as well as sections addressing policies and procedures, emergency and disaster preparedness, and conflicts of interest.

9.2.2 NMAC: The "Objective" section of the rule will be amended.

9.2.3 NMAC: The rule will be repealed and replaced by a new rule which contains updated "Objective"

- and "Older Americans Act Services" sections. The rule will no longer address voluntary contributions or cost sharing and fee scales.
- 9.2.4 NMAC: The rule will be repealed and replaced with a new rule addressing designation of and changes to planning and service areas.
- 9.2.5 NMAC: The rule will be repealed and replaced with a new rule addressing the designation of area agencies on aging including conflicts of interest requirements and the coordination of Title III and Title VI programs.
- 9.2.6 NMAC: The rule will be repealed and replaced by a new rule with substantial additions to the requirements of area agencies on aging including the administration of the area plan.
- 9.2.7 NMAC: The rule will be repealed and replaced by a new rule which addresses new federal regulations regarding de-designation of area agencies on aging and ALTSD's role should such a dedesignation occur.
- 9.2.8 NMAC: Rule 9.2.8 NMAC, Adequate Proportion of Services, filed 6/30/2015, will be repealed.
- 9.2.9 NMAC: Rule 9.2.9 NMAC, Direct Services, filed 6/30/2015, will be repealed.
- 9.2.11 NMAC: The rule will be repealed and replaced by a new rule containing an updated "Objective" section and a new section addressing appeals will be added.
- 9.2.13 NMAC: The rule will be repealed and replaced by a new rule with an updated "Objective" section and sections addressing the Gold Mentor Program will be removed.
- 9.2.14 NMAC: The rule will be repealed and replaced by a new rule containing a new "Objective" section and formatting updates.

- 9.2.15 NMAC: The rule will be repealed and replaced by a new rule containing a new "Objective" section and formatting updates.
- 9.2.16 NMAC: The rule will be repealed and replaced by a new rule containing a new "Objective" section and formatting updates.
- 9.2.17 NMAC: The rule will be repealed and replaced by a new rule addressing new federal standards and requirements of legal assistance providers as well as area agency duties related to legal assistance providers.
- 9.2.18 NMAC: The rule will be repealed and replaced with a new rule addressing ALTSD's responsibilities in addressing nutrition services.
- 9.2.19 NMAC: The rule will be repealed and replaced by a new rule which updates the definitions, sets forth the requirements and responsibilities of the state long-term care ombudsman as well as ombudsmen employees and volunteers, and addresses interference of long-term care facilities with ombudsman-related responsibilities.
- 9.2.20 NMAC: The rule will be amended to reflect current NMAC formatting requirements.
- 9.2.21 NMAC: The rule will be repealed and replaced to include citations to statutes and federal regulations.
- 9.2.22 NMAC: The rule will be repealed and replaced to reflect current NMAC formatting requirements.
- 9.2.23 NMAC: The rule will be repealed and replaced to reflect current NMAC formatting requirements.

To obtain an electronic copy of the full text of the proposed rules, please visit: https://www.aging.nm.gov/admin/admin-rules/

To obtain the full text of the proposed rules in nonelectronic form, please contact:

kathryn.farquhar@altsd.nm.gov. A reasonable fee may be charged to provide any records in nonelectronic form. See Subsection B of 14-4-5.2 NMSA 1978.

## FINANCE AND ADMINISTRATION, DEPARTMENT OF

## NOTICE OF ADDITIONAL RULEMAKING HEARING

The Department of Finance and Administration's Local Government Division (the Division) is proposing to repeal and replace the New Mexico Administrative Code (NMAC) rule 10.6.2 NMAC, *Procedures Local Government Law Enforcement Agencies* to address liability associated with allowable use of fees and align with updates to New Mexico law.

Section 63-9D-8, NMSA 1978, as amended, requires Local Government Division to administer the Enhanced 911 Fund.

Notice Date: July 29, 2025

Additional Hearing Date: August 29,

2025

Adoption Date: Proposed as August

30, 2025

Technical Citations: 10.6.2 NMAC

The DFA held a public rule hearing on the above-referenced rule on July 11, 2025, at 9:00 am, in-person at Mabry Hall, New Mexico Public Education Department. During the July 11 hearing, DFA discovered that not all members of the public received adequate notice of the hearing. DFA is committed to transparency, public engagement, and compliance with all notice requirements.

To ensure full and fair opportunity for public participation, the DFA is holding an additional hearing on August 29, 2025.

## Written Comments will now be accepted through August 29, 2025, at 12:00 p.m. MT

These proposed rule changes will be contained in 10.6.2 NMAC. The register and the proposed rule are available on the Division website at: https://www.nmdfa.state.nm.us/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting DFA Office of General Counsel at dfalegal@dfa.nm.gov and (505) 827-4985.

The LGD proposes to implement this rule effective August 30, 2025.

A public hearing to receive testimony on this proposed rule will be held on August 29, 2025, at 9:00 a.m.
The hearing will be held at the New Mexico Public Education Department, Marbry Hall Auditorium, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501.

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

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

Interested persons may address written comments to:

DFA Office of General Counsel ATTN: IPDD 2.110.2 NMAC Public Comments 407 Galisteo St. Bataan Memorial Building, Room 180 Santa Fe, NM 87501

Recorded comments may be left at

(505) 827-4985. Interested persons may also address comments via electronic mail to: dfalegal@dfa. nm.gov. Written mail, electronic mail and recorded comments must be received no later than 12:00 p.m. MT on August 28, 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 DFA website at https://www.nmdfa. state.nm.us/ along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

# HEALTH CARE AUTHORITY HEALTH IMPROVEMENT DIVISION

### NOTICE OF PUBLIC HEARING

The New Mexico Health Care Authority Division of Health Improvement is finalizing repeal and replacement of the temporary emergency rule 8.370.8 NMAC Employee Abuse Registry.

These regulations apply to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing an individual on the registry. This rule provides for the investigation and determination of complaints alleging abuse, neglect or exploitation of recipients of care or services by employees. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed

by care providers subject to the Caregiver Criminal History Screening Act, Sections 29-17-1 et seq. NMSA 1978, and that Act's implementing rule, 8.370.5 NMAC. It also supplements requirements for preemployment screening of certified nurse aides applicable to nursing facilities pursuant to 42 CFR Sections 483.75(e) and 488.335; and 8.370.25 NMAC. This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible.

Specifically, the changes include: 8.370.8 NMAC Repeal/replace the expiring emergency rule to establish new updated rule to comply with federal regulations as well as NMAC rule requirements. Specifically, reformatting Section 7 definitions, updating the reporting contact information in Section 9, updating the investigation timelines in Section 10, and the severity standard in Section 11. The proposed rule may be viewed at the Division of Health Improvement website at https://www. hca.nm.gov/dhi-regulations/.

A public hearing to receive testimony on this proposed rule will be held on September 3, 2025, 9:00 a.m-12:00 p.m. The public hearing will be a Hybrid, via Zooms as well as in person, pursuant to Section 14-4-5.6 NMSA 1978.

Join on your computer, mobile app, or room device.

You are invited to a Zoom webinar! When: September 3, 2025 9:00 AM Mountain Time (US and Canada) Topic: DHI Rules Hearing (8.321.13, 8.370.3, 8.370.8, 8.370.12, 8.370.17)

#### Description:

8.321.13 Adult accredited Residential Treatment Centers
8.370.3 Health facilities licensing fees & procedures
8.370.8 Employee Abuse Registry
8.370.12 requirements for acute care, limited services and specialty hospitals

8.370.17 requirements for freestanding birth centers
Join from PC, Mac, iPad, or Android: https://us02web.zoom.us/j/811204012
29?pwd=K0HaayYSwgtr9vVTYker7
FgyZstqHD.1
Passcode:832267

Or call in (audio only)
Dial in by phone,
Phone one-tap:
+16694449171,,81120401229#,,,,\*83
2267# US
+16699006833,,81120401229#,,,,\*83
2267# US (San Jose)

#### Join via audio:

- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 646 931 3860 US
- +1 689 278 1000 US
- +1 929 436 2866 US (New York)
- +1 301 715 8592 US (Washington DC)

Webinar ID: 811 2040 1229

Passcode: 832267

International numbers available: https://us02web.zoom.us/u/kdK3rrPdf

All written comments may be dropped off during the scheduled hearing time (see above) at the Division of Health Improvement offices, 5300 Homestead Rd. NE, Albuquerque NM 87110 at the Hozho conference room #109.

Individuals wishing to testify may contact the Division of Health Improvement (DHI), P.O. Box H, Santa Fe, NM 87504, or by calling (505) 476-9093.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, September 3, 2025. Please send comments to: Division of Health Improvement P.O. Box H Santa Fe, NM 87504, Recorded comments may be left at (505) 476-9093. You may send comments electronically to Nancy Laster DHI Division Director at: Nancy.Laster@hca.nm.gov.

Written and recorded comments will be posted to the agency's website within 3 days of receipt. All comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

# TITLE 8 SOCIAL SERVICES CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND

COMMUNITY
BASED WAIVER PROGRAMS
PART 8 EMPLOYEE
ABUSE REGISTRY

**8.370.8.1** ISSUING AGENCY: New Mexico Health Care Authority. [8.370.8.1 NMAC - Rp, 8.370.8.1 NMAC xx/xx/2025]

8.370.8.2 SCOPE: This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing an individual on the registry. This rule provides for the investigation and determination

of complaints alleging abuse, neglect or exploitation of recipients of care or services by employees. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed by care providers subject to the Caregiver Criminal History Screening Act, Sections 29-17-1 et seq. NMSA 1978, and that Act's implementing rule, 8.370.5 NMAC. It also supplements requirements for preemployment screening of certified nurse aides applicable to nursing facilities pursuant to 42 CFR Sections 483.75(e) and 488.335; and 8.370.25 NMAC. This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible.

[8.370.8.2 NMAC - Rp, 8.370.8.2 NMAC xx/xx/2025]

#### **8.370.8.3 STATUTORY**

AUTHORITY: The Employee Abuse Registry Act, Sections 27-7A-1 to 27-7A-8 NMSA 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.

[8.370.8.3 NMAC - Rp, 8.370.8.3 NMAC xx/xx/2025]

## 8.370.8.4 **DURATION**:

Permanent.

[8.370.8.4 NMAC - Rp, 8.370.8.4 NMAC xx/xx/2025]

#### **8.370.8.5 EFFECTIVE**

**DATE:** xxxxx xx, 2025, unless a later date is cited at the end of a section.

[8.370.8.5 NMAC - Rp, 8.370.8.5 NMAC xx/xx/2025]

### **8.370.8.6 OBJECTIVE:**

The objective of this rule is to

implement the Employee Abuse Registry Act. The rule is intended to provide guidance as to the rights and responsibilities under the Employee Abuse Registry Act of providers, employees of providers, the health care authority and the adult protective services division of the department of aging and long-term services, and the public including recipients of care and services from providers. [8.370.8.6 NMAC - Rp, 8.370.8.6

NMAC xx/xx/20258.370.8.7 **DEFINITIONS:** 

**Definitions** A. beginning with "A":

"Abuse"

means:

(a)

knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or

the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person.

**(2)** 

"Adjudicated" means with respect to a substantiated registry-referred complaint, a final determination by the Secretary following a hearing, or by a court, that the employee committed abuse, neglect, or exploitation requiring the listing of the employee on the registry.

"APS" (3)

means the adult protective services division of the New Mexico aging and long-term services department.

**Definitions** beginning with "B": "Behavioral change" means an observable manifestation of psychological, emotional or mental harm, injury, suffering or damage, and includes, but is not limited to, crying, hysterical speech, or disruptions to sleeping, working, eating, speech, nonverbal communications, socially interacting, or other activities which were performed routinely before the harm, injury, suffering, or damage.

**Definitions** C. beginning with "C":

"Complaint" means any report, assertion, or allegation of abuse, neglect, or exploitation made by a reporter to the incident management system and includes any reportable incident that a licensed or certified health care facility or communitybased services provider is required to report under applicable law.

**(2)** 

"Custodian" means the person assigned by the secretary to maintain the registry in accordance with this rule and the Employee Abuse Registry Act.

**Definitions** beginning with "D": "Direct care" means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of care or services.

E. **Definitions** beginning with "E":

"Employee" means a person employed by or on contract with a provider, either directly or through a third-party arrangement to provide direct care. "Employee" does not include a New Mexico licensed health care professional practicing within the scope of the professional's license or a certified nurse aide practicing as a certified nurse aide.

"Exploitation" means an unjust or improper use of a person's money or property for another person's profit or advantage, pecuniary or otherwise.

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

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

**Definitions** Η.

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

beginning with "I": "Investigation" means a systematic fact-finding process that has as its goal the gathering of all information relevant to making a determination whether an incident of abuse, neglect or exploitation occurred.

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

beginning with "K":[RESERVED]

**Definitions** beginning with "L": "Licensed health care professional" means a person who is required to be licensed, and is licensed, by a New Mexico health care professional licensing board or authority, and the issuance of whose professional license is conditioned upon the successful completion of a postsecondary academic course of study resulting in a degree or diploma, including physicians and physician assistants, audiologists, acupuncture practitioners, dentists, registered nurses, licensed practical nurses, chiropractors, pharmacists, podiatrists, certified nurse-midwife, nurse practitioners, occupational therapists, optometrists, respiratory therapists, speech language pathologists, pharmacists, physical therapists, psychologists and psychologist associates, dietitians, nutritionists and social workers.

## **Definitions** beginning with "M":

**(1)** 

"Manager" means the authority employee designated by the secretary to manage the employee abuse registry program pursuant to the New Mexico Employee Abuse Registry Act and this rule.

#### **(2)** "Mental

**Anguish**" means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these and includes a mental sensation of extreme or excruciating pain.

N. **Definitions** beginning with "N": "Neglect" means, subject to a person's right to refuse treatment and subject to a provider's right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful sexual

contact, including such contact with another recipient of care or services.

## O. Definitions beginning with "O":[RESERVED] P. Definitions beginning with "P": "Provider"

means:

(1) an intermediate care facility for the mentally retarded;

**(2)** a

rehabilitation facility;

(3) a home

health agency;

**(4)** a

homemaker agency;

(5) a home, facility, nursing home for the aged or disabled;

(6) a group

home;

(7) an adult

foster care home;

(8) a case management entity that provides services to elderly people or people with developmental disabilities;

(9) a corporate

guardian;

(10) a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities;

(11) an adult

daycare center;

(12) a boarding home; an adult residential care home, or assisted living facility;

(13) a

residential service or habilitation service authorized to be reimbursed by medicaid;

(14) any

licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services;

(15) programs funded by the children, youth and families department that provide homemaker or adult daycare services;

(16) and

any other individual, agency or organization that provides respite care or delivers home- and communitybased services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care, deliver homeand community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly;

(17) adult accredited residential treatment centers;

(18) crisis

triage centers.

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

(1) "Registry"

means an electronic database operated by the authority that maintains current information on substantiated registryreferred employee abuse, neglect or exploitation, including the names and identifying information of all employees who, during employment with a provider, engaged in a substantiated registry-referred or an adjudicated incident of abuse, neglect or exploitation involving a recipient of care or services from a provider.

**(2)** 

"Reporter" means a person who or an entity that reports possible abuse, neglect or exploitation to the authority's incident management system.

S. Definitions

beginning with "S":

(1)

"Secretary" means the secretary of the health care authority.

(2) "Sexual

abuse" means the inappropriate touching of a recipient of care or services by an employee for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch the employee for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming or depiction of acts considered pornographic.

(3)

"Substantiated" means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

(4)

"Substantiated registry-referred" means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

T. Definitions
beginning with "T": [RESERVED]
U. Definitions
beginning with "U":

"Unsubstantiated" means that that the complaint's alleged abuse, neglect or exploitation did not or could not have occurred, or there is not a preponderance of reliable evidence to substantiate the complaint, or that there is conflicting evidence that is inconclusive.

V. Definitions
beginning with "V": "Verbal
abuse" means profane, threatening,
derogatory, or demeaning language,
spoken or conveyed by an employee
with the intent to cause pain, distress
or injury, and which does cause
pain, distress or injury as objectively
manifested by the recipient of care or

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

services.

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

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

Z. Definitions beginning with "Z": [RESERVED] [8.370.8.7 NMAC - Rp, 8.370.8.7 NMAC xx/xx/2025]

8.370.8.8 REGISTRY ESTABLISHED; PROVIDER INQUIRY REQUIRED: Upon

the effective date of this rule, the authority has established and maintains an accurate and complete electronic registry that contains the name, date of birth, address, social security number, and other appropriate identifying information of all persons who, while employed by a provider, have been determined by the authority, as a result of an investigation of a complaint, to have engaged in a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider. Additions and updates to the registry shall be posted no later than two business days following receipt. Only authority staff designated by the custodian may access, maintain and update the data in the registry.

## A. Provider requirement to inquire of registry: A provider, prior to employing or

A provider, prior to employing or contracting with an employee, shall inquire of the registry whether the individual under consideration for employment or contracting is listed on the registry.

- B. Prohibited employment: A provider may not employ or contract with an individual to be an employee if the individual is listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.
- C. Applicant's identifying information required: In making the inquiry to the registry prior to employing or contracting with an employee, the provider shall use identifying information concerning the individual under consideration for employment or contracting sufficient to reasonably and completely search the registry, including the name, address, date of birth, social security number, and other appropriate identifying information required by the registry.
- D. **Documentation of inquiry to registry:** The provider shall maintain documentation in the employee's personnel or employment records that evidences the fact that the provider made an inquiry into the registry concerning that employee prior to employment. Such documentation must include evidence, based on the response to such inquiry received from the custodian by the provider, that the employee was not listed on the registry as having a substantiated registryreferred incident of abuse, neglect or exploitation.

- for other staff: With respect to all employed or contracted individuals providing direct care who are licensed health care professionals or certified nurse aides, the provider shall maintain documentation reflecting the individual's current licensure as a health care professional or current certification as a nurse aide.
- Consequences of  $\mathbf{F}$ **noncompliance:** The authority or other governmental agency having regulatory enforcement authority over a provider may sanction a provider in accordance with applicable law if the provider fails to make an appropriate and timely inquiry of the registry, or fails to maintain evidence of such inquiry, in connection with the hiring or contracting of an employee; or for employing or contracting any person to work as an employee who is listed on the registry. Such sanctions may include a directed plan of correction, civil monetary penalty not to exceed \$5,000 per instance, or termination or non-renewal of any contract with the authority or other governmental agency.

[8.370.8.8 NMAC - Rp, 8.370.8.8 NMAC xx/xx/2025]

## 8.370.8.9 INCIDENT MANAGEMENT SYSTEM

**INTAKE:** The authority has established an incident management system for receipt, tracking and processing of complaints. Complaints may be reported to the authority's incident management system using the authority website's on-line form completion utility, by telephone using a toll-free number, facsimile, U.S. mail, email, or in-person. The method of reporting preferred by the authority is on-line form completion via the authority's website, https://www. hca.nm.gov/report-abuse-neglectexploitation/. The toll-free telephone line is staffed by the authority during normal business hours and after hours. A message system is also available for reporting complaints during non-business hours.

**A. Incident report form**: Complaints of suspected abuse, neglect or exploitation will

be reported by providers on the department's incident report form if possible. This form and instructions for completing and filing the form are available at the department's website or may be obtained from the department by calling the toll-free number 800-752-8649 or 866-654-3219.

- B. Reportable intake information: Reports of suspected abuse, neglect or exploitation made to the authority by persons who do not have access to, or are unable to use, the authority's current incident report form shall provide as specific a description of the incident or situation as possible, and shall contain the following information where applicable:
- (1) the location, date and time or shift of the incident;
- (2) the name, date of birth, social security number, gender, address and telephone number of the person the reporter suspects to have been abused, neglected, or exploited; and the name, address and telephone number of the guardian or health care decision maker for such person, if applicable;
- (3) the names, addresses, phone numbers and other identifying information of the providers who provide services to the person the reporter suspects to have been abused, neglected, or exploited;
- (4) the names, addresses, phone numbers and other identifying information of the following people who the reporter believes may have been involved with, or have knowledge of, the incident; provider's staff and employees; family members or guardians of the person the reporter suspects to have been abused, neglected, or exploited; other health care professionals or facilities; and any other persons who may have such knowledge;
- (5) the condition and status of the person the reporter suspects to have been abused, neglected, or exploited;
- (6) the reporter's name, address, telephone number and other contact information,

together with the name and address of the provider with whom the reporter is employed, if applicable.

C. Method of filing complaint: The completed incident report form must be filed with the department. It may be filed by use of the department's on-line form completion.

[8.370.8.9 NMAC - Rp, 8.370.8.9 NMAC xx/xx/2025]

## 8.370.8.10 COMPLAINT PROCESSING:

A. Assignment of complaint: The manager or designee shall review the complaints, reports or allegations of abuse, neglect or exploitation, prioritize these complaints and assign appropriate authority staff to investigate when warranted, and refer the complaint, report, or allegation to APS, and other appropriate oversight agencies for investigation.

**(1)** 

Assignment shall be made to appropriate staff of the authority of all complaints of abuse, neglect or exploitation involving a provider for whom the authority has oversight authority or for whom the authority has agreed to investigate.

shall be made to APS of complaints of abuse, neglect or exploitation in all instances where the complaint involves a provider of medicaid waiver services administered by the aging and long-term services department and the provider is not otherwise licensed by or under contract with the authority.

(3)

The manager shall prioritize the complaints and ensure that the complaints that allege the most serious incidents of abuse, neglect or exploitation, or that present a high risk of future harm, are promptly investigated.

B. Immediate threat to health or safety: In instances where the investigation determines that there exists an immediate threat to the health or safety of a person in the care of a provider, the authority or APS, in accordance with applicable

statutory authority, will make the necessary arrangements or referrals to ensure the protection of persons at risk of harm or injury. The authority will take appropriate action to eliminate or reduce the immediate threat to health or safety with respect to providers it licenses or with whom it contracts.

C. Conducting the investigation: The authority investigation of complaints will follow the procedures in this rule. The investigations conducted by APS will comply with applicable APS rules or with the provisions herein.

**(1)** investigators shall gather all relevant evidence, weigh the evidence including making credibility determinations. Individuals from whom information is gathered may include the reporter, witnesses identified by the reporter, listed on the incident report form or discovered during the investigation, the alleged victim, appropriate representatives of the provider, medical personnel with relevant information, family members and guardians of the alleged victim, any employee suspected of abuse, neglect or exploitation, other recipients of care and services, and other persons possibly having relevant information.

(2) Physical injuries that are the subject of the complaint will be observed in person and documented. Complete documentation must be obtained of all objectively verifiable manifestations of mental anguish, verbal abuse, sexual abuse or neglect on the part of the recipient of care or services.

(3) The investigator will generally follow authority guidelines addressing faceto- face individualized interviews, telephonic interviews, witness statements and documentation of contacts.

(4) The investigator will follow established guidelines for clinical consultations.

instances where the investigation results in discovery of other, unrelated instances of possible abuse, neglect

or exploitation, the investigator will file an incident report form with the incident management system. However, additional allegations involving the same complaint as the one under investigation are considered the same case and will not be separately reported, although the investigator may supplement the Incident Report.

(6) At any time during the investigation, the manager shall make referrals to other licensing authorities based upon information of possible violations of applicable health facility, community provider or health care professional standards.

**(7)** 

The investigator will submit an investigation report to the manager with recommendations as to whether the complaint is:

(a)

unsubstantiated;

(b)

substantiated; or

(c)

substantiated registry referred.

(8) Where

appropriate, the investigation report may make findings and recommendations with respect to provider responsibility for abuse, neglect or exploitation.

(9) The manager shall review the investigation report and recommendations and shall make a determination whether the complaint of abuse, neglect or exploitation is substantiated.

(10) If the manager determines, as a result of the manager's review of the investigation report and recommendations, that the complaint is substantiated, the manager shall apply the appropriate severity standard to the substantiated complaint to further determine if the complaint is substantiated registry referred.

D. Investigation file and report: The authority shall establish an investigation file, which shall contain all applicable information relating to the complaint including the incident report form, correspondence, investigation,

referrals, determinations, secretary's decision, and notices of appeal. Following the investigation and determination by the manager, the complaint and investigation file will be maintained by the custodian. The investigator, or the investigator from the lead agency in a joint investigation, shall prepare and submit a written investigation report. The investigation report shall be part of the investigation file. The investigation report shall contain a review of the evidence obtained during the investigation, including but not limited to:

- (1) interviews conducted and written statements;
- (2) interviews and statements reviewed that were originally conducted or obtained by other entities such as the provider, other health care facilities and medical providers, or law enforcement;
- (3) documents, diagrams, photographs and other tangible evidence obtained or reviewed;
- description of any actions taken by the provider in response to the complaint or situation under investigation; and,
- (5) analysis of the evidence and recommendations.
- **E.** Timeline and processing of a complaint: The investigation of each complaint shall be completed within the timelines established by the authority.

(1)

The manager shall review the investigatory findings and recommendations and make a determination as to whether the complaint of abuse, neglect or exploitation is substantiated registry referred.

(2) The manager may issue a specific extension of any complaint processing deadline if reasonable grounds exist for such extension and the reasons are set out in the written extension. The written extension is included in the investigation file. Grounds for an extension may include, but are not limited to, the temporary

non-availability of witnesses or documentary evidence, or the need for information not yet available from other entities that may be involved with an investigation into the facts that form the basis of the complaint, including the office of the medical investigator and agencies charged with law enforcement, auditing, financial oversight, fraud investigation, or advocacy.

enforcement actions: Failure by the authority or APS to comply with the procedures or time requirements set out in this section does not abrogate or invalidate any action taken against an employee pursuant to this rule, or any action taken against a provider for noncompliance with this rule or any other applicable law or regulation. However, any such failure may be admitted into evidence at a hearing. [8.370.8.10 NMAC - Rp, 8.370.8.10 NMAC xx/xx/2025]

8.370.8.11 **SEVERITY STANDARD:** A determination of the severity of all substantiated complaints of abuse, neglect or exploitation is made for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or exploitation on the recipient of care or services, and by assessing the employee for aggravating factors. In assessing the impact of abuse, neglect or exploitation, a reasonable person standard shall apply when the harmed individual is not able to express their feelings, when there is no discernable response from the harmed individual, or when circumstances do not permit a direct evaluation of the

individual's psychosocial outcome. Such circumstances may include, but are not limited to, the individual's death, cognitive impairments, physical impairments, insufficient documentation by the facility, or when an individual's reaction to a deficient practice is markedly incongruent with the level of reaction a reasonable person in the individual's position would have to the deficient practice.

- A. Abuse: A substantiated complaint of abuse meets the severity standard if:
- (1) the abuse results in, or is a contributing factor to, death;
- (2) the abuse results in the infliction of a physical injury.
- (3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the abuse results in the infliction of pain.
- (5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, behavioral changes, or by applying a reasonable person standard.
- (6) the abuse is sexual abuse.
- (7) the abuse is verbal abuse that causes mental anguish, including psychological or emotional damage, as evidenced by behavioral changes or physical symptoms, or by applying a reasonable person standard.
- (8) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse; or
- (9) the employee used, brandished or threatened to use, a weapon in connection with the substantiated.
- **B.** Neglect: A substantiated complaint of neglect meets the severity standard if:
- (1) the neglect results in, or is a contributing factor to, death;
- (2) the neglect results in the infliction of a physical injury or emotional injury.

- (3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the neglect results in the infliction of pain.
- (5) the neglect causes mental anguish as evidenced by the victim's descriptions, or behavioral changes, or by applying a reasonable person standard; or,
- (6) the employee used alcohol or a controlled substance at or near the time of the substantiated neglect.

# C. Exploitation: A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

(1) an objectively quantifiable loss, the value of which exceeds the lesser of either:

(a)

\$100.00; or,

**(b)** 

twenty - five percent the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or

- subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.
- D. Aggravating factors: A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:
- (1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or
- (2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation.

[8.370.8.11 NMAC - Rp, 8.370.8.11 NMAC xx/xx/2025]

## **8.370.8.12** PROVIDER COOPERATION:

- A. Access to provider by investigators: The provider shall provide immediate physical access to the provider's entire facility, or its service delivery sites to investigators from the authority or APS. The investigators may require such access during any or all shifts.
- B. Access to provider records: The provider shall provide to investigators from the authority or APS immediate access to all information obtained as a result of the provider's own internal investigation of the matters that form the basis of the complaint, including but not limited to written statements, interviews, affidavits, physical items, medical information, electronic and computer data, and photographic information.
- **Interviews:** C. Investigators from the authority or APS shall have a reasonable opportunity to conduct confidential interviews with any person who may have relevant information relating to the complaint, including employees and other staff including licensed health care professionals and certified nurse aides, other licensed health care professionals and other provider staff, recipients of care or services from the provider and their family members, guardians, health care decision makers and friends.
- D. Physical access to recipients of care and services:
  The provider must allow reasonable access to individuals receiving care or services from the provider to investigators from the authority or APS when such investigators announce that they are investigating a complaint. Such access may be telephonic or face-to-face.
- E. Access to the provider's records, patient trust accounts and patient property: The provider must provide immediate access to investigators from the authority or APS to the provider's billing records, patient trust accounts,

- representative payee records, patient care and medical records, and patient property. In addition, the provider must assure access to employee and personnel records, including documentation showing provider inquiry to the registry.
- F. Copying: The access required to be provided to investigators includes copying paper documents and printing and copying electronic and computer records or data. Copied documents shall be retained in accordance with applicable state retention policies.
- G. Consequences of provider's denial of cooperation:
  The authority shall administer sanctions for a provider's failure to comply with the Employee Abuse Registry Act, including failure to provide access as required herein to conduct investigations of complaints, and such sanctions include a directed plan of correction, a civil monetary penalty not to exceed \$5,000, or such sanctions as are available under applicable contract or licensing provisions.

[8.370.8.12 NMAC - Rp, 8.370.8.12 NMAC xx/xx/2025]

## **8.370.8.13** NOTIFICATION FOLLOWING INVESTIGATION:

- A. Notification to provider and employee: If the authority or APS determines, following an investigation, that an instance of either substantiated or substantiated registry-referred employee abuse, neglect, or exploitation has occurred, then the authority, if it substantiated the complaint, or APS, if it substantiated the complaint, shall promptly notify the employee and the provider.
- B. Required information for substantiated registry-referred complaints: The notice to the provider and employee for substantiated registry-referred complaints shall be by certified mail and shall include the following information.
- (1) The nature of the abuse, neglect, or exploitation.
  (2) The date
- (2) The date and time of the occurrence.

- The right to request a hearing, and the time and manner for requesting a hearing.
- **(4)** The fact that the substantiated registry-referred findings will be reported to the registry, once the employee has had an opportunity for a hearing.
- The failure by the employee to request a hearing in writing within 30 calendar days from the date of the notice shall result in the reporting of the substantiated findings to the registry and the provider.
- C. Required information for substantiated complaints. The notice to the provider and employee for substantiated complaints may be by mail or by email and shall include the following information.
- The nature of the abuse, neglect, or exploitation. The date
- **(2)** and time of the occurrence.
- (3) The fact that the substantiated complaint was not sufficiently severe to warrant reporting the employee to the registry.
- **(4)** The fact that the employee may not request a hearing.
- D. Unsubstantiated complaints: Notice of a determination that an investigated complaint is unsubstantiated shall be mailed or emailed to the provider following such determination.
- Ε. APS notification to **the authority:** APS shall notify the manager of substantiated complaints of abuse, neglect and exploitation, and substantiated registry-referred complaints of abuse, neglect and exploitation.

[8.370.8.13 NMAC - Rp, 8.370.8.13 NMAC xx/xx/2025

#### 8.370.8.14 **HEARINGS:**

Hearings are provided to employees by either the authority or APS. This section provides rules applicable to hearings held by the authority.

A. Request for **hearing:** An employee may request an evidentiary hearing if the employee is notified that as

a result of substantiated registryreferred findings of abuse, neglect, or exploitation the employee will be reported to the registry. The request for a hearing shall be made to the authority if the authority conducted the investigation and issued the notice. The employee's request for hearing shall be made to APS if APS conducted the investigation and issued the notice. A provider may not request a hearing pursuant to the Employee Abuse Registry Act. The following applies to hearings properly requested of the authority.

- The request for a hearing shall be in writing and mailed or delivered to the New Mexico health care authority at the address set forth in the notice.
- The request for hearing shall include a copy of the notice.
- **(3)** The request for hearing must be mailed or hand-delivered no later than 30 calendar days after the date of the notice.

В.

## **Scheduling order:** The authority, or the hearing officer, shall issue a scheduling order that sets the hearing at a location reasonably convenient for the employee and at a date and time reasonably convenient to the parties. The scheduling order shall establish deadlines for completion of discovery and provide for the filing of a confidentiality order. The hearing shall be scheduled within 30 calendar days following the authority's receipt of the request for hearing. Either party may request a continuance of the hearing for good cause. If the hearing is continued it

C. Hearing officer. The hearing will be conducted before an impartial and independent hearing officer of the authority. The hearing officer is not required to be an attorney. Upon appointment, the hearing officer shall establish an official file of the case. The hearing officer shall resolve all prehearing matters, including amendment of the scheduling order, schedule and conduct prehearing conferences, rule

shall be rescheduled at the earliest

date and time available to the parties.

on prehearing motions, and resolve discovery disputes. The hearing officer will preside over the hearing and allow each party an opportunity to present its case, and shall resolve all motions, evidentiary issues and other matters as may be necessary. Within 30 calendar days of the conclusion of the hearing the hearing officer will issue a report and recommended decision to the secretary.

Parties: The D. parties to the hearing are the authority, through the manager or designee, and the employee. Each party may be represented by an attorney.

E. **Confidentiality:** The hearing officer shall require the filing of an appropriate signed confidentiality order in which each party agrees to maintain and protect the confidentiality of all individually identifiable health information that is, or may be, used or disclosed at any time during the course of the entire proceeding in accordance with applicable state and federal law and regulations. Refusal or failure to sign an appropriate confidentiality order constitute grounds for denying discovery to the non-signing party, limiting the number and testimony of the non-signing party's witnesses, limiting the admission of evidence that discloses individually identifiable health information, and the imposition of other appropriate measures to limit the scope of disclosure of individually identifiable health information to the non-signing party.

#### **Discovery:** F.

**(1)** Exhibit and witness lists will be exchanged between the parties and provided to the hearing officer prior to the hearing by the parties in accordance with the scheduling order, any prehearing order, or by agreement of the parties. The witness list shall include a summary of the subject matter of the anticipated testimony of each witness listed.

**(2)** depositions are allowed except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing. Pursuant to provisions in the scheduling order or upon agreement of the parties, and with the consent of the witness if the witness is not employed by the authority or another governmental entity, a party may interview witnesses identified by the other party at a reasonable time and in a reasonable manner.

of documents. Upon request by the employee, the authority shall provide a copy of the investigation to the employee. The parties may request the production of other relevant documents in accordance with the scheduling order or other discovery order.

#### G. Hearing

procedures: The hearing shall be closed to the public. The hearing officer shall conduct the hearing in an efficient and orderly manner that respects the rights of the parties to present their cases. The hearing officer shall maintain proper decorum and shall assure that all participants in the hearing are courteous to one another. The hearing officer is authorized to resolve motions and other disputes before and during the hearing.

(1) Recording. The hearing officer will cause a record to be made of the hearing and retained in the official file. Generally, such record is made by use of commonly available audio recording technology. A log of the recording shall be maintained.

(2) Order of presentation at hearing. The authority shall present its case, the employee shall present the employee's case, and the authority may present its rebuttal case.

(3) Public. The hearing is closed, nonpublic hearing.

(4) Evidence. The New Mexico rules of evidence do not apply, although they may be referred to for guidance as to type of evidence that may be admitted. Generally, evidence shall be admitted if it is of a type relied upon by reasonable persons in the conduct of

important affairs. Proffered evidence may be excluded if it is not relevant or is repetitious or cumulative.

(5) Telephonic testimony. Upon timely notice to the opposing party and the hearing officer and with the approval of the hearing officer, the parties may present witnesses by telephone, or live video.

Recommended decision. The hearing officer shall issue a recommended decision to the secretary within 30 days of the closing of the hearing and transfer the official record to the custodian.

(7) The custodian shall maintain the official record of the hearing, which shall include the recommendation of the hearing officer and the secretary's adjudicated decision.

H. Secretary's decision: Within 10 business days of receipt of the authority's or the APS' hearing officer recommendation, the secretary of the authority shall issue a final decision and promptly provide the parties with a copy. If the decision of the secretary finds that the employee was responsible for abuse, neglect or exploitation of sufficient severity for referral to the registry, it shall be the adjudicated decision of abuse, neglect or exploitation.

I. Judicial review: An employee may appeal the secretary's adjudicated decision of abuse, neglect or exploitation to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. The custodian will enter the employee's name into the registry within two working days following receipt of the adjudicated decision. The custodian shall promptly remove the employee from the registry upon the authority's receipt of an order issued by the district court granting a stay pending the outcome of the appeal, or upon the authority's receipt of a district court order reversing the adjudicated decision.

J. Court of appeals: If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, notification shall be made to the custodian who shall promptly remove the employee from the registry.

[8.370.8.14 NMAC - Rp, 8.370.8.14 NMAC xx/xx/2025]

#### **8.370.8.15 NOTIFICATION**

BY APS: APS shall promptly provide all required employee information to the custodian of the final disposition of complaints of substantiated registry-referred abuse, neglect or exploitation after the occurrence of each of the following:

A. No hearing requested: The employee has not requested an administrative hearing within 30 calendar days after the date of the notice to the employee following an investigation resulting in the determination of substantiated registry-referred abuse, neglect, or exploitation.

B. Adjudication of abuse, neglect or exploitation: The employee has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978 after 30 calendar days following the date of the final APS administrative adjudication decision of employee abuse, neglect or exploitation of sufficient severity for registry referral.

C. Judicial decision:
Upon the receipt by APS of a district court order or decision sustaining the APS administrative adjudication decision of abuse, neglect or exploitation of sufficient severity for registry referral, if an employee seeks judicial review in the district court.

D. Court of Appeals: If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, then notification shall be made to the custodian who shall promptly remove the employee from the registry.

[8.370.8.15 NMAC - Rp, 8.370.8.15 NMAC xx/xx/2025]

**8.370.8.16 ENTRY ON THE REGISTRY:** The custodian shall provide the employee and the provider for whom the employee worked with notice of the employee's listing on the registry. The following employees will be listed on the registry by the custodian:

A. No hearing requested: Any employee determined to have committed substantiated registry-referred abuse, neglect or exploitation who does not request an administrative hearing within 30 calendar days after the date of the notice to the employee.

**B.** Adjudicated decision: Any employee who, after 30 calendar days following the date of an adjudicated decision of abuse, neglect or exploitation, has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. Judicial decision: Any employee for whom a district court has entered an order or decision sustaining an administrative adjudication of abuse, neglect or exploitation.

D. Court of appeals: Any employee who seeks review in the court of appeals by writ of certiorari shall remain listed on the registry, unless a stay is granted pending the outcome of the case, or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses the district court, then the custodian shall promptly remove the employee from the registry.

[8.370.8.16 NMAC - Rp, 8.370.8.16]

NMAC xx/xx/2025

**8.370.8.17 REMOVAL FROM THE REGISTRY:** After a period of three years from the effective date of placement on the registry, an individual on the registry may petition for removal from the registry. The petition shall be sent to the custodian. The petition contents shall be reviewed for completeness within five days, and if not complete, notice shall be sent to the petitioner informing the petitioner that the petition is incomplete. The petition

review time does not commence to run until the submission of a complete petition.

A. Petition contents: Any individual whose name is on the registry may petition the custodian in writing for removal of the individual's name from the registry. In addition to the name, address, telephone number, and social security number of the petitioner, the petition shall provide:

(1) the petitioner's employment history since placement on the registry, to include for each employer, the name, address and telephone number of the employer, a brief description of the petitioner's responsibilities, the dates of the employment, reasons for ending the employment, and the names and telephone numbers of any employer contacts;

(2) evidence of any rehabilitation, restitution or education since the incident of abuse, neglect or exploitation, including copies of any certificates or other evidence of successful completion of rehabilitation or other educational programs, and including evidence of relevant volunteer activities;

(3) other relevant information including changed circumstances.

**Review of petition:** The authority shall establish a process of review of the petition. Such process may include review of the petition by authority or APS employees selected for such reviews and shall include a requirement that a recommendation be made to the secretary on the merits of the petition within 20 calendar days from receipt of the completed petition. The burden at all times rests upon the petitioner to present truthful information sufficient to show that good cause exists for removing the petitioner's name from the registry.

considerations: The review process established by the authority shall consider all relevant factors to determine if the petitioner has presented truthful information sufficient to demonstrate that good cause exists for removing the petitioner's name from the registry,

including but not limited to:

and extent of the substantiated abuse, neglect or exploitation which resulted in the placement of the petitioner's name on the registry including records obtained from the employee abuse registry program and the custodian of the registry;

(2) the evidence showing the rehabilitation activities of the petitioner, which may be based in part on relevant volunteer activities, education and restitution;

(3) the petitioner's age at the time of the substantiated abuse, neglect or exploitation, and the length of time since the substantiated abuse, neglect or exploitation;

(4) the likelihood that the petitioner will commit future acts of abuse, neglect or exploitation; and,

(5) the existence and extent of false or misleading statements or information provided by the petitioner in connection with the petition.

**Decision** on D. **Petition:** The secretary shall issue a final written determination on the petition based upon the review of the petition within 30 days of receipt of the completed petition and shall provide the decision to the petitioner in person or by certified mail. The secretary's final written determination shall be delivered or mailed to the petitioner within three business days of such determination. If the petition is granted, the petitioner's name shall be promptly removed from the registry.

E. Hearings: If the secretary denies the petition, the petitioner may request an administrative hearing with 10 calendar days of receipt of the decision. Upon receipt of a request for a hearing, an independent hearing officer of the authority shall conduct the hearing. If a petition is denied by the secretary and a hearing is requested and provided, the individual may not thereafter re-petition for removal from the registry. If the petition is denied following a hearing,

then the petitioner may seek judicial review pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If a petition is denied by the secretary, and an administrative hearing is not timely requested, then the individual on the registry may petition only one additional time for removal from the registry after a minimum of 36 months from the date of the prior petition denial.

[8.370.8.17 NMAC - Rp, 8.370.8.17 NMAC xx/xx/2025]

### 8.370.8.18 CONFIDENTIALITY:

The authority complies with all state and federal confidentiality requirements regarding information obtained in connection with the operation of the employee abuse registry program, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

A. Confidentiality of information: Information obtained by the incident management system involving incidents or situations of suspected abuse, neglect or exploitation is confidential and is not subject to public inspection until completion of all investigations and hearings, and then only to the extent specifically permitted by law and only such information that does not identify individuals who are receiving care or services from providers.

B. Unsubstantiated complaints: Complaints of suspected abuse, neglect or exploitation obtained by the incident management system that are not substantiated following investigation are not public information and are not subject to public inspection.

C. Substantiated complaints: Complaints of suspected abuse, neglect or exploitation obtained by the incident management system that are substantiated following investigation are subject to public inspection only to the extent permitted by law and the disclosure may not include any identifying information about an individual who is receiving health care services from a provider.

D. Permitted disclosures: Nothing herein shall

restrict an appropriate disclosure of information to the centers for medicare and medicaid services; nor shall any provision herein restrict disclosures to law enforcement officials, including district attorneys and courts, in accordance with the Adult Protective Services Act and the Resident Abuse and Neglect Act or other law.

[8.370.8.18 NMAC - Rp, 8.370.8.18 NMAC xx/xx/2025]

## History of 8.370.8 NMAC: [RESERVED]

History of Repealed Material: 8.370.8 NMAC, Employee Abuse Registry filed xx/xx/2024 Repealed effective xx/xx/2025.
Other: 8.370.8 NMAC, Employee Abuse Registry filed xx/xx/2024 Replaced by 8.370.8 NMAC, Employee Abuse Registry effective xx/xx/2025.

## HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

## NOTICE OF PUBLIC HEARING

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

The HCA proposes the New Mexico LIHEAP Model Plan covering the period of October 1, 2025, to September 30, 2026. All comments received will be considered for the New Mexico LIHEAP Model Plan.

The proposed Model Plan is available on and can be printed from the HCA's website at: <a href="https://www.hca.nm.gov/wp-content/uploads/LIHEAP-DRAFT-FFY2026-State-Plan.pdf">https://www.hca.nm.gov/wp-content/uploads/LIHEAP-DRAFT-FFY2026-State-Plan.pdf</a>. A copy of the proposed LIHEAP Model Plan is available in written format upon request. Please call the Income Support Division at (505) 709-5391 to request a copy. You may also send a request to:

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

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

A public hearing to receive testimony on this proposed plan will be held on September 2, 2025, from 9:00 a.m. to 10:00 a.m. The hearing will be held at 39-B Plaza La Prensa, Santa Fe, NM 87507.

Written comments will be accepted from July 29, 2025 through August 29, 2025 and will be posted to the HCA website within 3 days of receipt.

Interested persons may address written or recorded comments to:

Health Care Authority P.O. Box 2348 Santa Fe, NM 87504-2348

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

## HEALTH CARE AUTHORITY

#### INCOME SUPPORT DIVISION

#### NOTICE OF PUBLIC HEARING

The Health Care Authority (HCA) Income Support Division (ISD) is proposing amendments to 8.102.461 NMAC:

#### **Section 3:**

- Removing the word "department".
- No other language besides removing the word "department" in section 3 is under review at this time.

#### **Section 10:**

- adding subsection D: Nondisplacement safeguards:
- (1) An adult taking part in a work activity outlined in 45 CFR 261.30 may not fill a vacant employment position if:

(a)

Another individual is on layoff from the same or any substantially equivalent job; or

**(b)** 

The employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force in order to fill the vacancy with an adult taking part in a work activity.

(2) A State must establish and maintain a grievance procedure to resolve complaints of alleged violations of the displacement rule in this section.

(3) This section does not preempt or supersede State or local laws providing greater protection for employees from displacement.

• No other language in section 10 is under review at this time.

#### **Section 14:**

- Removing HSD and replacing it with HCA
- No other language in section 14 is under review at this time.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary

to promulgate rules and regulations necessary to carry out the duties of the Authority and its divisions. Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299. Administration of HCA, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). The Authority must promulgate these rules and make them effective no later than June 1, 2025, to be in compliance with Federal law.

The register and rule language is available on the HCA website at: Income Support Division Registers - New Mexico Health Care Authority. If you do not have internet access, a copy of the final register and rules may be requested by contacting HCA Office of the Secretary at (505) 827-7750. The Authority is proposing to implement these rules effective December 1, 2025.

A hybrid public hearing to receive testimony on this proposed rule will be held, pursuant to Section 14-4-5.6 NMSA 1978, on Thursday August 28, 2025, 11:00 a.m. - 12:00 pm. You may join in person, virtually, or by phone.

You may join in person at: HCA Income Support Division Office at 4363 Jager Dr NE, Rio Rancho, NM 87144

You may join virtually from your computer, tablet or smartphone: Microsoft Teams Need help? Get the app now and be ready when your first meeting starts: Join the meeting now Meeting ID: 259 647 897 972 Passcode: vq6dD7EP Dial in by phone +1 505-312-4308,,212462035# United States, Albuquerque (888) 506-1357,,212462035# United States (Toll-free) Find a local number Phone conference ID: 212 462 035#.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468,

Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Authority requests at least a 10-day advance notice to provide the requested alternative formats and special accommodations.

Written comment may be dropped off during the scheduled hearing time at the HCA Income Support Division Office at 4363 Jager Dr NE, Rio Rancho NM 87144. All written comments will be posted on the agency website within 3 days of receipt. Individuals wishing to testify may contact the Income Support Division (ISD), P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling (505) 819-8118. Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, August 28, 2025. Please send comments to: Income Support Division P.O. Box 2348, Santa Fe, NM 87504-2348

Recorded comments may be left at (505) 819-8118. You may send comments electronically to: HCA-isdrules@hca.nm.gov. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

## HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

#### NOTICE OF PUBLIC HEARING

The New Mexico Health Care
Authority (NMHCA) is required
by Federal Law to file a State Plan
to describe how the Authority
administers the State's TANF
funded cash assistance program.
The State Plan must be submitted
every two years to the United States
Department of Health and Human
Services (DHHS) and Administration
for Children and Families (ACF).
The TANF State Plan is combined
with the Workforce Innovation
and Opportunity Act (WIOA). The
Authority is required to offer a 45-day

comment period prior to submittal. Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299. Administration of the Health Care Authority (HCA), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

A hybrid public hearing to receive testimony on the TANF State Plan will be held pursuant to Section 14-4-5.6 NMSA 1978, on Monday September 15, 2025, from 10:00 am-11:00 am. You may join in person, virtually, or by phone.

You may join in person at: HCA Income Support Division Sandoval County Office at 4363 Jager Dr NE, Rio Rancho, NM 87144.

You may join virtually from your computer, tablet or smartphone:

Microsoft Teams Need help?

+1 505-312-

4308,,772405860# United States, Albuquerque

### Join the meeting now

(888) 506-1357,,772405860# United

States (Toll-free)

Meeting ID: 237 600 915 288 Find a local number

Passcode: Mq2GZ3LD

Phone conference ID: 772 405 860#

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Authority requests at least a 10-day advance notice to provide the requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments by the following ways:

☐ Drop of at HCA Income Support Division, Sandoval County Office Attn: Monica Pineda at 4363 Jager Dr NE, Rio Rancho NM 8714

□ Calling (505) 819-8118.

□ Mailing comments to:
Income Support Division: Attn,
Monica Pineda at P.O. Box 2348,
Santa Fe, NM 87504-2348.

□ Emailed electronically to:
HCA-isdrules@hca.nm.gov.
Written or recorded comments must
be received by 5:00 p.m. on the date
of the hearing, September 15, 2025.
Written and recorded comments will
be given the same consideration as
oral testimony made at the public

All written comments will be posted on the agency website at Income Support Division Registers - New Mexico Health Care Authority within 3 days of receipt.

## MEDICAL BOARD -PODIATRY BOARD

## NOTICE OF EMERGENCY RULEMAKING

Public Notice: The New Mexico Medical Board (NMMB) has filed emergency rules, effective July 29, 2025. This action addresses procedural updates following the August 2, 2024, public rule hearing where the Board received input on amendments to 16.21.1 through 16.21.12 NMAC. Although those rules were amended, they should have been repealed and replaced. This notice of emergency rulemaking serves to inform that the previously amended rules (16.21.1-16.21.12 NMAC) are now formally repealed and replaced with the following:

- 16.10.23 NMAC, General Provisions
- 16.10.24 NMAC, Fees
- 16.10.25 NMAC, License by Exam
- 16.10.29 NMAC, License Expiration and Renewal
- 16.10.30 NMAC, Continuing Education
- 16.10.32 NMAC, Lapse of License and Reinstatement

**Topic:** Emergency Rule Hearing **Date:** Nov 7, 2025

Time: 09:00 AM Mountain Time (US and Canada)

Place: New Mexico Medical Board 2055 S. Pacheco Street, Bldg. 400 Santa Fe, NM 87505

Purpose: During the 2023 Legislative Session HB83 passed and was signed by Governor Lujan Grisham on April 5, 2023. HB83 transferred the Podiatry Board from Regulation and Licensing Department to the New Mexico Medical Board. The addition to the Medical Practice Act requires promulgation of rules to implement the provisions set forth in HB83.

No technical information serves as a basis for this proposed rule change.

Public comment: Interested parties may provide comment on the proposed amendments of this state rule at the public hearing or may submit written comments to Monique Parks , New Mexico Medical Board, 2055 South Pacheco Street, Bldg. 400, Santa Fe, NM 87505, or by electronic mail to MoniqueM.Parks@nmmb.nm.gov . All written comments must be received no later than 3:00 p.m. (MDT) on October 31, 2025. All written comments will be posted to the agency website within (3) three business days.

Copies of proposed rules: Copies of the proposed rules may be accessed through the New Mexico Medical Board's website at www. nmmb.state.nm.us or may be obtained from the Board office by calling (505) 476-7220 or via email at MoniqueM.Parks@nmmb.nm.gov or at Elishia.Lucero@nmmb.nm.gov.

Individuals with disabilities who require the above information in an alternative format, or who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Monique Parks or Elishia Lucero at (505) 476-7220 or via email at MoniqueM.Parks@

nmmb.nm.gov or Elishia.Lucero@nmmb.nm.gov. The New Mexico Medical Board requires at least ten (10) calendar days advance notice to provide any special accommodations requested.

## **Summary of proposed changes:**

The Board summarizes its proposed changes to its administrative rules as follows:

16.21.1 NMAC though 16.21.12 - Podiatric Licensure Rules:
As a matter of law and general summary, the entirety of the podiatric licensure rules are transferred to the New Mexico Medical Board for regulation of podiatric physicians in New Mexico. Thus, the rules issued under the Podiatry Board are being repealed.

16.21.1 NMAC- General Provisions

16.21.2 NMAC- Fees

16.21.3 NMAC- License by Exam

16.21.4 NMAC- Expedited License by Reciprocity

16.21.5 NMAC - Temporary License and Emergency License 16.21.6-Licensure for Military Members, Spouses, Dependent Children and Veterans

16.21.7 NMAC - License Expiration and Renewal

16.21.8 NMAC - Continuing Education

16.21.9 NMAC - Management of Pain with Controlled Substances

16.21.10 NMAC - Lapse of License and Reinstatement

16.21.11 NMAC - Disciplinary Proceedings

16.21.12 NMAC - Management of Medical Records

16.10.23 NMAC though 16.10.32 NMAC - Podiatric Licensure Rules: The New Mexico Medical Board is adopting new rules to replace the repealed rules. Other changes to rules include: changing the title of podiatrist to podiatric physician; create a podiatry advisory committee; change reciprocity requirements and change licensure renewal periods from one year to two years.

16.10.23 NMAC - General Provisions 16.10.24 NMAC - Fees 16.10.25 NMAC - License by Exam 16.10.29 NMAC - License Expiration and Renewal 16.10.30 NMAC - Continuing Education 16.10.32 NMAC - Lapse of License and Reinstatement

## REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

#### NOTICE OF PROPOSED RULE HEARING

Public Hearing. The New Mexico Regulation and Licensing Department (RLD), Cannabis Control Division (CCD), will hold a public rule hearing on September 3, 2025, at 9:00 am. The rule hearing will be held at the Rio Grande Conference Room in the Toney Anaya State Office Building located at 2550 Cerrillos Road, Santa Fe, New Mexico. The hearing will be live-streamed via Internet-based video and via telephone for those wishing to observe the hearing. Individuals wishing to participate and offer comment on the proposed rules will appear in-person at the hearing location. A PDF of the proposed rule and meeting details may be accessed through the Cannabis Control Division website: https://www.rld. nm.gov/cannabis/ or from Victoria Kaniatobe at the contact information listed below.

Purpose of Rule Hearing. The purpose of the public rule hearing is to receive public commentary regarding the proposals for amendments to rules as described below.

Any technical information used to inform the proposed rules will be accessible by visiting: <a href="https://www.rld.nm.gov/cannabis/">https://www.rld.nm.gov/cannabis/</a>.

**Statutory Authority.** Legal authority for this rulemaking may be found

the Cannabis Regulation Act (CRA), Section 26-2C-1 through Section 26-2C-42 NMSA 1978 (2021). Additional authority may be found at Section 9-16-6 NMSA 1978 (2021).

Public Comment. The CCD will begin accepting written public comments on the proposed rules beginning July 29, 2025. Please submit written comments on the proposed rules to Bradford A. Borman, Attorney for the Cannabis Control Division, via electronic mail at ccd.publiccomment@state. nm.us. Written comments may also be submitted by visiting the CCD website at <a href="https://www.rld.nm.gov/cannabis/">https://www.rld.nm.gov/cannabis/</a> or by mailing the comment to the following address:

Cannabis Control Division Public Comment c/o Bradford A. Borman P.O. Box 25101 Santa Fe, NM 87504

All public comments must be received by the close of the public rule hearing on September 3, 2025, Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: <a href="https://www.rld.nm.gov/cannabis/">https://www.rld.nm.gov/cannabis/</a>.

No later than July 29, 2025, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <a href="https://www.rld.nm.gov/cannabis/">https://www.rld.nm.gov/cannabis/</a> or by contacting the Cannabis Control Division at RLD.CannabisControl@rld.nm.gov or (505) 476-4995.

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Victoria Kaniatobe, Legal Clerk for the Cannabis Control Division at Victoria.Kaniatobe@rld.nm.gov or (505) 476-4577 at least seven (7) days prior to the hearing.

The Cannabis Control Division (CCD) of the New Mexico Regulation and Licensing Department (RLD) is proposing to create New Mexico Administrative Code (NMAC) rule 16.8.9 NMAC, *Embargo, Recall and Seizure of Cannabis* as directed by House Bill 10 of the 2025 Legislative Session.

## The CCD is proposing to create the rule as follows:

The proposed new rule establishes procedures and licensee responsibilities related to the embargo, recall, seizure, and condemnation of cannabis and cannabis products. It outlines the CCD's authority to restrict movement of cannabis, issue mandatory recalls, coordinate with law enforcement on seizures and pursue administrative or judicial actions to ensure public health and regulatory compliance. The rule sets standards for applicant and licensee cooperation during investigations, defines conditions and protocols for product holds and destruction, and includes due process protections through notice and hearing procedures. It also establishes detailed inventory management and tracking requirements during enforcement actions, including mandatory tagging, segregation, and secure storage of embargoed or recalled products. Licensees are required to main inventory continuity, audit trails, and camera surveillance of affected products, and are prohibited from any unauthorized movement, alteration, or sale. The rule also mandates written procedures for voluntary recalls, immediate notification to the CCD, and thorough documentation of all actions taken.

## **Summary of Proposed Amended Rules.**

#### 16.8.1.7 Definitions

- Adds definition of "audited product".
- Adds definition of "delistyle".
- Adds definition of "flowering".

- Adds definition of "inhaled product".
- Adds definition of "mature plant".
- Adds definition of "oral consumption".
- Adds definition of "representative sample".
- Adds definition of "skin and body product(s)".

## 16.8.1.11 Cannabis Regulatory Advisory Committee Meetings

 Clarifies that meetings of the Cannabis Regulatory Advisory Committee may be held remotely at the discretion of the Superintendent of the Regulation and Licensing Department.

## 16.8.2.8 General Operational Requirements for Cannabis Establishments

 Prohibition against licensees providing free non-medical cannabis moved from 16.8.2.40 NMAC.

#### 1.1.1.11 Recall of Cannabis

• Removes section in its entirety, as the new proposed section 16.8.9 NMAC provides regulations related to the recall of cannabis.

#### 1.1.1.12 Chain of Custody

 Modifies the information required of licensees related to chain of custody documentation.

## 16.8.2.13 Requirements for the Transportation of Cannabis

 Clarifies shipping manifest documentation required of licensees related to the transport of cannabis products.

## 16.8.2.20 Monitoring of Licensee

 Adds requirement for licensees to maintain complete and accessible personnel records for all workers, including employees and contractors,

- for at least two (2) years after separation.
- Eliminates the requirement that licensees submit a biennial audit to the CCD.

## 16.8.2.21 Cannabis Producer Licensure: General Provisions

 Removes reference to Subsection BB of 16.8.2.8 NMAC, which does not exist.

## 16.8.2.22 Application Requirements for Cannabis Producer License

 Adds requirement for applicants and licensees to provide proof of lawful possession of the proposed or licensed premises through ownership or a completed property owner acknowledgment form.

## 16.8.2.27 Minimum Requirements for the Production of Cannabis

 Corrects referenced rule for cannabis waste procedures.

## 16.8.2.29 Cannabis Manufacturer Licensure: General Provisions

- Clarifies that licensed manufacturers may only conduct activities authorized for the class for which they are licensed.
- Clarifies that restriction on manufacturing without a license encompasses all cannabis products.
- Modifies the prohibited additives to cannabis products and separately addresses products for oral consumption.

## 16.8.2.30 Application Requirements for Cannabis Manufacturer License

- Removes topicals from the requirement to obtain authority from the New Mexico environment department.
- Adds requirement for applicants and licensees to provide proof of lawful possession of the proposed or licensed premises through ownership or a

completed property owner acknowledgment form.

## 16.8.2.34 Minimum Standards for the Manufacture of Cannabis Products

- Adds clarity regarding requirements for manufacturing I licensees engaging in deli-style transactions at a co-located common ownership retail license.
- Clarifies restrictions on cannabis conversions.

## 16.8.2.36 Application Requirements for Cannabis Retailer Licensee

 Adds requirement for applicants and licensees to provide proof of lawful possession of the proposed or licensed premises through ownership or a completed property owner acknowledgment form.

## 16.8.2.40 Minimum Standards for Retail of Cannabis Products

- Removes prohibition on sale or consumption of cannabis products removed from packaging for display.
- Prohibition against licensees providing free non-medical cannabis moved to 16.8.2.11 NMAC.
- Clarifies delivery of cannabis products to consumers is to be made only by licensed cannabis couriers, exclusively to residential addresses.

## 16.8.2.41 Cannabis Courier Licensure; General Provisions

- Identifies approved sources
   of payment for cannabis
   delivery as any legal method
   of payment including gift
   card pre-payments but
   excluding Electronic Benefits
   Transfer Services Card.
- Reduces maximum retail value of cannabis allowed in a courier vehicle to five thousand dollars (\$5,000).
- Adds clarity regarding intervals for cannabis delivery to consumers.

16.8.2.43 Cannabis Testing Laboratory License; General Provisions

> Clarifies that individuals with an interest in or employed by a cannabis establishment may not also hold an interest, invest in or be employed by a cannabis testing lab.

## 16.8.2.44 Application Requirements for Cannabis Testing Laboratory License

 Adds requirement for applicants and licensees to provide proof of lawful possession of the proposed or licensed premises through ownership or a completed property owner acknowledgment form.

## 16.8.2.45 Submittal of Application for Amended Cannabis Testing Laboratory License

- Reorganizes the rule to clarify a material or substantial modification of the premises as:
  - an increase or decrease in size;
  - a sale of the property used for the testing laboratory;
  - the purchase of additional property for the laboratory;
     or
  - o a change in the laboratory's location.
- Identifies requirements for approval of a material or substantial change in testing methods
  - Includes change

     in the type of
     instrument used in
     testing for required
     analyte
  - Limits material or substantial changes to testing methods to once a year at time of license renewal

submission of any information representing material or substantial change and an initial demonstration of capability for any new or materially changed testing method.

## 16.8.2.48 Minimum Standards for the Testing of Cannabis Products

- Updates the standard sample size for microbial test samples to no less than one gram, and the standard sample size for nonmicrobial test samples to no less than 0.5 grams
- Updates table 1, Minimum quantity of sample increments.
- Updates the minimum quantity of sample increments:
  - For a dried cannabis batch size of five or less pounds, a minimum sample increment of 10;
  - o For a dried batch size of 5 to 15 pounds, a sample increment of 10 plus 5 per pound or fraction thereof above five pounds; and
  - For a Topicals, edibles, concentrates, and volatile solvents batch size of two pounds or less, a sample increment of 10;
  - For a Topicals, edibles, concentrates, and volatile solvents batch size greater than two pounds, a sample increment of 5 per pound.
- Removes the option to use

for internal control purposes a portion of a cannabis test sample that is not destroyed.

## 16.8.2.49 Cannabis Consumption Area Licensure; General Provisions

 Limits all cannabis products to be consumed at licensed cannabis consumption areas to pre-packaged 10 mg or less units purchased at the consumption area.

## 16.8.2.54 Minimum Standards for Cannabis Consumption Areas:

 Adds requirement for cannabis consumption lounge to maintain a copy of a passing finished product Certificate of Analysis (COA) for all products available for consumption.

## 16.8.3.9 Cannabis Finished Product Labeling

- Adds to the principal display label on cannabis products the requirement to include the license number of the retail licensee that sold the finished cannabis product.
- Adds requirement to include the name and license number of the testing lab that completed the finished product test.
- Adds requirement to include the date the finished product test was performed.

## 16.8.3.10 Cannabis Seed and Immature Cannabis Plant Labeling:

- Adds requirement to include cannabis producer license number, strain name, strain names of parent strains, germination rate and tetrahydrocannabinol (THC) thresholds on cannabis seeds and cannabis immature plants.
- Adds requirement to provide mother plant COA at the time of sale.

## 16.8.3.12 Cannabis Finished Product Packaging

- Adds a requirement that every regulated cannabis product be in an opaque, resealable and continually child-resistant container at the time of transfer to a cannabis retail licensee and consumer.
- Clarifies an exception for medical cannabis to the Total THC limitation of 10 mg per serving and 800 mg per package.
- Eliminates requirement that liquid cannabis finished products be single serving only.
- Eliminates as unneeded the runway for selling medical cannabis packaged prior to the enactment of the CRA.

### 16.8.3.13 Exit Packaging

• Eliminates the requirement for exit packaging.

## 16.8.7.15 Required Testing of Cannabis Products

- Clarifies required testing of cannabis products in Table
- Clarifies limits to potency retesting.
- Eliminates an exception
  to required testing for
  pesticide residue for any
  cannabis product made
  from cannabis concentrate
  or extract that has verified
  pesticide residue test results.
   Testing of such products for
  pesticide residue will now
  be required.
- Limits re-testing by a cannabis establishment of failed samples to one retest by any state licensed cannabis testing laboratory.
- Adds a requirement that any cannabis finished product that has been remediated due to microbial contaminants be labeled as Remediated.
- Clarifies that cannabis that fails a test for pesticides is subject to destruction under CCD wastage rule.

#### 16.8.8.9 Cannabis Plant Tier Levels

Eliminates the authority
 of licensee to increase its
 authorized plant count up to
 eight increments at a time.

#### 16.8.8.10 Plant Increase Request

- Eliminates from the CCD's factors to consider in a licensee's request to increase its plant count:
  - That the licensee has met the required minimum sale of medical cannabis each of the most recent three months; and
  - Whether there is a shortage of medical cannabis during the most recent sixmonth period.

#### 16.8.11.8 General Provisions for Fees:

• Requires all payments to originate from an authorized payment source and establishes consequences for unauthorized payments, including application incompleteness and expiration. Effective date for this provision to be January 1, 2027.

# 16.8.11.15 Retailer Fee Discount for Microbusiness Consignment Contract Establishes eligibility criteria, limitations and compliance requirements for a licensing fee discount based on consignment contracts between retailer licensees and cannabis microbusinesses.

## SECRETARY OF STATE, OFFICE OF

## NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rules below.

A public hearing will be held on September 5 at 9:00 am at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on proposed rule changes to 1.10.13 NMAC, as well as changes to 1.10.23 NMAC and 1.10.37 NMAC and also a new rule, 1.10.38 NMAC, for which separate notices are being published. All comments will be recorded by a court reporter.

**Authority:** Section 1-2-1 NMSA 1978; Sections 1-19-25 through 1-19-37 NMSA 1978

### 1.10.13 NMAC Campaign Finance

Purpose: The purpose of this rulemaking to clarify processes for candidates desiring to register a new and different candidate campaign committee in the state's Campaign Finance Information System (CFIS) for the purposes of seeking another elected office. Further amendments make clear procedures for closing an existing campaign committee upon death of a candidate.

**Summary of Full Text: Proposed** amendments to 1.10.13.8 NMAC clarify that a candidate shall expend all funds in accordance with the Campaign Reporting Act or transfer any remaining funds from an old campaign committee to a new campaign committee and file a final report to close the old campaign committee before the registration form is accepted by the secretary of state unless the candidate is seeking public financing and must keep a previous campaign account open and separated. Amendments to 1.10.13.9 NMAC requires the Secretary of State to mark the account in CFIS as "deceased" upon receipt or discovery of an obituary or death certificate. The campaign committee's treasurer shall then be permitted to report any

outstanding transactions, expend any remaining funds in accordance with the Campaign Reporting Act, and close the account.

**Details for Obtaining a Copy of** Rule and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office's website at www.sos.nm.gov or can be obtained from the Elections Bureau & Ethics Division by calling (505) 827-3600 or emailing lindsey. bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@ sos.nm.gov, fax 505-827-3611, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is September 4, 2025. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

## SECRETARY OF STATE, OFFICE OF

## NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rules below.

A public hearing will be held on September 5 at 9:00 am at the State

Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on proposed rule changes to 1.10.23 NMAC, as well as changes to 1.10.13 NMAC, and 1.10.37 NMAC and also a new rule, 1.10.38 NMAC, for which separate notices are being published. All comments will be recorded by a court reporter.

**Authority:** Election Code, Sections 1-2-1, and 1-14-1 et seq. NMSA 1978

## 1.10.23 NMAC Procedures for Recounts, Audits, Rechecks and Contests

Purpose: The purpose of the proposed changes is to clarify the role of district judges during voting system checks, recounts and audits. Pursuant to a recommendation from the State Records Center and Archives and in order to bring historic changes to the rule into compliance, 1.10.23 NMAC will be repealed and replaced with a new version that remains substantially the same but that includes new amendments as outlined below.

**Summary of Full Text:** Amendments to 1.10.23.9 specify that a district judge should be present for the opening and closing of ballot boxes during a voting system check. The proposed changes further clarify that a member of the New Mexico State Bar may serve as a judge's designee for that purpose. Amendments to 1.10.23.10 affirm that a district judge must witness all ballot movement during a recheck and a recount, and further amendments clarify that a member of the New Mexico State Bar may serve as a judge's designee for that purpose. Additional changes remove a "in-lieu of absentee" reference as it refers to an outdated category of ballots and remove "district judge" as a participant permitted to tabulate ballots during a recount or recheck.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office's website at www.sos.nm.gov or can be obtained from the Elections Bureau & Ethics Division by calling (505) 827-3600 or emailing lindsey. bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@ sos.nm.gov, fax 505-827-3611, or by regular mail at Attn: Lindsey Bachman - proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is September 4, 2025. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

## SECRETARY OF STATE, OFFICE OF

## NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rules below.

A public hearing will be held on September 5 at 9:00 am at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on proposed rule changes to 1.10.23 NMAC, as well as changes to 1.10.13 NMAC, and 1.10.37 NMAC and also a new rule, 1.10.38 NMAC, for which separate notices are being published. All comments will be recorded by a court reporter.

**Authority:** Section 1-2-1 NMSA 1978; 1-2-27.1 NMSA 1978

## 1.10.37 NMAC Public Official Home Address Confidentiality

Purpose: The implementation of the provisions of 1-2-27.1 NMSA 1978 revealed that further rulemaking was needed to better align existing public processes with state statute. Proposed amendments clarify that federal elected and appointed officials are public officials who can designate addresses as confidential pursuant to 1-2-27.1 NMSA 1978. Further amendments also provide for the maintenance and review of the public officials with addresses marked confidential, define judicial proceeding, and further clarify the process of requesting unredacted copies of records for the purpose of a judicial proceeding.

Summary of Full Text: Amendments to section 1.10.37.7 define "judicial proceeding" for the purposes of the public official confidentiality home address designation to include, but not be limited to, challenges brought pursuant to New Mexico's Election Code. Amendments to section 1.10.37.8 require a compliance review of the list of public officials with addresses marked confidential every six months and require an update to voter records deemed no longer eligible for the confidential address designation. Amendments to section 10.37.9 require requestors of unredacted addresses complete an affidavit that the copies are being requested for the purposes of a judicial proceeding and that any address designated as confidential

shall not be used for any other purpose.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office's website at www.sos.nm.gov or can be obtained from the Elections Bureau & Ethics Division by calling (505) 827-3600 or emailing lindsey. bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@ sos.nm.gov, fax 505-827-3611, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is September 4, 2025. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

## SECRETARY OF STATE, OFFICE OF

### NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State ("Office") hereby gives notice that the Office will conduct a public hearing on the described rules below.

The purpose of this hearing is to obtain public input on a new rule, Emergency Election Procedures, to be codified as 1.10.38 NMAC.

A public hearing will be held on September 5 at 9:00 am at the State Land Office, 310 Old Santa Fe Trail, Santa Fe NM 87504. Attendees cannot park in the State Land Office parking lot, but must park at the PERA lot, one block east of the State Land Office. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on proposed rule changes to a new rule, 1.10.38 NMAC, as well as changes to 1.10.23 NMAC and 1.10.37 NMAC and 1.10.13 NMAC, for which separate notices are being published. All comments will be recorded by a court reporter.

**Authority:** Section 1-2-1 NMSA 1978

## 1.10.38 NMAC Emergency Election Procedures

Purpose: The purpose of this rulemaking is to clarify the procedures that New Mexico's election officials should follow during declared states of emergency in order to ensure the development of emergency contingency plans to provide for maximum participation in the electoral process and establish a safe and orderly procedure for impacted elections.

Summary of Full Text: The proposed rule includes sections that address processes for election officials to follow during a declared emergency. It includes the process for potential relocation of election polling places due to destruction, inaccessibility or lack of safety. It further establishes processes for addressing significant disruption to mailed ballot delivery. It includes requirements for inclusion of tribes, pueblos and Indian Nation and makes clear that no emergency procedures shall be interpreted as extending or as an extension of the time period for an election.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office's website at www.sos.nm.gov or can be obtained from the Elections Bureau & Ethics Division by calling (505) 827-3600 or emailing lindsey. bachman@sos.nm.gov. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide comments at the public hearing. Before the public hearing, written comments may be sent to Lindsey Bachman, Director of Legislative and Executive Affairs, via email at lindsey.bachman@ sos.nm.gov, fax 505-827-3611, or by regular mail at Attn: Lindsey Bachman – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is September 4. 2025. All written public comments will be posted on the website throughout the written comment period at: www.sos.nm.gov.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email lindsey.bachman@sos.nm.gov (5) business days prior to the hearing.

## WORKFORCE SOLUTIONS, DEPARTMENT OF

#### NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice that the Department will conduct a public hearing in conference room of the Human Rights Bureau located at 1596 Pacheco St Suite 103 in Santa Fe, New Mexico, 87505 on September 3, 2025 at 10:00 am. The purpose of the public hearing will be to obtain input and public comment on the Department's adoption of a rule adding a new part 5 Industrial Revenue Bonds to Chapter 1 Labor Relations General Provisions, Title 11 Labor and Workers Compensation of the New Mexico Administrative Code.

Summary: The rule is being added to define regulations necessary for the application of prevailing wage rates for laborers and mechanics employed under the auspices of a local government through the issuance of an industrial revenue bond, including procedures for the predetermination of wages, the adoption of job classification descriptions, and the adoption of procedures for the enforcement of the Public Works Minimum Wage Act (PWMWA), and in conformity with the Public Works Apprenticeship and Training Act (PWAT).

Under NMSA 1978 §13-4-11(J), the director of the Labor Relations Division of the Department of Workforce Solutions has authority to issue rules necessary to administer and accomplish the purpose of the Public Works Minimum Wage Act. Under NMSA 1978 §13-4D-4(C), the Workforce Solutions Department has authority to adopt rules and regulations necessary to implement the provisions of the Public Works Apprentice and Training Act.

Interested individuals may testify at the public hearing or submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on September 2, 2025. However, the submission of written comments as soon as possible is encouraged.

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

Individuals with disabilities who require this information in an

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

End of Notices of Rulemaking and Proposed Rules

## **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.

# ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

This is a short-form amendment to 19.15.2 NMAC, Section 7, effective 07/29/2025.

Short form amendment explanatory statement. Subsections A through O, and Q through W, were not shown as no changes were made to those subsections.

**19.15.2.7 DEFINITIONS:** 

\*\*\*

## P. Definitions beginning with the letter "P".

### (1) "Penalized

unit" means a proration unit to which, because of an excessive gas-oil ratio, the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) "Person"

means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) "PFAS

chemicals" means a perfluoroalkyl or polyfluoroalkyl substance with at least one fully fluorinated carbon atom.

[<del>(3)</del>] <u>(4)</u> "Pit"

means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

#### [<del>(4)</del>] <u>(5)</u> "Playa

lake" means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

[<del>(5)</del>] <u>(6)</u> "Pool"

means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir".

#### [(6)](7)

"Potential" means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

[<del>(7)</del>] <u>(8)</u> "Ppm"

means parts per million by volume. [(8)] (9) "PQL"

means practical quantitation limit.

 $[\frac{(9)}{(10)}]$ 

"Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to maintain the reservoir's existing pressure or to retard the reservoir pressure's natural decline.

#### $[\frac{(10)}{(11)}]$

"Produced water" means a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

#### $[\frac{(11)}{(12)}]$

"Producer" means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

#### $[\frac{(12)}{(13)}]$

"Product" means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

#### [<del>(13)</del>] <u>(14)</u>

"Proration day" consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

#### $[\frac{(14)}{(15)}]$

"Proration month" means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

#### [<del>(15)</del>] <u>(16)</u>

"Proration period" means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

[<del>(16)</del>] <u>(17)</u>

"Proration schedule" means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

 $[\frac{(17)}{(18)}]$ 

"Proration unit" means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

[<del>(18)</del>] <u>(19)</u>

"Prospective spacing unit" means a

hypothetical spacing unit that does not yet have a producing well.

[<del>(19)</del>] <u>(20)</u>

"PVC" means poly vinyl chloride. [(20)] (21)

"Psi" means pounds per square inch.

\*\*

[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019; A, 10/13/2020; A, 8/23/2022; A, 7/29/2025]

ENERGY, MINERALS
AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION

This is an amendment to 19.15.7 NMAC, Section 16, effective 07/29/2025.

## 19.15.7.16 WELL COMPLETION OR RECOMPLETION REPORT AND LOG (Form C-105):

Within 45 days following the completion or recompletion of a well, the operator shall file form C-105 with the division accompanied by a summary of special tests conducted on the well, including drill stem tests. In addition, the operator shall file a certification that no PFAS chemicals were added to the fluid used in the completion or recompletion of the well, a copy of electrical and radio-activity logs run on the well with form C-105. If the division does not receive form C-105 with attached certification, logs and summaries within the specified 45day period, the division shall withhold the allowable authorizations for the well or suspend injection authority, as appropriate, until the operator has complied with 19.15.7.16 NMAC.

**B.** In the case of a dry hole, a complete record of the well on form C-105, or if appliable form C-103, with the attachments listed in Subsection A of 19.15.7.16 NMAC shall accompany the notice of intention to plug the well, unless

previously filed. The division shall not approve the plugging report or release the bond the operator has complied with 19.15.7.16 NMAC.

C. The division shall not keep form C-105, or if appliable form C-103, and accompanying attachments confidential unless the well's owner requests in writing that the division keep it confidential. Upon such request, the division shall keep these data confidential for 90 days from the date of the well's completion, provided, however, that the report, logs and other attached data

may, when pertinent, be introduced in a public hearing before division examiners, the commission or in a court of law, regardless of the request that they be kept confidential.

D. If there is a change in the information provided under this part, the operator must submit the change to the division within 30 days after the date the operator first knew of the change.

[19.15.7.16 NMAC - Rp, 19.15.13.1105 NMAC, 12/1/2008; A, 9/26/2017; A, 8/23/2022; A, 7/29/2025]

# ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

This is an amendment to 19.15.14 NMAC, Section 9 and 10, effective 07/29/2025.

#### **19.15.14.9 APPLICATIONS:**

An operator shall file a complete form C-101 and complete form C-102 with the division and meet the following requirements, if applicable:

A. an applicant for a permit to drill a well within the corporate limits of a city, town or village shall give notice to the duly constituted governing body of the city, town or village or its duly authorized agent and certify on form C-101 that it gave such notice;

- B. an applicant for a permit to drill in a quarter-quarter section containing an existing well or wells operated by another operator shall concurrently file a plat or other acceptable document locating and identifying the well or wells, furnish a copy of the application to the other operator or operators in the quarter-quarter section and certify on form C-101 that it furnished the copies; and
- emit to drill, deepen or plug back shall certify that they will not introduce any additives that contain PFAS chemicals in the completion or recompletion of the well; and
- [C.] D. an applicant for a permit to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall also comply with Subsection B of 19.15.15.12 NMAC.

[19.15.14.9 NMAC - Rp, 19.15.3.102 NMAC and 19.15.13.1101 NMAC, 12/1/2008; A, 7/29/2025]

## 19.15.14.10 APPROVAL OR DENIAL OF A PERMIT TO DRILL, DEEPEN OR PLUG BACK:

A. The director or the director's designee may deny a permit to drill, deepen or plug back if the applicant is not in compliance with 19.15.14.9 NMAC and Subsection A of 19.15.5.9 NMAC. In determining whether to grant or deny the permit, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.25.8 NMAC. If the noncompliance is caused by the operator having more than the allowed number of wells not in compliance with

19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

- **B.** The division may impose conditions on an approved permit to drill, deepen or plug back.
- C. If the division denies the permit it shall return the form C-101 to the applicant with the cause for rejection stated.
  [19.15.14.10 NMAC Rp, 19.15.3.102 NMAC and 19.15.13.1101 NMAC, 12/1/2008: A, 7/29/2025]

ENERGY, MINERALS
AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION
COMMISSION

This is an amendment to 19.15.16 NMAC, Sections 17 and 19, effective 07/29/2025.

## 19.15.16.17 <u>COMPLETION</u> <u>OPERATIONS</u>, SHOOTING AND CHEMICAL TREATMENT OF WELLS:

A. If completing, shooting, fracturing or treating a well [injures] has the potential to negatively impact the producing formation, injection interval, communicates with other strata, casing and casing seat or may create underground waste or contaminate fresh water, the operator shall within five working days notify the division in writing [the division] and proceed with diligence to use the appropriate method and means for rectifying the loss of containment or any damage.

shall include but is not limited to verifying casing integrity and isolation of strata. This can include pressure testing in accordance with 19.15.25 NMAC, performing casing integrity logs, cement bond logs and any other means determined

necessary by the operator or required by the division.

If damage from the shooting, fracturing or treating of a well has the potential to impact surface or groundwater, then the operator will disclose to the division all additives used in the applicable fluid stream including trade secret additives as necessary to identify all potential contaminates. If trade secret chemical information is received by the division, the division will hold that information confidential as required by Section14-2-1 NMSA 1978. Based on the chemicals identified by the operator and the division the operator will test for all identified potentially harmful chemicals and will use a third party, verified laboratory to conduct any appropriate testing necessary to verify any potential impact. The testing may also include but is not limited to PFAS, chemicals listed in 20.6.2 NMAC and chemicals listed in Subparagraph (e) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC. The division may require more robust sampling than what is proposed by the operator if deemed necessary due to the nature of the potential chemicals.

deemed there is an impact to surface or groundwater the operator shall report the impact as a major release in accordance with 19.15.29 NMAC and respond accordingly.

B. If completing, shooting, fracturing or chemical treating results in the well's irreparable injury the division may require the operator to properly plug and abandon the well and take any necessary actions to mitigate any results impacts.

[19.15.16.17 NMAC - Rp, 19.15.3.115 NMAC, 12/1/2008; 19.15.16.17 NMAC - Rn, 19.15.16.16 NMAC, 2/15/2012; A, 7/29/2025]

## 19.15.16.19 LOG, COMPLETION AND WORKOVER REPORTS:

A. Completion report. Within 45 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different

common source of supply, the operator shall file a completion report with the division on form C-105. For the purpose of 19.15.16.19 NMAC, a hole drilled or cored below fresh water or that penetrates oil- or gasbearing formations or that an owner drills is presumed to be a well drilled for oil or gas. The operator shall signify on form C-105, or alternatively on form C-103, whether the well has been hydraulically fractured.

В. Hydraulic fracture disclosure. For a hydraulically fractured well, the operator shall also complete and file with the FracFocus chemical disclosure registry a completed hydraulic fracturing disclosure within 45 days after completion, recompletion or other hydraulic fracturing treatment of the well. The hydraulic fracturing disclosure shall be completed on a then current edition of the hydraulic fluid product component information form published by FracFocus and shall include complete and correct responses disclosing all information called for by the FracFocus form, provided that:

(1) the division does not require the reporting of information beyond the material safety data sheet data as described in 29 C.F.R. 1910.1200;

(2) the division does not require the reporting or disclosure of proprietary, trade secret or confidential business information; and

(3) the division shall download and archive New Mexico FracFocus submissions on a quarterly basis.

chemical disclosure registry is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment(s) were performed shall file the information required by the then most recent FracFocus form with the division along with Well Completion Report (form C-105) or Sundry Notice (form C-103) reporting the hydraulic fracture treatment and file the information on the FracFocus internet

website when the website is again operable. If the FracFocus chemical disclosure registry is discontinued or becomes permanently inoperable, the operator shall continue filing the information with the division until otherwise provided by rule or order.

D. On or before
[DATE], an operator shall provide the
FracFocus disclosure to the following
persons and entities unless the person
or entity opts out of the notification:

(1) all owners of a private water well that are within 5280 feet of the well site;

<u>(2)</u> the state land office if the state owns minerals that are being developed at the well site;

bureau of land management if the
United States owns the minerals that
are being developed at the well site;

(4) to any tribe if the minerals being developed at the well site are within the boundary of that tribe's reservation and are subject to the jurisdiction of the division;

departments, fire departments, emergency service agencies, and first responders that have a jurisdiction that includes the well site;

governments that have a jurisdiction within 5280 feet of the well site;

<u>(7)</u> the administrator of any public water system that operates:

A surface water public water system intake that is located 15 stream miles or less from the well site;

a groundwater source under the direct influence of a surface water public water system supply well within 5280 feet of the well site; and

a public water system supply well completed within 5280 feet of the well site.

<u>E.</u> The FracFocus disclosure must be disclosed to the above parties via certified mail within 30 days of being filed with FracFocus. [19.15.16.19 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/2008;

19.15.16.19 NMAC - Rn & A, 19.15.16.18 NMAC, 2/15/2012; A, 9/26/2017; A, 7/29/2025]

# ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION

This is an amendment to 19.15.25 NMAC, Section 14, effective 07/29/2025.

## 19.15.25.14 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for <u>casing repairs and</u> wells to be placed in approved temporary abandonment.

operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than ten percent over a 30 minute period;

operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than ten percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years and has not been connected to a pipeline.

**B.** During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.14 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure change occurring immediately before, during or

immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location;

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

**D.** The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.13 NMAC.
[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 7/29/2025]

# FINANCE AND ADMINISTRATION, DEPARTMENT OF COLONIAS INFRASTRUCTURE BOARD

TITLE 2 PUBLIC
FINANCE
CHAPTER 91 GRANTS
PART 3 REVIEW AND
SELECTION FOR ANIMAL

### WELFARE FUND PROGRAM **PROJECTS**

#### 2.91.3.1 **ISSUING AGENCY:** New Mexico Department of Finance and Administration. [2.91.3.1 NMAC - N, 07/29/2025]

2.91.3.2 **SCOPE:** This rule applies to eligible applicants applying for financial assistance from the animal welfare program fund, including municipalities, counties, Indian nations, tribes, and pueblos, and qualifying nonprofit organizations within the state of New Mexico. [2.91.3.2 NMAC - N, 07/29/2025]

#### 2.91.3.3 STATUTE **AUTHORITY:** This rule is created by Subsection E of Section 9-6-5 NMSA (1978). [2.91.3.3 NMAC - N, 07/29/2025]

#### 2.91.3.4 **DURATION:** Permanent.

[2.91.3.4 NMAC - N, 07/12/2025]

#### 2.91.3.5 **EFFECTIVE DATE:** July 29, 2025, unless a later

date is cited at the end of the section. [2.91.3.5 NMAC - N, 07/29/2025]

## 2.91.3.6 **OBJECTIVE:** The purpose of this rule is to establish procedures for the administration, application, review, award, and oversight of the animal welfare program fund to support eligible animal welfare projects.

[2.91.3.6 NMAC - N, 07/29/2025]

#### **DEFINITIONS:** 2.91.3.7

- A. "Animal" refers to species that humans have selectively bred over many generations to thrive in captivity and adapt to human care, such as cats or dogs.
- В. "Department" refers to the department of finance and administration, including all its corresponding divisions.
- C. "Eligible entity" refers to a municipality, county, Indian nation, tribe, pueblo, or nonprofit organization that is in good standing with the New Mexico department of justice.

#### D. "Equipment and Supplies" means vehicles, equipment and tools, computer hardware and software, training materials, and supplies that are necessary and directly related to supporting animal welfare.

- "Fund" refers to the animal welfare program fund established by House Bill 113 of the 2025 legislative session.
- "Project" refers F. to a proposed initiative aimed at improving the welfare of cats and dogs, eligible for funding under the animal welfare program.
- G. "Underserved **communities**" refers to geographic areas or populations that face barriers to access or have limited availability of animal welfare services. These may include, but are not limited to:
- Rural or **(1)** frontier areas with few or no animal shelters, veterinary clinics, or animal control services.
- **(2)** Lowincome communities, including those with high rates of poverty, where residents may lack the resources to obtain basic animal care.
- **(3)** Indian nation, tribal, or pueblo lands, where jurisdictional complexity or historical underfunding has limited access to animal services.
- Areas with high stray animal populations, shelter overcrowding, or elevated euthanasia rates.

**(5)** 

Communities historically excluded from state or federal funding for animal welfare initiatives.

[2.91.3.7 NMAC - N, 07/29/2025]

#### 2.91.3.8 APPLICATION PROCESS REQUIREMENTS:

- The department will announce funding availability each year, depending on appropriations.
- Applications must be submitted in the format prescribed by the department. Applications for funding must include:
- description of the project and its objectives;
  - a detailed **(2)**

budget and justification for the project;

**(3)** 

a completion timeline with a procurement plan and proposed project milestones;

demonstration of the organization's ability to manage the project and adhere to state legal requirements;

**(5)** 

description of internal controls that help management or employees prevent, detect, and correct issues timely during their assigned functions. [2.91.3.8 NMAC - N, 07/29/2025]

#### 2.91.3.9 **PROJECT**

**REQUIREMENTS:** Eligible projects must be consistent with one or more of the following:

- A. Controlling loose or stray dogs and managing costs through humane measures.
- В. Enforcement of animal cruelty and neglect laws.
- C. Reduce intake at animal shelters through community outreach, pet retention services, and diversion programs.
- Ensuring accessible D. spay and neuter services for the public.
- Providing Ε. temporary housing and care for stray animals seized by animal control authorities.
- F. Development and distribution of public educational materials on animal welfare. [2.91.3.9 NMAC - N, 07/29/2025]

#### 2.91.3.10 **REVIEW AND AWARD PROCESS:**

- Each application A. will be evaluated based on the following criteria (total 100 points):
- alignment with program objectives (30 points);

**(2)** demonstrated need and community

organization capacity and experience (20 points);

impact (25 points);

**(4)** project feasibility and cost-effectiveness (15 points);

(5) monitoring and evaluation plan (10 points).

- **B.** The department may establish a review committee composed of a subject matter experts in animal welfare, public finance, and program evaluation to evaluate applications.
- C. Priority will be given to projects that serve underserved communities and highneed areas.
- **D.** Award notifications will detail funding amounts, reporting obligations, special conditions, and any other usage limitations.

  [2.91.3.10 NMAC N, 07/29/2025]

## 2.91.3.11 REPORTING AND COMPLIANCE:

- A. Applicants awarded grants must submit quarterly reports detailing progress toward project milestones, grant expenditure, and reimbursement projections.
- **B.** All awarded funds must be expended within two years of the award date.
- C. Failure to comply may result in suspension, termination, repayment of funds, and disqualification from future awards. [2.91.3.11 NMAC N, 07/29/2025]

#### **2.91.3.12 SEVERABILITY:**

If any provision of this rule is found to be invalid, the remaining portions shall remain in effect.

[2.91.3.13 NMAC - N, 07/29/2025]

HISTORY OF 2.91.3 NMAC - [RESERVED]

## FINANCE AND ADMINISTRATION, DEPARTMENT OF LOCAL GOVERNMENT

The New Mexico Department of Finance and Administration approved the repeal of 2 110.2 NMAC, Small Cities Community Development Block Grant filed 11/15/2016 and replaced it with 2 110.2 NMAC, Small Cities Community

Development Block Grant adopted on 07/01/2025 and effective 7/29/2025.

## FINANCE AND ADMINISTRATION, DEPARTMENT OF LOCAL GOVERNMENT

TITLE 2 PUBLIC
FINANCE
CHAPTER 110 LOCAL
GOVERNMENT GRANTS
PART 2 SMALL CITIES
COMMUNITY DEVELOPMENT
BLOCK GRANT

2.110.2.1 ISSUING
AGENCY: Department of Finance and Administration Infrastructure
Planning and Development Division,
Suite 202 Bataan Memorial Building
Santa Fe, New Mexico 87501.
[2.110.2.1 NMAC - Rp, 2 110.2.1
NMAC, 7/29/2025]

#### 2.110.2.2 SCOPE:

All counties and incorporated municipalities, except the cities of Albuquerque, Farmington, Las Cruces, Santa Fe and Rio Rancho. [2.110.2.2 NMAC - Rp, 2 110.2.2 NMAC, 7/29/2025]

## 2.110.2.3 STATUTORY AUTHORITY: Title 1 of the Housing and Community Development Act of 1974, as amended. [2.110.2.3 NMAC - Rp, 2 110.2.3 NMAC, 7/29/2025]

## **2.110.2.4 DURATION:** Permanent.

[2.110.2.4 NMAC - Rp, 2 110.2.4 NMAC, 7/29/2025]

# **2.110.2.5 EFFECTIVE DATE:** July 29, 2025, unless a later date is cited at the end of a section. [2.110.2.5 NMAC - Rp, 2 110.2.5 NMAC, NMAC, 7/29/2025]

#### **2.110.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 110 is to establish procedures to be used by counties and incorporated

municipalities when applying for a small cities community development block grant.

[2.110.2.6 NMAC - Rp, 2 110.2.6 NMAC, 7/29/2025]

## **2.110.2.7 DEFINITIONS:**

**Definitions** beginning with "A": "Asset management" means a systematic process of maintaining, upgrading, and operating physical assets costeffectively. It combines engineering principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision making. It is a planning process that ensures the most value from each asset with a plan to rehabilitate and replace them when necessary. An accurate and up-todate asset management plan will help communities comply with the government accounting standards board's statement #34 (GASB 34), an accounting standard for publicly owned systems.

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

C. Definitions beginning with "C":

(1) "CDBG"

means the small cities community development block grant program.

(2) "Council" means the New Mexico community development council.

(3) "Council of governments" means a regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

## D. Definitions beginning with "D":

**(1)** 

"Department" means the department of finance and administration.

(2) "Division" means the infrastructure planning and development division.

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

F. Definitions beginning with "F": "Federal rules" means code of federal regulations, housing and urban development 24 CFR Part 570 which governs the CDBG program.

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

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

I. Definitions
beginning with "I": "ICIP" means
an infrastructure capital improvement
plan. An ICIP is a planning
document developed by a unit of
local government, water association,
or land grant/merced that includes
capital improvement priorities over a
five year period and is developed and
updated annually. An ICIP includes
policy direction, funding time frames,
estimated costs, justifications, and
details of each specific infrastructure
capital improvement project proposed,
by year, over the five year period.

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

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

L. Definitions beginning with "L":

Provisions.

(1) "Land grant/merced" means a political subdivision of the state organized under Section 49-1-1 through 49-1-23 NMSA 1978, Land Grants General

(2) "Low and moderate income person" means a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on fifty percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to eighty percent of the county median low and moderate income.

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

N. Definitions
beginning with "N": "Non-rural"
means a county or an incorporated
municipality that does not meet the
definition of rural.

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

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

R. Definitions beginning with "R": "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000. For purposes of determining population a unit of local government, water association, or land grant/merced must use Attachment I at the end of 2.110.2 NMAC.

S. Definitions beginning with "S":

(1) "SBA" means the United States small

business administration.
(2) "Setaside" means a portion of all CD

aside" means a portion of all CDBG funding received by the CDBG program that is annually allocated by the council to be used only for certain set-aside categories that are chosen by the council.

T. Definitions
beginning with "T": [RESERVED]
U. Definitions

U. Definitions beginning with "U": "Units of local government" means an incorporated municipality or county.

V. Definitions
beginning with "V": [RESERVED]
W. Definitions
beginning with "W": "Water
association" means political
subdivisions of the state organized
under Section 3-29-1 through Section
3-29-20 NMSA 1978, the "Sanitary
Projects Act" or Section 73-21-1
through Section 73-21-55 NMSA
1978, the "Water and Sanitation
District Act".

X. Definitions
beginning with "X": [RESERVED]
Y. Definitions
beginning with "Y": [RESERVED]
Z. Definitions
beginning with "Z": [RESERVED]
[2.110.2.7 NMAC - Rp, 2 110.2.7
NMAC, 7/29/2025]

## 2.110.2.8 ADMINISTRATION:

A. The council is responsible for allocating grants under the CDBG program to assist local communities with basic infrastructure and community development needs.

**B.** These application regulations will govern the CDBG appropriation allocated to the state from the United States department of housing and urban development.

C. As part of their administrative responsibility, the council and the division will continue to provide technical assistance to prospective applicants and grantees. The nature of these programs requires a thorough outreach effort to ensure that units of local government are aware of program requirements.

D. The council and the division assure local entities and citizens of the state of New Mexico that public comment will be solicited should the council choose to make any substantial changes to these application regulations.

[2.110.2.8 NMAC - Rp, 2 110.2.8 NMAC, 7/29/2025]

## 2.110.2.9 PROGRAM OBJECTIVES:

A. The CDBG program was established under Title I of the Housing and Community Development Act of 1974, as amended, to assist communities in providing essential community facilities, providing decent housing for residents, promoting economic development, and maintaining a suitable living environment.

**B.** State and national objectives of the CDBG program require that assistance be made available for activities that address at least one of the following, which are described in greater detail in 2.110.2.16 NMAC:

(1) benefit principally low and moderate income families;

(2) aid in the prevention or elimination of slums or blight;

other community development needs of recent origin having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available to meet such needs.

C. The state encourages successful applicants to award a fair share of contracts and subcontracts to small, minority, and women's businesses and to commit itself to hire locally for any employment opportunities that will be created as a result of project funding. [2.110.2.9 NMAC - Rp, 2 110.2.9 NMAC, 7/29/2025]

# 2.110.2.10 ELIGIBLE APPLICANTS:

A. All counties, incorporated municipalities, and New Mexico mortgage finance authority (MFA) are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho which cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

- B. Other entities such as water associations, sanitation districts, land grants, public nonprofit groups, council of governments, mutual domestic water consumer associations, etc., cannot apply directly for assistance, other than planning grants.
- C. However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.
- D. Indian pueblos and tribes receive funding directly from the department of housing and urban development (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3rd St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923.

  [2.110.2.10 NMAC Rp 2 110.2.10

# 2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES:

NMAC, 7/29/2025]

Applicants may apply for funding assistance under the following categories:

A. Community infrastructure: Eligible activities may include, but are not limited to:

(1) property acquisition; (2)

construction or rehabilitation of the following:

(a)

water systems;

(b)

real

sewer systems;

(c)

municipal utilities;

(d)

roads;

(e)

streets;

**(f)** 

highways;

(g)

curbs;

(h)

gutters;

sidewalks:

(i)

storm sewers;

(j)

street lighting;

(k)

traffic control devices;

(l) (m)

parking facilities;

(n)

solid waste disposal facilities.

**B.** Public facility capital outlay: Eligible activities may include, but are not limited to:

(1) real

property acquisition;

**(2)** 

construction or improvement of community centers;

(3) senior

citizen centers;

(4) non-

residential centers for the handicapped such as sheltered workshops;

(5) other community facilities designed to provide health, social, recreational or similar community services for residents.

C. Emergency: The emergency fund provides funding for emergency projects that address life threatening situations resulting from

disasters or imminent threats to health and safety.

**(1)** 

Applications under this category will be accepted throughout the year.

**(2)** 

Application shall include verification of emergency from an authoritative state agency documenting the need for the emergency project, and shall be submitted no later than 18 months from the date of the authoritative state agency's written verification of emergency.

applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

### D. Planning:

Municipalities, counties, water associations, water and sanitation districts, and land grants are eligible to apply directly for planning grants. Municipalities or counties who have a comprehensive plan dated five years or greater from the date of application submission are required to use CDBG planning grant funds solely for the development of a comprehensive plan. A comprehensive plan must be focused on a community's physical development over the next 15-20 years related to the goals and policies of the community, developed with input from all segments of the community, adopted by resolution or ordinance, and include as a minimum the following required elements and may include the following optional elements:

(1) required

elements:

(a)

land use including:

(i)

an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category;

(ii)

a projection of the distribution, location and extent of future land uses by land use category over a 20-year period; (iii)

goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and

(iv)

specific actions and incentives that the entity may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged;

**(b)** 

housing including:

(i)

an analysis of existing housing supply and demand, and forecasted housing needs;

(ii)

goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community;

(iii)

a description of the actions that may be taken to implement housing goals, objectives and policies; and

(iv)

must comply with the affordable housing act.

(c)

transportation including:

(i)

description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate;

(ii)

goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and potential funding mechanisms; and

(iii)

a description and assessment of proposed location, type and capacity

of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

(d)

infrastructure including:

(i)

a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities and other types of facilities;

(ii)

goals, objectives and policies for promoting the efficient provision of infrastructure; and

(iii)

a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

(e)

economic development including:

(i)

a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the entity;

(ii)

goals, objectives and policies for promoting economic development; and

(iii)

a description of the actions that the entity will take to implement economic development goals, objectives and policies;

**(f)** 

water including:

(i)

(ii)

description and assessment of the sources of water supply;

the existing demand for water by residential, commercial, institutional, industrial and recreational sectors;

(iii)

assessment of the unaccounted for water losses due to leaks, theft or other reasons;

(iv)

goals, objectives and policies for promoting the efficient use of water and for managing periods of drought;

(v)

an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase water use efficiencies;

(g)

hazard including:

(i)

an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism;

(ii)

goals, objectives and policies for hazard mitigation; and

(iii)

a description of the actions that will be taken to mitigate hazards; and

(11)

implementation; a compilation of the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance;

(2) optional

elements:

(a)

drainage;

**(b)** 

parks, recreation and open space;

(c)

tourism;

(d)

growth management;

(e)

fiscal impact analysis;

**(f)** 

intergovernmental cooperation;

**(g)** 

social services;

(h)

historic preservation;

(i)

asset management plan.

(3) if the entity has a comprehensive plan that is not more than five years old at the date of application, it may apply for funding assistance for any of the following planning activities:

(a)

data gathering analysis and special studies;

**(b)** 

base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

(c)

improvement of infrastructure capital improvement plans and individual project plans;

(d)

development of codes and ordinances, that further refine the implementation of the comprehensive plan;

(e)

climate change mitigation and adaptation plan;

**(f)** 

preliminary engineering report (according to United States department of agriculture/rural utilities service (USDA/RUS) guidelines);

**(g)** 

related citizen participation or strategic planning process;

(n)

other functional or comprehensive planning activities;

(1)

asset management plan; or

(j)

regionalization of infrastructure and service delivery.

(4) applicants may apply for planning assistance throughout the year.

### E. Colonias:

(1) The

Colonias category is established in the amount of ten percent of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions that qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the Colonias set aside are municipalities and counties

located within 150 miles of the U.S. - Mexico border.

(3)

Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a)

lack of potable water supply; or

lack of adequate sewage systems; or

(c)

lack of decent, safe and sanitary housing.

**(4)** 

Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp, 2 110.2.11 NMAC, 7/29/2025]

# 2.110.2.12 OTHER ELIGIBLE ACTIVITIES:

A. Administrative costs associated with implementing a program such as preparing environmental reviews, and other costs for services are eligible activities.

- **B.** Although the costs of conducting program audits are considered an eligible activity, it is recommended that they be paid by the applicant to expedite grant closeout.
- C. The council may pledge future CDBG allocations to guarantee repayment of loans to non-entitlement municipalities and counties for CDBG eligible projects in accordance with Section 108 of the Housing and Community Development Act of 1974, as amended.

[2.110.2.12 NMAC - Rp, 2 110.2.12 NMAC, 7/29/2025]

# **2.110.2.13 INELIGIBLE ACTIVITIES:** The following are among the activities that are not eligible for CDBG funding assistance:

A. construction or rehabilitation of buildings used for the general conduct of government, such as city halls or county courthouses; compliance with the Americans with Disabilities Act is an eligible activity;

- **B.** general operation and maintenance expenses associated with public facilities or services;
- C. income maintenance;
- **D.** housing allowance payments and mortgage subsidies;
- E. expenditures for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration, voter transportation or other political activities;
- F. costs involved in the preparation of applications and securing of funding.
  [2.110.2.13 NMAC Rp, 2 110.2.13 NMAC, 7/29/2025]

# 2.110.2.14 RURAL ALLOCATION:

- A. A minimum of fifteen percent of the CDBG allocation will be awarded to rural counties and municipalities.
- **B.** Rural applicants and non-rural applicants may apply for funding from the community infrastructure Colonias, and public facility capital outlay categories.
- C. Rural and non-rural applicants may apply for funding from the planning category.
  [2.110.2.14 NMAC Rp, 2 110.2.14 NMAC, 7/29/2025]

# 2.110.2.15 PROGRAM PUBLIC PARTICIPATION

**REQUIREMENTS:** Applicants must provide opportunities for public participation in the development of community development goals, objectives, and applications for funding assistance by undertaking the following activities:

- **A.** provide for and encourage citizen participation within their areas of jurisdiction with particular emphasis on participation by persons of low and moderate income;
- **B.** provide citizens with reasonable and timely access to local meetings, information, and records relating to proposed and actual use of funds;

- C. provide for technical assistance as determined by the applicant, groups and representatives of low and moderate income persons that request assistance in developing proposals; the level and type of assistance is to be determined by the applicant.
- **D.** provide for public hearings to obtain citizen participation and respond to proposals and questions at all stages;
- **E.** prior to selecting a project and submitting an application for CDBG funding assistance, conduct at least one public hearing for the following purposes:
- (1) to advise citizens of the amount of CDBG funds expected to be made available for the current fiscal year;
- (2) to advise citizens of the range of activities that may be undertaken with the CDBG funds;
- (3) to advise citizens of the estimated amount of CDBG funds proposed to be used for activities that will meet the national objective to benefit to low and moderate income persons;
- (4) to advise citizens of the proposed CDBG activities likely to result in displacement, and the unit of general local government's anti-displacement and relocation plans;
- (5) to obtain recommendations from citizens regarding the community development and housing needs of the community:
- After considering all recommendations and input provided at the public hearing(s), the governing body must select one project for which to submit an application for funding assistance at an official public meeting.
- G. The applicant must conduct a second public hearing prior to the submission of the application. Public hearing notices must be published in the non-legal section of newspapers, or posted in a minimum of three prominent public places within the project area, with public access. Notice of any public

- hearing must be published or posted at least 10 days in advance of the hearing date. Emergency hearings may be called upon 72 hour's notice unless threat of personal injury or property damage requires less notice. Emergency hearings may be called only under unforeseen circumstances. which demand immediate action to protect the health, safety and property of citizens or to protect the applicant from substantial financial loss. All applicants must be in compliance with all provisions of the Open Meetings Act Section 10-15-1 NMSA 1978 et., seq.
- H. Evidence of compliance with these public participation requirements must be provided with each application, i.e., hearing notice, minutes of public meetings, list of needs and activities to be undertaken, etc.
- I. Applicants must provide for timely written answers to written complaints and grievances within 15 working days where practicable.
- J. Applicants must identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

  [2.110.2.15 NMAC Rp, 2 110.2.15 NMAC, 7/29/2025]

### 2.110.2.16 PROGRAM REQUIREMENTS FOR MEETING NATIONAL PROGRAM OBJECTIVES:

- **A.** Each CDBG application must meet the following national objectives.
- **B.** Low and moderate income benefit an activity identified as principally benefiting fifty-one percent persons of low and moderate income will be considered eligible only if it meets one of the following criteria:
- (1) the activity must be carried out in a neighborhood or area consisting predominantly of persons of low and moderate income and provide services to such persons; or

- (2) the activity must involve facilities designed for use by a specific group of people or clientele predominantly of low and moderate income.
- [2.110.2.16 NMAC Rp, 2 110.2.16 NMAC, 7/29/2025]

# 2.110.2.17 APPLICATION REQUIREMENTS:

- A. Number of applications all eligible applicants may submit one application for CDBG funding assistance in the community infrastructure, public facility capital outlay, or Colonias categories.
- B. Planning applicants should contact the division about funding availability. Applicants may submit a planning grant application at any time, subject to funding availability.
- C. Counties may submit multiple applications for planning grants on behalf of eligible applicants.
- **D.** Planning applications may be submitted even if the applicant has not completed previously awarded CDBG projects.
- E. Single purpose application -an application must be limited to a project specific activity or set of activities that address a particular need in a designated target area of a unit of local government.
- F. Joint applications Joint applications are allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.
- (1) Joint applications must satisfy certain criteria found in federal rules and must receive division approval prior to submitting an application for funding assistance.
- (2) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.
- (3) Other parties to the joint application may submit another application.

**G.** The following minimum requirements apply to all applications for CDBG funding:

**(1)** 

Applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended.

(2) Projects shall be completed within 36 months of an executed grant agreement signed by both parties.

(3) Any funding limits for applications not stated in this document may be established in application materials, or at a council meeting. Applications exceeding five hundred thousand dollars (\$500,000.00) must be accompanied by a certified cost estimate from an engineer, architect, or landscape architect licensed to do business in the state of New Mexico, which must be certified no more than 120 days prior to application submission.

(4)

Application must be complete, with all documentation provided as listed on the submission and attachment checklist included in the application, otherwise application will be deemed ineligible and the application will be returned to the applicant and will not be considered for funding.

(5)

Applications must include a determination of rural or non-rural status

(6)

Applications must include project cost estimates.

- **H.** Threshold requirements a project must be completed by the deadline for threshold compliance.
- (1) Any open CDBG project must be completed at the time of application (certificate of occupancy or certification of operation must be in place).
- (2) Any previous CDBG project's monitoring findings and concerns must be resolved.
- (3) The current applicant's fiscal operating budget must be certified by the division.

(4) The applicant's quarterly/monthly financial reports to the division must be current.

applicant must have submitted to the New Mexico state auditor its most current audit(s) that were required to be conducted and submitted for review per the New Mexico state auditor's required report due dates for the previous fiscal year(s) and an applicant must be in compliance with the budget certification rule, 2.2.3 NMAC.

- (6) The set aside category; planning is exempt from threshold requirements set forth in Subsections I of 2.110.2.17 NMAC.
- I. Matching requirements to extend available resources and to ensure applicants are invested in projects, the following matches will be required.
- rural applicants must provide, at a minimum, a ten percent cash match during the project period from local, state or other public resources, excluding local work force or local equipment.

**(2)** 

Local funds expended by an eligible applicant for engineering, architectural design or environmental review prior to project approval may be applied towards the required match if approved by the division.

(3) Applicant may request a waiver of the matching requirement if documentation can be provided to demonstrate the absence of local resources to meet the required match. Criteria used by the division to recommend council approval/disapproval will be as follows:

(a)

the required match must exceed five percent of the applicant's general fund budget;

(b)

the required match must equal or exceed the available balance of funds in the applicant's overall budget.

J. Other funding commitments - if other funding is necessary to make a proposed project

feasible, funding commitments must be in place and letters of commitment or grant agreement from the funding agency must be submitted with the application.

Asset management - communities that implement an asset management program and use that approach as the basis for their rate analysis will be credited in the application process for their achievement. To support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required to be submitted at the time of application. The model for the asset management program is the international infrastructure asset management model. This approach includes five core components:

- (1) current state of the assets: an asset inventory that includes at a minimum: asset name, asset location, asset condition, useful life, and an estimate of replacement value;
- (2) level of service: a description of type and level of service provided;
- (3) criticality: an evaluation of which assets are critical to sustaining the operation;
- (4) life cycle costing: at a minimum, a capital improvement plan that describes the replacement of assets and some consideration of operation and maintenance of the assets;
- plan: a description of the funding sources that will be used to pay for capital and operational needs.
  [2.110.2.17 NMAC Rp, 2 110.2.17 NMAC, 7/29/2025]

# 2.110.2.18 APPLICATION SUBMISSION PROCEDURES AND CONTENT: The application packet provided by the division

packet provided by the division must be used. It is only necessary to answer the questions on the application that pertain to the relevant single project category.

A. An applicant must submit an original (hard copy) and two separate electronic copies of each

application to the division, and one electronic copy to the appropriate council of governments.

**B.** Applications for community infrastructure and public facility capital outlay must be received by the division on or before 5:00 p.m. on the designated application deadline. Applications received after that time will not be processed.

[2.110.2.18 NMAC - Rp, 2 110.2.18 NMAC, 7/29/2025]

# 2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS:

- A. Upon receipt of an application, division staff will review for eligibility, completeness, feasibility, and compliance and ensure that all other funding necessary to make the project functional is in place. Applications not meeting the criteria will be returned to the applicant and will not be considered for funding.
- B. Applications will be forwarded to appropriate state agencies for technical review and comment. Review agencies may include, but are not limited to, the environment department, department of transportation, department of health, state engineer's office, agency on aging and long term services, economic development department, state fire marshal and governor's commission on disability.
- C. An eligible applicant will be allowed to make a presentation to the council and division staff at the official hearing. Testimony related to the application will be presented by an official or designee of the applicant who may be assisted by technical staff.
- **D.** Rating criteria to evaluate and score CDBG applications for the community infrastructure, public facility and Colonias categories will include the following:

(1)

description;

- (2) need;
- (3) cost

analysis;

- (4) planning
  and readiness;
  (5) risk
  analysis;
  (6) optional
  additional criteria;
  (7) additional
  colonias criteria.
- E. Planning grant criteria: The planning grant applications will be rated with the below:

(1)

description;

- (2) need;
- (3) cost

analysis;

(4) risk

analysis;

(5) division

support and approval.

- F. Planning applications that are in compliance with all applicable rules and regulations are received and evaluated throughout the year.
- G. The council delegates to the division director the authority to award, in the division director's discretion, set aside funding for applications for supplemental funding and planning projects in compliance with applicable rules and regulations. The division will provide the council with an update on all such awards at each council meeting.

  [2.110.2.19 NMAC Rp, 2 110.2.19 NMAC, 7/29/2025]

# 2.110.2.20 SELECTION OF CDBG GRANTEES BY COUNCIL:

- A. Division staff will present its recommendation to the council at least seven days prior to each allocation meeting.
- **B.** The council will review staff recommendation and funding allocation and make funding decisions in an open public meeting.
- C. The council, in making its final decisions, will consider the past performance of the applicant in administering CDBG projects.
- **D.** The council may adjust the scope and dollar amount to stay within available funding or for purposes of consistency.

- deviate from staff recommendation and funding allocation, if the council by majority vote determines and substantiates that any of the following conditions apply: To not fund a project recommended by the division staff other funding sources for the project are available or other applications were deemed to be a priority or circumstances have changed since the application was submitted.
- **F.** The council will make funding determinations by a majority vote.
- G. The council may waive or adjust any division imposed CDBG application requirement as long as the waiver will not result in violation of state or federal statutes, regulations, rules, or penalize other applicants.
- H. If the council sets aside funding for supplemental funding; the council may at any time during the calendar year, transfer funds between categories if there is limited demand in the funded categories. The transferred funds may be used to fund projects that were previously submitted for funding.

  [2.110.2.20 NMAC Rp, 2 110.2.20 NMAC, 7/29/2025]

### 2.110.2.21 REVERSIONS, SUPPLEMENTAL FUNDING AND UNDERRUNS:

- A. Decision of the division to impose special conditions or fiscal agent requirements if a CDBG award is provided to a grantee that has deficiencies identified in the audit(s) approved by the state auditor's office, the division reserves the right to impose special conditions or fiscal agent requirements dependent upon the specific findings or opinions as described in the audit(s).
- **B.** Decision by the council or division to revert funds if, within 12 months of a CDBG award for a project by the council, the CDBG award has not resulted in an executed agreement between the division and the applicant or the applicant has not made adequate progress on the project or reasonable

suspicion exists that there was fraud or misrepresentation regarding the project by the applicant, the division may recommend to the council to revert all or part of the award and the council may vote to revert all or part of the award. The applicant shall receive written notice from the division of the council's decision to revert all or part of award by certified mail. The applicant may appeal, in writing, the council's decision to revert all or part of the award within 30 days of receipt of the written notice of the council's decision. The appeal of the council's decision by the applicant shall be held at a council meeting no later than 90 days from the council's receipt of the written appeal. The council's decision on the appeal of the reversion shall be final. The council may grant the applicant a reasonable period of time to cure the particular default that was the basis of the reversion. At the end of the cure period, the council shall vote again on the issue of the reversion and this decision shall be final.

- C. Reversions and supplemental funding When funds are reverted from a previously approved project grant or additional funds are made available for any other reason, the council may decide that the funds will:
- (1) be set aside to supplement current projects that require additional funding to complete the project(s); or
- (2) be returned to the category of the program from which it was awarded;
- (3) go into any other category; or
- (4) take other action as deemed appropriate.
- D. Underruns if upon completion of the approved activities a balance of funds remains after all payments have been made, this balance shall be handled as follows: if the grantee has not accomplished all work called for in the original application submitted for funding consideration, the grantee may request division staff to approve the expenditure of underrun funds for a portion or all of the remaining

work; if appropriate justification and sufficient funding exist, division staff may approve the request for use of underrun funds and amend the grant agreement accordingly;
[2.110.2.21 NMAC - Rp; 2 110.2.21 NMAC, 7/29/2025]

**2.110.2.22** [RESERVED] [2.110.2.22 NMAC - Repealed xx/xx/2025]

2.110.2.23 CITIZEN
ACCESS TO RECORDS: Citizens and units of general local government will be provided with reasonable access to records regarding the past use of CDBG funds.
[2.110.2.23 NMAC - Rp, 2 110.2.23 NMAC, 11/15/2016]

### 2.110.2.24 NM COMMUNITY ASSISTANCE

**FUNDS:** The council will allocate and administer New Mexico community assistance underrun funds in accordance with the provisions of the Community Assistance Act. [2.110.2.24 NMAC - Rp, 2 110.2.24 NMAC, 11/15/2016]

# 2.110.2.25 MEETING PROCEDURES:

- A. Special meetings. Special meetings of the council may be called by a majority of the council members or the chairperson of the council, and will be held at the time and place fixed by the division.
- B. Notice. Written notice stating the time, place and, if a special meeting, the purpose, will be delivered either personally, by mail, or email by the division, to each council member at least 72 hours before the scheduled date of the meeting. The meeting notice and agenda will be available to the public and posted on the department of finance and administration web site. The council may establish dates and times for regularly scheduled meetings.
- C. Quorum. A majority of the current members of the council in attendance either in person or by telephone will constitute a quorum at council meetings.

- D. Record of meetings. The meeting shall be recorded and the division shall have the minutes made into a written record. The original of this record shall be retained by the division and a copy shall be forwarded to the council members. Copies shall be available upon request.
- E. Participation methods. A member of council may participate in a meeting of the council by means of a video conferencing or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by virtually can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the council who speaks during the meeting. [2.110.2.25 NMAC - Rp, 2 110.2.25 NMAC, 7/29/2025]

### **Continued Next Page**

### 2.110.2.26 [RESERVED]

[2.110.2.26 NMAC - Repealed 7/29/2025]

### Attachment I

(Referenced by: 2.110.2.7 NMAC)

CDBG projects are designed to meet the national objectives: low and moderate income Applicants may choose between two different processes to determine low and moderate income eligibility: (1) conduct a special survey using the HUD approved methodology in accordance with Section A "Survey Methodology" and Section C "HUD Section 8 Income Limits" below; or (2) use the most recent low and moderate income data from section B "American Community Survey" and Section C "HUD Section 8 Income Limits" below.

### A. Survey Methodology

The division recommends using the following HUD approved methodology:

This survey methodology was designed by HUD to assist States and entitlement cities in determining whether most of the individuals in a proposed target area are of low and moderate income.

Upon requesting permission from the division to conduct a sample survey, an applicant should indicate the justification for the sample survey. Applicants must provide to the division a map of the project service area, a brief description of the proposed project, and a description of how the six steps described in the suggested methodology will be implemented.

If the applicant conducts a sample survey, such applicant must be prepared to document all efforts. There must be a master list (with telephone numbers, where possible) to match the surveys. The master list must be coded to the individual surveys.

Such documentation must include a separate survey for each household, for unreachables that could not be replaced from the universe, and for "non-households" in the survey area, such as empty lots, business and government property. The sixth step of the methodology provides a complete listing of the information that an applicant must maintain in its files and submit to the division.

The six steps of the survey methodology are located on the department of finance and administration website, infrastructure planning and development division, community development bureau, CDBG information page.

### B. American community survey (ACS)

The U.S. census bureau provides a fact finder source for population, housing, economic, and geographic information. This source may be used by applicants to determine eligibility for low to moderate income persons. This source is located at the American FactFinder website, community facts.

### C. HUD Section 8 Income Limits

HUD Section 8 income limits must be used in conjunction with either the survey methodology or ACS data to determine low and moderate income eligibility. Applicants should contact the division for the most current data sets.

### **HISTORY OF 2.110.2 NMAC:**

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

DFA Rule 85-3, State of New Mexico Regulations Governing the 1986 Small Cities Community Development Block Grant Program and 1985 New Mexico Community Assistance Program, 10/4/1985.

DFA Rule 87-3, State of New Mexico 1988 Small Cities Community Development Block Grant Program New Mexico Community Assistance Program Application Regulations, 12/4/1987.

DFA Rule 89-3, 1989 Small Cities Community Development Block Grant Program New Mexico Community Assistance Program Applications Regulations, 3/2/1989. DFA Rule 90-1, 1990 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 12/28/1989. DFA #91-1, 1991-1992 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 1/14/1992. DFA #93-1, 1993 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 7/9/1993. DFA-LGD No. 93-1, 1994 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 6/13/1994. DFA-LGD Rule No. 95-1, 1995 Small Cities Community Development Block Grant Program New Mexico Community Assistance Application Regulations, 5/31/1995. DFA-LGD Rule No. 95-2, 1996 Small Cities Community Development

### **History of Repealed Material:**

Block Grant Application Regulations.

2 110.2 NMAC, Small Cities Community Development Block Grant - Repealed, 8/30/2001. 2.110.2 NMAC, Small Cities Community Development Block Grant - Repealed, 6/5/2015. 2.110.2 NMAC, Small Cities Community Development Block Grant - Repealed, 11/15/2016. 2.110.2 NMAC, Small Cities Community Development Block Grant, filed 11/15/2016 Repealed effective 7/29/2025.

**Other:** 2.110.2 NMAC, Small Cities Community Development Block Grant, filed 11/15/2016 Replaced

by 2.110.2 NMAC, Small Cities Community Development Block Grant effective 7/29/2025.

### FINANCE AND ADMINISTRATION, DEPARTMENT OF LOCAL GOVERNMENT

This is an amendment to 2.42.2 NMAC, Sections 7, 8, 9, and 12, effective 7/29/2025.

### **2.42.2.7 DEFINITIONS:**

As used in this rule:

A. "Agency head" means:

- (1) the cabinet secretary of departments and their administratively attached boards and commissions;
- (2) the director for other agencies and institutions and their administratively attached boards and commissions;
- (3) the superintendent of regulation and licensing for boards and commissions attached to the regulation and licensing department;
- (4) the chairperson, president or executive secretary for remaining boards and commissions; and
- (5) the chief executive, chief administrative officer, or governing body for local public bodies.
- **B.** "Attend" has the same meaning as ascribed to it in Section 10-8-3 NMSA 1978.
- committee meeting" means the formal convening of public officers who comprise a board, advisory board, commission or committee even if no further business can take place because of the lack of a quorum.
- **D.** "Designated post of duty" means the address of a public officer's or employee's assignment as determined by the agency.
- E. "Employee" means any person who is [in the employ of] employed by any New Mexico state

agency or local public body within New Mexico whose salary is paid either completely or partially from public money but does not include jurors or jury commissioners.

- F. "Governmental entity" means a New Mexico state agency or local public body within New Mexico.
- G. "Home" means:
  (1) for per
  diem purposes, the area within a
  50-mile radius of the place of legal
  residence as defined in Section 1-1-7
  NMSA 1978:
- (2) for mileage purposes, the place of legal residence as defined in Section 1-1-7 NMSA 1978.
- H. "Local public body" means every political subdivision of the state, whether created under general or special act including, but not limited[,] to counties, municipalities, drainage, conservancy, irrigation, school, or other districts, that receives or expends public money from whatever source derived.
- I. "Non-salaried public officer" means a public officer serving as a member of a board, advisory board, committee or commission who is not entitled to compensation, but is entitled to payment of per diem rates and mileage.
- J. "Normal work day" means eight hours within a nine-hour period for all public officers and employees, both salaried and non-salaried, regardless of the officers' or employees' regular work schedule.
- K. "Occasionally and irregularly" means not on a regular basis and infrequently as determined by the agency. For example, an employee is not entitled to per diem rates under 2.42.2.8 NMAC if the employee either travels once a week or travels every fourth Thursday of the month. However, the employee is entitled to per diem rates under 2.42.2.8 NMAC if the employee either travels once a month with irregular destinations and at irregular times or travels four times in one month and then does not travel again

in the next two months, so long as this is not a regular pattern.

L. "Out of state" means beyond the exterior boundaries of the state of New Mexico.

M. "Public officer" means every elected or appointed officer of a governmental entity, including but not limited to:

(1) officers of the judicial branch of state government, including judges;

(2) officers of the legislative branch of state government, except legislators; and,
(3) all board,

advisory board, committee and commission members elected or appointed to a board, advisory board, committee or commission specifically authorized by law or validly existing as an advisory committee pursuant to Section 9-1-9 NMSA 1978.

N. "Secretary" means the secretary of finance and administration.

O. "Travel" means: for per diem purposes, being on official business away from home as defined in [Subsection F] Subsection G above and at least 50 miles from the designated post of duty of the public officer or employee. However, nonsalaried public officers are eligible for per diem for attending meetings in accordance with Subsection C of 2.42.2.8 NMAC.

P. "Travel voucher" means a payment voucher submitted for the purpose of claiming reimbursement for travel expenditures.

[2.42.2.7 NMAC - Rp, 2.42.2.7

[2.42.2.7 NMAC - Rp, 2.42.2.7 NMAC, 01/16/2024; A, 7/29/2025]

# 2.42.2.8 PER DIEM RATES AND PRORATION:

A. Applicability: Per diem rates shall be paid to public officers and employees only in accordance with the provisions of this section. Per diem rates shall be paid without regard to whether expenses are actually incurred. Where lodging or meals are provided or paid for by the agency, the governing body, or another entity, the public officer or

employee is entitled to reimbursement only for actual expenses under 2.42.2.9 NMAC.

B. [<del>Partial day</del>]
<u>Same day travel</u> rate computation:

Except as provided in Subsections C through I of this section, per diem rates for travel by public officers and employees shall be computed as follows:

(1) Partial

day per diem rate: Public officers or employees who occasionally and irregularly travel shall be reimbursed for travel which does not require overnight lodging, but extends beyond a normal work day as published on the department of finance and administration website on May 1 for the preceding fiscal year.

(2)

Overnight travel: Regardless of the number of hours traveled, travel for public officers and employees where overnight lodging is required shall be reimbursed as published on the department of finance and administration website on May 1 for the preceding fiscal year or actual lodging and meal expenses under 2.42.2.9 NMAC.

(3) Return

from overnight travel: On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made in accordance with applicable rates, [To calculate the number of hours in the partial day, begin with the time the traveler initially departed. Divide the number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed] as published on the department of finance and administration website on May 1 for the preceding fiscal year.

(4) Special area designations: For all officers and employees, the in state special area shall be Santa Fe county.

C. Board, commission and committee members: Non-salaried public officers may receive per diem as follows:

(1) Official board, commission and committee meetings:

(a)

### State non-salaried public officers:

Non-salaried public officers of the state may elect to receive:

(i)

\$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

(ii)

\$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(iii)

per diem rates in accordance with Subsection B of this section.

(b)

### Local non-salaried public officers:

Non-salaried public officers of local public bodies may elect to receive:

(i)

\$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

(ii)

\$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(iii)

per diem rates in accordance with Subsection B of this section provided that the local governing body has not established a lesser rate.

(c)

### Municipal non-salaried public

**officers:** Non-salaried public officers of municipalities may elect to receive either:

(i)

\$95.00 if the officer physically attends the meeting for four hours or more during a single calendar day; or

(ii)

\$45.00 if the officer physically attends the meeting for less than four hours or the officer attends a virtual meeting of any duration during a single calendar day; or

(iii)

per diem rates in accordance with Subsection B of this section, provided that the board or commission meeting is held outside of the municipal boundaries.

Other official meetings: Non-salaried public officers may receive per diem rates for travel on official business that does not constitute a board, advisory board, committee or commission meeting only in accordance with Subsection B of this section

**Members** serving in dual capacities: Nonsalaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem rates by employees or officers of local public bodies who also serve on boards or commissions subject to this rule.

- D. **Temporary** assignment: Public officers and employees may be reassigned temporarily to another duty station.
- **Routine (1)** reassignment: Public officers and employees subject to periodic reassignment of duty stations or districts as a normal requirement of their employment will not be eligible for per diem rates after the time of arrival at the new duty station or district.
- Non-**(2)** routine reassignment: Public officers or employees not normally subject to periodic reassignments who are temporarily assigned to another office of a state agency away from home will receive per diem for the first 30 calendar days of their assignment only, unless [approvalof the secretary is given to extend] the secretary approves extending per diem payments upon showing that the assignment is necessary and temporary. Except in such

extraordinary circumstances, after 30 calendar days, the place where the employee or officer is assigned will be regarded as the designated post of duty.

E.

department of transportation: The New Mexico department of transportation may adopt special policies pertaining to payment of per diem rates for temporary assignments. Such policies shall be

**New Mexico** 

subject to the [annual approval of the secretary's annual approval and must not exceed the rates set by the department of finance and administration.

- F. Department of public safety: The department of public safety may adopt special policies pertaining to payment of per diem rates, mileage and subsistence allowances authorized by law for commissioned officers. Such policies shall be subject to the [annualapproval of the secretary's annual approval and must not exceed the rates set by the department of finance and administration.
- G. Travel for educational purposes: A public officer or employee shall not be reimbursed for more than 30 calendar days of per diem in any fiscal year for attending educational or training programs unless approval has been obtained from the secretary.
- H. Per diem in conjunction with other leave: While traveling, if a public officer or employee takes sick, annual or authorized leave without pay for more than four hours of the normal work day, per diem shall not be allowed for that day unless authorized in writing by the agency head.
- I. Illness or emergency: Agency heads may grant permission, in writing, to pay per diem rates and travel reimbursement to an employee or public officer who becomes ill or is notified of a family emergency while traveling on official business and must either remain away from home or discontinue the official business to return home. [2.42.2.8 NMAC - Rp, 2.42.2.8 NMAC, 01/16/2024; A, 7/29/2025]

### 2.42.2.9 REIMBURSEMENT OF ACTUAL EXPENSES IN LIEU OF PER DIEM RATES:

A. **Applicability:** Upon written request of a public officer or an employee, agency heads may [grant written approval for] approve a public officer or employee of that agency or local public body to

be reimbursed actual expenses in lieu of the per diem rate where overnight travel is required. В. Overnight travel:

For overnight travel for state officers and employees where overnight lodging is required, the public officer or employee will be reimbursed as follows:

Actual

**(1)** reimbursement for lodging: A public officer or an employee may elect to be reimbursed actual expenses for lodging not exceeding the single occupancy room charge (including tax) in lieu of the per diem rate set forth in 2.42.2.8 NMAC. Whenever possible, public officers and employees should stay in hotels which offer government or discounted rates. Agencies, public officers or employees who incur lodging expenses in excess of \$[215.00] 350.00 per night must obtain the signature of the agency head or chairperson of the governing board on the travel voucher prior to requesting reimbursement and on the encumbering document at the time of encumbering the expenditure.

Actual **(2)** reimbursement for meals: [Actualexpenses for meals are limited by A daily meal allotment is reimbursed in accordance with Paragraph (2) of Subsection K of Section 10-8-4 NMSA 1978 to the rates published on the department of finance and administration website on May for the preceding fiscal year.

Receipts required: The public officer or employee must submit receipts for the actual [meal and] lodging expenses incurred. Under circumstances where the loss of receipts would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts.

The affidavit must accompany the travel voucher and include the signature of the agency head or governing board.

**Return from** C. overnight travel: On the last day of travel when overnight lodging is no longer required, partial day reimbursement shall be made in accordance with Paragraph (2) of Subsection K of Section 10-8-4 NMSA 1978 to the rates published on the department of finance and administration website on May 1st for the preceding fiscal year. [Tocalculate the number of hours in the partial day, begin with the time the traveler initially departed on the travel. Divide the total number of hours traveled by 24. The hours remaining constitute the partial day which shall be reimbursed as published on the department of finance and administration website on May 1 for the preceding fiscal year. No reimbursement for actual expenses will be granted in lieu of partial day per diem rates.

[2.42.2.9 NMAC - Rp, 2.42.2.9 NMAC, 01/16/2024; A, 7/29/2025]

## 2.42.2.12 REIMBURSEMENT FOR OTHER EXPENSES: Public

officers and employees may be reimbursed for certain actual expenses in addition to per diem rates.

- A. Public officers and employees may be reimbursed for the following expenses provided that receipts for all such expenses are attached to the reimbursement voucher:
- (1) taxi or other transportation fares at the destination of the traveler;
- (2) gratuities as allowed by the agency head or designee, not to exceed twenty percent per transaction, excluding meals;

(3) parking

fees;

(4) actual costs for travel by common carrier, provided such travel is accomplished in the most economical manner practical;

- (5) rental cars or charter aircraft, provided less expensive public transportation is not available or appropriate;
- (6) registration fees for educational programs or conferences, provided, if the fee includes lodging or meals, then no per diem rates shall be paid and only actual expenses paid by the officer or employee and not included in the fee shall be reimbursed within the limits of 2.42.2.9 NMAC; and

**(7)** 

professional fees or dues that are beneficial to the agency's operations or mission.

circumstances where the loss of receipts would deny reimbursement and create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts. The affidavit must accompany the travel voucher and include the signature of the agency head or governing board.

**B.** Local public bodies: Local public bodies may adopt regulations governing the reimbursement of actual expenses incurred in addition to per diem rates and mileage.

[2.42.2.12 NMAC - Rp, 2.42.2.12 NMAC 01/16/2024; A, 7/29/2025]

# HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

This is an amendment to 8.139.520 NMAC, Section 10 effective 8/1/2025.

8.139.520.10 COUNTING INCOME:

A. Income averaging: (1) Optional

income averaging: Income received by a household may be averaged at the household's option (See 8.139.500.10 NMAC) except as specified below.

(2)

**Mandatory income averaging:** Averaging is mandatory for income

received under the following circumstances:

(a)

contract or self/employment income;

**(b)** 

educational monies.

### B. Rounding off:

Calculations shall be rounded to the nearest dollar. Figures between one cent and forty/nine cents are rounded down; figures between 50 cents and 99 cents are rounded up. When adding gross amounts received weekly, biweekly or semi/monthly to arrive at the monthly income, cents are retained until the total monthly amount is determined; the total monthly amount is rounded as the final step. Cents resulting from the computation of the twenty percent earned income deduction are rounded before being subtracted from earned income. Cents are retained in the computation of shelter and medical expenses until the final step.

# C. Ineligible or disqualified household members:

An ineligible or disqualified household member shall not be included when:

(1)

determining the maximum food stamp benefit amount for the household's size:

- (2) comparing the household's monthly income with the income eligibility standards; or
- (3) comparing the household's resources with the resource eligibility limits.

**(4)** 

# Intentional program violation (IPV) or work disqualified:

(a)

The income and resources of individuals disqualified for IPV or noncompliance with E&T work requirements shall be counted in their entirety.

**(b)** 

A household's allowable deductions for earned income, medical expenses, dependent care expenses, excess shelter expenses, and the standard deduction continue to apply to the remaining household members.

(c)

HSD shall make sure that a household's food stamp benefit

amount is not increased as a result of the disqualification of one or more members.

# (5) Ineligible [alien] non-citizen or SSN disqualified:

(a)

**Resources:** Resources of ineligible [aliens] non-citizen, or individuals disqualified for failure or refusal to apply for or provide a social security number, shall be counted in their entirety.

**(b)** 

# Income and deductions of ineligible [aliens] non-citizen:

(i`

Income belonging to the ineligible [alien] non-citizen shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the ineligible [alien's] non-citizen's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii)

The twenty percent earned income deduction is applied to the countable income attributed to the remaining eligible household members.

(iii)

[The allowable expense(s) either billed to or paid by the ineligible alien shall be allowed in its entirety as a household expense.] The allowable expense(s) either billed to or paid by the ineligible non-citizen shall be counted on a pro rata basis to the remaining eligible household members. The prorated share is calculated by dividing the expense(s) evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable expense(s).

(c)

# Income and deductions for ABAWD or SSN disqualified individuals:

(i

Income belonging to an individual disqualified because of ABAWD

status or failure or refusal to provide a social security number shall be counted on a pro rata basis to remaining eligible household members. The prorated share is calculated by first subtracting any allowable exclusions from the disqualified member's income, then dividing the income evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable income.

(ii)

The twenty percent earned income deduction is applied to the countable income attributed to the remaining household members.

(iii)

The portion an allowable expense either paid by or billed to a disqualified individual(s) is divided evenly among all household members, including the disqualified individual(s). All but the disqualified individual's share is counted as a deductible expense for the remaining household members.] The allowable expense(s) either billed to or paid by the ineligible non-citizen shall be counted on a pro rata basis to the remaining eligible household members. The prorated share is calculated by dividing the expense(s) evenly by all household members, including the excluded member(s). The result is multiplied by the number of eligible household members to determine countable expense(s).

**(6)** 

Reduction/termination during certification period: When an individual is excluded or disqualified during the certification period, the caseworker shall determine the eligibility of the remaining household members based on information already in the case record.

(7) Excluded

for IPV disqualification: If a household's benefits are reduced or terminated during the certification period because one of its members was disqualified for an IPV, the caseworker shall notify the remaining household members of changes in eligibility and food stamp benefit

amount at the same time the excluded member is notified of the disqualification. The household is not entitled to an adverse action notice but may request a fair hearing to contest the reduction or termination of benefits, unless it has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

### (8) Excluded

for other causes: If a household's benefits are reduced or terminated during the certification period because one or more of its members is an ineligible [alien] non-citizen, is disqualified for failure to comply with E&T work requirements, disqualified for failing or refusing to apply for or provide a social security number, the caseworker shall issue an adverse action notice informing the household of the individual's ineligibility, the reason for the ineligibility, the eligibility and benefit amount of the remaining member(s), and the actions the household must take to end the disqualification.

# D. Non-household members:

(1) Income

and resources: The income and resources of non-household members, such as certain students, roomers, and boarders, are not considered available. Cash payments from a non-household member to the household shall be counted as income (Subsection E of 8.139.520.8 NMAC). Vendor payments (Subsection D of 8.139.520.9 NMAC) shall be excluded as income.

**(2)** 

Deductible expenses: If a household shares deductible expenses with a non-household member, only the amount actually paid or contributed by the household is deductible as an expense. If the payments or contributions cannot be differentiated, the expenses shall be divided evenly among individuals actually paying or contributing to the expense; only the household's pro rata share is deducted.

(3) Combined income of household/non-household members: When the earned income

of one or more household members and the earned income of a nonhousehold member are combined as one wage, the income for the household shall be determined as follows.

(a)

If the household's share can be identified, it is counted as earned income.

**(b)** 

If the household's share cannot be identified, the caseworker shall divide the earned income among all those whom it was intended to cover and count a prorated share to the household.

**E.** Self/employed household: The following guidelines shall be used to determine eligibility and food stamp benefit amount for self/employed households, including those households that own or operate commercial boarding houses.

(1) Averaging self/employment income:

(a)

### **Annualizing:**

(i)

Households which by contract or self/employment derive their annual income in a period of time shorter than one year shall have income averaged over a 12 month period, provided that the income from the contract is not received on an hourly or piecework basis.

(ii)

Annualizing shall not apply to seasonal or migrant farm workers.

(iii)

Self/employment income representing a household's annual income shall be averaged over a 12 month period, even if the income is received within only a short period of time.

(iv)

The self/employment income shall be annualized even if the household receives income from other sources in addition to self/employment.

(v)

Self/employed households include, but are not limited to, school employees, sharecroppers, and farmers. Tenured teachers who may not actually have a signed contract shall have their income considered on this basis. (vi

For self/employed households that receive their annual income in a short period of time, an initial certification period is assigned to bring the household into the annual cycle.

(vii)

Households which receive their annual income from self/employment and have no other source of income may be certified for up to 12 months.

**(b)** 

### **Anticipated income:**

(i)

If the average annualized amount or self/employment income received on a monthly basis does not accurately reflect a household's actual circumstances because it has experienced a substantial increase or decrease in business, self/employment income shall be calculated on anticipated earnings.

(ii)

Income shall not be calculated based on previous income (e.g., income tax returns) if a self/employed household has experienced a substantial increase or decrease in business.

(c)

**Projected income:** If a household's self/employment enterprise has been in existence for less than one year, the income from self/employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the coming year. If the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household shall be certified for short periods of time until the business has been in operation long enough to make a longer projection.

(d)

**Seasonal income:** Self/employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover.

**(2)** 

# **Determining monthly self/ employment income:**

(a)

For the period of time over which

self/employment income is averaged, the caseworker shall add all self/employment income, including capital gains, exclude the cost of producing the self/employment income, and divide the self/employment income by the number of months over which the income shall be averaged.

**(b)** 

A capital gain is defined as proceeds from the sale of capital goods or equipment. Capital gains are counted in full as income to determine self/employment income.

(c)

For households with self/employment income calculated on an anticipated basis, the caseworker shall add any capital gains the household anticipates receiving in the next 12 months, beginning with the date the application is filed. The resulting amount is counted in successive certification periods during the 12 months, except that a new average monthly amount is calculated if the anticipated amount of capital gains changes.

(3)

# **Determining net self/employment income:**

(a)

A household's total self/employment income, minus the allowable costs of producing the income, shall be counted as gross income to the household. The gross self/employment income shall be added to any other earned income.

**(b)** 

The total monthly gross earned income, after allowing the twenty percent earned income deduction, is added to all monthly unearned income to determine income eligibility.

(c)

For households anticipating income, the cost of producing income is calculated by anticipating allowable costs of producing the self/employment income.

(d)

Expenses exceeding self/employment income shall not be deducted from other income.

(e)

If a self/employment enterprise is a farming or ranching operation,

expenses exceeding self/employment income may be offset against any other countable household income, provided that the farming or ranching operation grosses or is anticipated to gross at least \$1,000 annually.

(4) Allowable

**costs:** Allowable costs of producing self/employment income include, but are not limited to:

(a)

identifiable costs of labor, stock, raw material, seed and fertilizer.

(b)

payments on the principal of the purchase price of income/producing real estate and capital assets, equipment, machinery, and other durable goods;

(c)

interest paid to purchase income/ producing property;

(d)

insurance premiums, and taxes paid on income/producing property;

(e)

transportation costs necessary to produce self employment income, such as farmers carrying grain to elevators, or trips to obtain needed supplies, are allowable costs of doing business; costs are allowed at twentyfive cents per mile;

**f**)

payment of gross receipts taxes.

(5) Costs not

**allowed:** In determining net self/ employment income, the following shall not be allowed as a cost of doing business:

(a)

net losses from previous periods;

(b)

federal, state, and local personal income taxes, money set aside for retirement purposes, and other work/related personal expenses (such as transportation to and from work), since these expenses are accounted for by the twenty percent earned income deduction (Paragraph (3) of Subsection E of 8.139.520.10 NMAC);

(c)

charitable contributions and entertainment; and

(d)

depreciation.

F. Boarders:

(1) Individuals paying a reasonable amount for room and board shall be excluded from a household when determining the household's eligibility and food stamp benefit amount.

(2) Payments from a boarder shall be counted as self/employment income.

(3) Household income eligibility is determined as follows.

(a)

Income from a boarder includes all direct payments to the household for room and meals, including contributions for shelter expenses.

**(b)** 

Shelter expenses paid by a boarder directly to someone outside the household shall not be counted as income. Such payments are considered vendor payments and are not used to determine reasonable compensation (Paragraph (4) of Subsection C of 8.139.400.11 NMAC), or as a shelter expense for the household.

(4) After determining the income received from a boarder, the caseworker shall exclude the portion of the boarder payment which is a cost of doing business. The cost of doing business is equal to either of the following, provided that the amount allowed as a cost of doing business does not exceed the payment the household receives from the boarder for lodging and meals:

(a)

the amount of the maximum food stamp allotment for a household size that is equal to the number of boarders (Subsection E of 8.139.500.8 NMAC); or

**(b)** 

the actual documented cost of providing room and meals if the actual cost exceeds the appropriate maximum food stamp allotment; if actual costs are used, only separate and identifiable costs of providing room and meals to boarders are excluded.

[8.139.520.10 NMAC - Rp, 8.139.520.10 NMAC, 11/21/2023; A, 8/1/2025]

### HEALTH CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC, Section 10, effective 8/1/2025.

### 8.200.400.10 BASIS FOR DEFINING GROUP - MEDICAID CATEGORIES:

A. Except where noted, the 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.

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.

Part D provides prescription drug coverage.

> The **(2)**

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).

Specified low-income medicare beneficiaries (SLIMB) - Category 045: SLIMB medicaid covers lowincome medicare beneficiaries who

have medicare Part A. SLIMB is limited to the payment of the medicare Part B premium.

Qualified individuals 1 (QI1s) -

Category 042: QI1 medicaid covers low-income medicare beneficiaries who have medicare Part A. QI1 is limited to the payment of the medicare part B premium.

Qualified disabled working individuals (QDI) - Category 050:

ODI medicaid 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.

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 lowincome medicare beneficiaries must meet an income and resource test and submit an application to determine if they qualify for LIS.

Supplemental C. 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).

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:

the pickle amendment and 503 lead;

(b)

early widow(er);

(c)

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

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

nonpayment SSI status (E01);

**(f)** 

revolving SSI payment status "pingpongs"; 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.

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

disabled individual who is employed;

**(b)** 

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:

medicaid **(1)** 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:

the aged (Category 081);

the blind (Category 083); or

the disabled (Category 084).

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

(a)

### There are two HCBS delivery models:

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.

### HCBS waiver programs include:

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

(ii) medically fragile (Category 095);

(iii)

(i)

developmental disabilities (Category 096); and

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. Noncitizens 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 twelvemonths for a period established yearly by the office of refugee resettlement (ORR) based on available appropriated funds for the fiscal year 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.

**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 precancerous 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/E, 10/1/2024; A, 2/1/2025; A/E, 5/1/2025; A, 8/1/2025]

### **HEALTH CARE AUTHORITY MEDICAL ASSISTANCE** DIVISION

This is an amendment to 8.249.400 NMAC, Sections 6, 8, 10, 23, and 24, effective 8/1/2025.

8.249.400.6 **OBJECTIVE:** The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual 8.200 NMAC, Medicaid Eligibility - General Recipients Policies. Processes for establishing and maintaining medicaid eligibility are detailed in the income support division (ISD) general provisions policy manual 8.100 NMAC, General Provisions for Public Assistance Programs. Refugee medical assistance (RMA): The RMA offers health coverage for a refugee [withinthe first twelve months] for a period established yearly by the office of refugee resettlement (ORR) based on appropriated funds for the fiscal year from their date of entry to the United States (U.S.) when they do not qualify for other medicaid eligibility categories. An RMA eligible refugee has access to a benefit package that parallels the full medicaid services. This program is not funded by medicaid; funds are provided through a grant under Title IV of the Immigration and Nationality Act. The purpose of this grant is to provide for the effective resettlement of a refugee and to assist him or her to achieve economic self-sufficiency as quickly as possible. [8.249.400.6 NMAC - Rp, 8.249.400.6 NMAC, 1/1/2014; A,

1/1/2023; A/E, 5/1/2025; A, 8/1/2025]

8.249.400.8 MISSION: [Totransform 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

**(b)** 

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.

[8.249.400.8 NMAC - N, 1/1/2014; A, 1/1/2022; A/E, 5/1/2025; A, 8/1/2025]

**8.249.400.10 BASIS FOR DEFINING GROUP:** At the time of application, an applicant or an eligible recipient and [HSD] HCA shall identify everyone who is to be considered for inclusion in the assistance unit and budget group. Each member of the assistance unit and budget group, including each unborn child, is counted as one in the household size.

[8.249.400.10 NMAC - Rp, 8.249.400.10 NMAC, 1/1/2014; A/E, 5/1/2025; A, 8/1/2025]

### 8.249.400.23 BUDGET

**GROUP:** The budget group includes all members of the assistance unit. Additional budget group members include individuals who live in the household with the assistance unit and have a financial obligation of support.

- **A.** Except for an supplemental security income (SSI) recipient, the following individuals have a financial obligation of support for medicaid eligibility:
- (1) spouses: married individuals as defined under applicable New Mexico state law (New Mexico recognizes common law and same sex marriages established in other states); and
- (2) parents for children: there is a presumption that a child born to a married woman is the child of the spouse, or if the individual established parentage by some other legally recognized process.
- **B.** The following individuals do not have a financial obligation of support for medicaid eligibility:
- (1) an SSI recipient to the assistance unit;
- (2) a father of the unborn child who is not married to the pregnant woman;

- (3) a
- stepparent to a stepchild;
  - (4) a

grandparent to a grandchild;

- (5) a legal guardian or a conservator of a child; (6) a non-
- citizen sponsor to the assistance unit;
  - (7) a sibling to

a sibling.

C. Budget group earned income disregards and [ehild-eare] childcare deductions vary based on the age group of the child. Refer to 8.232.500 NMAC. [8.249.400.23 NMAC - N, 1/1/2014; A, 1/1/2022; A/E, 5/1/2025; A, 8/1/2025]

# **8.249.400.24** LIVING IN THE HOME

- A. To be included in the assistance unit and budget group, an individual must be living, or considered to be living, in the budget group's home.
- B. A child considered to be living in the home: A child is considered to be part of the budget group as evidenced by the child's customary physical presence in the home. If a child is living with more than one household, the following applies:
- (1) when the child is actually spending more time with one household than the other, the child would be determined to be living with the household with whom the child spends the most time; or
- the child is actually spending equal amounts of time with each household, the child shall be considered to be living with the household who first applies for medicaid enrollment.
- **C.** Extended living in the home: An individual may be physically absent from the home for longer or shorter periods of time and be a member of the assistance unit and budget group.
- (1) Extended living in the home includes:

(a)

when an individual is attending college or boarding school; or

when an individual is receiving treatment in a Title XIX medicaid facility, including institutionalized when meeting a nursing facility (NF) level of care (LOC) and intermediate care facilities for individuals with an

intellectual disability (ICF-IID) LOC.

an individual has been a member of the assistance unit, eligibility for another medicaid eligibility category, such as [long term] long-term care medicaid, should be evaluated; until a determination of eligibility for another category can be made, the individual is considered to be living with the budget group.

**D.** Temporary absence such as extended living in the home: An individual may be physically absent from the home and be a member of the assistance unit and budget group. These other temporary absences include:

(1) an individual not living in the home due to an emergency, who is expected to return to the household within 60 calendar days, continues to be a member of the household;

(2) a child removed from the home of a parent or a specified relative by a child protective services agency (tribal, bureau of Indian affairs, or children, youth and families department), until an adjudicatory custody hearing takes place; if the adjudicatory hearing results in custody being granted to some other entity, the child will be removed from the assistance unit; or

(3) a child residing in a detention center:

(a)

continues to be a member of the household if they reside fewer than 60 calendar days, regardless of adjudication as an inmate of a public institution; or

not eligible for medicaid enrollment if they reside 60 calendar days or more as an adjudicated inmate of a public institution pursuant to 8.200.410

[8.249.400.13 NMAC - N, 1/1/2014; A/E, 5/1/2025; A, 8/1/2025]

NMAC.

# HEALTH CARE AUTHORITY MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.249.600 NMAC, Sections 8, 9, 11, 12, 14, and 15, effective 8/1/2025.

**8.249.600.8** [RESERVED]

MISSION: 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.

[8.249.600.8 NMAC – Rp, 8.249.600.8 NMAC, 1/1/2019; A/E, 5/1/2025; A, 8/1/2025]

8.249.600.9 BENEFIT **DESCRIPTION:** Refugee medical assistance (RMA) offers health coverage for refugees [within thefirst twelve months for a period established yearly by the office of refugee resettlement (ORR) based on available appropriated funds for the fiscal year from their date of entry to the United States, when they do not qualify for medicaid. RMA eligible refugees have access to a benefit package that parallels the full coverage medicaid benefit package. This program is not funded by medicaid. RMA is funded through a grant under Title IV of the Immigration and Nationality Act. The purpose of this grant is to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible. Refer to 8.100.100 NMAC.

[8.249.600.9 NMAC - Rp, 8.249.600.9 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025; A, 8/1/2025]

# **8.249.600.11** INITIAL BENEFITS:

A. Approval or denial of application: After the eligibility determination is made, the income support [specialist (ISS)] division caseworker sends notice to the applicant or applicant group. The denial notice contains information

on the reason for the denial and explanation of appeal rights to the applicant(s).

Date of eligibility: Eligibility starts with the first day of the month of application after all eligibility requirements are met. The [twelve-month] eligibility period begins with the month the refugee enters the United States, as documented by the immigration and naturalization service (INS) (form I-94). [For cases involving childrenborn in the United States, the child's eligibility period expires when the refugee parent who arrived last in the United States has been in this country for twelve months.] [8.249.600.11 NMAC - Rp, 8.249.600.11 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025; A, 8/1/2025]

### 8.249.600.12 ONGOING

**BENEFITS:** No periodic review is required, since coverage is limited to [a maximum of twelve months] an eligibility period from the date of entry into the United States. [8.249.600.12 NMAC - Rp, 8.249.600.12 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025; A, 8/1/2025]

### 8.249.600.14 CASE

**CLOSURES:** Cases are closed when refugee medical assistance recipients no longer meet eligibility standards or after the [twelve-month] eligibility period expires, whichever comes first. [8.249.600.14 NMAC - Rp, 8.249.600.14 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025; A, 8/1/2025]

# 8.249.600.15 CHANGES AND REDETERMINATIONS OF ELIGIBILITY:

**A.** A re-determination of eligibility is not required.

- **B.** Changes in income are not reportable. Reported income changes are not acted upon.
- C. [A refugee who received medicaid for eleven or fewer months during the RMA period is eligible for RMA for any remaining months in the twelve-month RMA period. Eligibility for RMA is determined without a new eligibility determination or application.

**D:**] Residence changes must be reported within 10 days after the change for individuals placed in a public institution or those individuals moving out of New Mexico. Refer to 8.200.450 NMAC. [8.249.600.15 NMAC – Rp, 8.249.600.15 NMAC, 1/1/2019; A, 1/1/2023; A/E, 5/1/2025; A, 8/1/2025]

### MEDICAL BOARD -PODIATRY BOARD

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board is repealing 16.21.4 NMAC, Podiatrists - Expedited License by Reciprocity, effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board is repealing 16.21.5 NMAC, Podiatrists - Temporary License and Emergency License effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board is repealing 16.21.6 NMAC, Podiatrists - Licensure for Military Service Members, Spouses and Veterans effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.9 NMAC, Podiatrists - Management of Pain with Controlled Substances effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.11 NMAC, Podiatrists - Disciplinary Proceedings effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board is repealing 16.21.12 NMAC, Podiatrists - Management of Medical Records, effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.1 NMAC, Podiatrists - General Provisions and replacing it with 16.10.23 NMAC, Medicine and Surgery Practitioners - General Provisions, effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.2 NMAC, Podiatrists - Fees and replacing it with 16.10.24 NMAC, Medicine and Surgery Practitioners - Fees, effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.3 NMAC, Podiatrists - License By Exam and replacing it with 16.10.25 NMAC, Medicine and Surgery Practitioners - Licensure By Examination, Expedited Reciprocity, Expedited Licensure Military Service Members And Veterans, Temporary Licensure, And Emergency Licensure, effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.7 NMAC, Podiatrists - License Expiration and Renewal, replacing it with 16.10.29 NMAC, Medicine and Surgery Practitioners - License Expiration and Renewal, effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.8 NMAC, Podiatrists - Continuing Education and replacing it with 16.10.30 NMAC, Medicine and Surgery Practitioners - Continuing Education, effective July 29, 2025.

Pursuant to HB83 passed during the 2023 Legislative Session and signed by Governor Lujan Grisham on April 5, 2023, the Podiatry Board was transferred from Regulation and Licensing Department to the New Mexico Medical Board. New Mexico Medical Board is repealing 16.21.10 NMAC, Podiatrists - Lapse of License and Reinstatement and replacing it with 16.10.32 NMAC, Medicine and Surgery Practitioners - Lapse of License and Reinstatement, effective July 29, 2025.

### MEDICAL BOARD -PODIATRY BOARD

TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 10 MEDICINE AND
SURGERY PRACTITIONERS
PART 23 GENERAL
PROVISIONS

### 16.10.23.1 ISSUING

**AGENCY:** New Mexico Medical Board hereafter called the board, with the recommendations of the podiatry advisory committee, hereafter called the committee.

[16.21.1.1 NMAC - Rp, [16.10.23.1 NMAC - Rp/E, 16.21.1.1 NMAC 7/29/2025]

**16.10.23.2 SCOPE:** The provisions in 16.10.23 NMAC apply to all parts of Chapter 10 and provide information for applicants, licensed podiatric physician, board members, and members of the public. [16.10.23.2 NMAC - Rp/E, 16.21.1.2 NMAC 7/29/2025]

### 16.10.23.3 STATUTORY AUTHORITY: Podiatry Act, Subsection E of Section 61-8-6 NMSA 1978 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA1978. [16.10.23.3 NMAC - Rp/E, 16.21.1.3 NMAC 7/29/2025]

### **16.10.23.4 DURATION:**

Permanent.

[16.10.23.4 NMAC - Rp/E, 16.21.1.4 NMAC 7/29/2025]

### 16.10.23.5 **EFFECTIVE**

**DATE:** July 29, 2025, unless a later date is cited at the end of a section. [16.10.23.5 NMAC - Rp/E, 16.21.1.5 NMAC 7/29/2025]

### **16.10.23.6 OBJECTIVE:**

This part provides general provisions for the practice of podiatry, licensee responsibility, and requirements for the conduct of board business. [16.10.23.6 NMAC - Rp/E, 16.21.1.6 NMAC 7/29/2025]

### **16.10.23.7 DEFINITIONS:**

- A. "APMLE" means
  American podiatric medical licensing
  examination.
- **B.** "Board" means board The New Mexico medical board.
- C. "Committee" means podiatry advisory committee
- **D** "CPME" means the council on podiatric medical education.
- E. "NBPME" means the national board of podiatric medical examiners.
- F. "Practice of podiatry": means engaging in that primary health care profession, the members of which examine, diagnose, treat and prevent by medical, surgical and biomechanical means ailments affecting the human foot and ankle and the structures governing their functions, but does not include amputation of the foot or the personal administration of a general anesthetic.
- **G.** "Podiatric physician" is defined as a physician, pursuant to the laws of this state, and defined as a physician and surgeon within the scope of the podiatric physician license.
- H. "Foot and ankle radiation technologist" means a person who takes x-rays of the foot and ankle under supervision of the podiatric physician.
  [16.10.23.7 NMAC Rp/E, 16.21.1.7 NMAC 7/29/2025]

# 16.10.23.8 SCOPE OF PRACTICE:

- A. For the purpose of clarification of the Podiatry Act, Subsection C of Section 61-8-2 NMSA 1978, the practice of podiatry:
- (1) in regard to surgical treatment shall include the skin and subcutaneous tissues of the thigh and all structures distal to the knee.
- (2) does include amputation of any portion of the foot;
- (3) does allow the use of the services of a certified registered nurse anesthetist; and

- (4) a licensed podiatrist may assist a licensed medical or osteopathic physician in the performance of any surgery of the lower extremities.
- physician shall be recognized and permitted to supervise and administer hyperbaric oxygen following the published recommendations of the undersea and hyperbaric medical society, inc. "UHMS" and within the credentials and bylaws of the facility that operates the hyperbaric unit with the following stipulation; prior to administering hyperbaric oxygen, a podiatric physician must have on file with the, board, documentation certifying compliance with the above requirements.

[16.10.23.8 NMAC - Rp/E, 16.21.1.8 NMAC 7/29/2025]

### 16.10.23.9 LICENSE

**DISPLAY:** A valid license must be displayed and must be visible to the public in each place of business. [16.10.23.9 NMAC - Rp/E, 16.21.1.9 NMAC 7/29/2025]

# 16.10.23.10 RESPONSIBILITY OF LICENSEE: It is the

responsibility of the licensed podiatrist to keep the board informed of a current mailing address and email within 30 days of changes. All correspondence, including renewal forms, will be mailed or emailed to the last address on file. The board assumes no responsibility for renewal applications or other correspondence not received because of a change of mailing address or email address.

[16.10.23.10 NMAC - Rp/E, 16.21.1.10 NMAC 7/29/2025]

### **16.10.23.11 SEVERABILITY:**

The provisions of these regulations are severable. If any parts of these regulations are held invalid, the remaining provisions shall remain in force and effect.

[16.10.23.1 NMAC - Rp/E, 16.21.1.11 NMAC 7/29/2025]

# 16.10.23.12 COMMITTEE ORGANZIATION, POWERS AND DUTIES:

- A. The committee shall consist of three members, one member who shall be the executive director of the New Mexico podiatric medical association serving as an ex-officio member and two members who shall be podiatric physicians licensed to practice in New Mexico who have been actively engaged in the practice of podiatry for at least three consecutive years immediately prior to their appointments.
- В. Members of the committee shall be appointed by the board from a list of names submitted to the board by the New Mexico podiatric medical association or its authorized governing body or council. The list shall be submitted to the board within thirty days of a vacancy and shall contain at least three qualified podiatric physicians for each member appointed. Member vacancies shall be filled in the same manner. Committee members shall serve until their successors have been appointed and qualified.
- C. The Committee shall hold meetings in a frequency necessary to conduct business and shall meet at the request of the board. Meetings of the committee shall be subject to the Open Meetings Acts.
- **D.** The board, with the advice of the committee, shall administer and enforce the provisions of the podiatry act.

  [16.10.23.12 NMAC -Rp, 16.21.1.12 NMAC 7/29/2025]

# 16.10.23.13 ADVERTISING GUIDELINES:

- A. All advertisements shall include the podiatrist's name or medical group name, address and telephone number consistent with the Health Care Advertising Act, Section 57-27-1 NMSA 1978.
- **B.** Specialty practice: A podiatrist may only advertise a specialty practice if they qualify under one of the following provisions:
- (1) the licensee is board certified or board eligible by a recognized certifying board; if an abbreviation of the certifying board is used then the name of the certifying board must be included in the advertisement;

licensee is a fellow or an associate of a specialty organization which admits fellows and associates on the basis of an examination; if an abbreviation of the certifying board is used then the name of the certifying board must be included in the advertisement.

[16.10.23.13 NMAC - Rp/E, 16.21.1.14 NMAC 7/29/2025]

16.10.23.15 [RESERVED] 16.10.23.16 [RESERVED]

# HISTORY of 16.21.1 NMAC: Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives: Rule I, Conduct of Board Business,

filed 7/21/1980; Rule IX, Scope of Practice, filed

7/21/1980; Rule XI, Advertising by Licensees, filed 7/21/1980;

Rule XII, Inspection of Board Records, filed 11/29/1990; Rule XIV, Severability, filed 11/29/1990.

### **History of Repealed Material:**

Rule I, Conduct of Board Business (filed 7/21/1980); Rule IX, Scope of Practice (filed 7/21/1980); Rule XI, Advertising by Licensees (filed 7/21/1980); Rule XII, Inspection of Board Records (filed 11/29/1990); and Rule XIV, Severability, (filed 11/29/1990), repealed 10/15/2004. 16.21.1 NMAC, Podiatrists - General Provisions filed 9/15/2004, Repealed effective 7/29/2025.

### **Other History:**

Rule I, Conduct of Board Business (filed 7/21/1980); Rule IX, Scope of Practice (filed 7/21/1980); Rule XI, Advertising by Licensees (filed 7/21/1980); Rule XII, Inspection of Board Records (filed 11/29/1990); and Rule XIV, Severability, (filed 11/29/1990) all replaced by 16.21.1 NMAC, effective 10/15/2004. 16.21.1 NMAC, Podiatrists - General Provisions filed 9/15/2004 was replaced by 16.21.1 NMAC, Medicine

and Surgery Practitioners - General Provisions effective 7/29/2025.

### MEDICAL BOARD -PODIATRY BOARD

TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 10 MEDICINE AND
SURGERY PRACTITIONERS
PART 24 FEES

### 16.10.24.1 ISSUING

**AGENCY:** New Mexico Medical Board hereafter called the board, with the recommendations of the podiatry advisory committee, hereafter called the committee.

[16.10.24.1 NMAC - Rp/E, 16.21.2.1 NMAC, 7/29/2025]

**16.10.24.2 SCOPE:** Apply to all parts of Chapter 10 and provide information for applicants, licensed podiatric physician and members of the public.

[16.10.24.2 NMAC - Rp/E, 16.21.2.2 NMAC, 7/29/2025]

# **16.10.24.3 STATUTORY AUTHORITY:** Podiatry Act, Section 61-8-10 NMSA and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978. [16.10.24.3 NMAC - Rp/E, 16.21.2.3 NMAC, 7/29/2025]

# 16.10.24.4 DURATION: Permanent.

[16.10.24.4 NMAC - Rp/E, 16.21.2.4 NMAC, 7/29/2025]

### **16.10.24.5 EFFECTIVE**

**DATE:** July 29, 2025 unless a later date is cited at the end of a section. [16.10.24.5 NMAC - Rp/E, 16.21.2.5 NMAC, 7/29/2025]

**16.10.24.6 OBJECTIVE:** To establish fees to fund the cost of board operation.

[16.10.24.6 NMAC - Rp/E, 16.21.2.6 NMAC, 7/29/2025]

# 16.10.24.7 DEFINITIONS: [RESERVED]

[16.10.24.7 NMAC - Rp/E, 16.21.2.7 NMAC]

### 16.10.24.8 FEES:

**A.** Application fee for licensure by examination is \$400.00.

**B.** Application fee for licensure by reciprocity is \$600.00.

**C.** Duplicate license fee is \$25.00.

**D.** Temporary license fee is \$100.00.

**E.** Bi-annual renewal fee is \$600.00.

- F. Late fee for license renewal applications that are received but not complete, or not received or postmarked by December 31, is \$50 per month for each month or part thereof.
- **G.** Reinstatement fee is \$200.00 for the first twelve months of delinquency and \$500.00 for a license that has lapsed more than one year but not more than three years.
- H. Application for foot and ankle radiation technologists initial license fee in an amount not to exceed \$250. Renewal fee not to exceed \$100 per year.
- **I.** Fees for requests for copies of public records will be charged reasonable administrative fees.

[16.10.24.8 NMAC - Rp/E, 16.21.2.8 NMAC, 7/29/2025]

### **HISTORY of 16.21.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

Rule II, Initial Application For License, filed 7/21/1980; Rule II, Initial Application For License, filed 8/18/1989; Rule II, Initial Application For License, filed 11/29/1990; Rule II, Initial Application For License, filed 12/10/1990; Rule III, Licensure By Reciprocity, filed 7/21/1980;

Rule III, Licensure By Reciprocity, filed 8/18/1989;

Rule IV, Temporary Licenses, filed

7/21/1980;

Rule IV, Temporary License, filed 10/6/1987;

Rule IV, Temporary License, filed 8/18/1989;

Rule IV, Temporary License, filed 11/29/1990;

Rule VI, Renewal Of License, filed 7/21/1980;

Rule VI, Renewal Of License, filed 8/18/1989.

Rule XIII, Duplicate/Replacement License, filed 11/29/1990.

### **History of the Repealed Material:**

16 NMAC 21.3, Podiatry - Application For License By Examination (filed 6/17/1996); 16 NMAC 21.4, Podiatry - Application For License By Reciprocity (filed 6/17/1996); 16 NMAC 21.5, Podiatry - Application For Temporary License (filed 6/17/1996) - Repealed 10/15/2004.

16.21.2 NMAC, Podiatry - Fees, filed 9/15/2024 Repealed effective 7/29/2025.

### **Other History:**

Those applicable portions of Rule VI, Renewal Of License (filed 8/18/1989); 16 NMAC 21.3, Podiatry - Application For License By Examination (filed 6/17/1996); 16 NMAC 21.4, Podiatry - Application For License By Reciprocity (filed 6/17/1996); 16 NMAC 21.5, Podiatry - Application For Temporary License (filed 6/17/1996) replaced by 16.21.2 NMAC, Fees, effective 10/15/2004. 16.21.2 NMAC, Podiatry - Fees, filed 9/15/2024 Replaced by 16.10.24 NMAC, Podiatry Fees effective 7/29/2025.

# MEDICAL BOARD - PODIATRY BOARD

TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 10 MEDICINE AND
SURGERY PRACTITIONERS
PART 25 LICENSURE BY
EXAMINATION, EXPEDITED

RECIPROCITY, EXPEDITED LICENSURE MILITARY SERVICE MEMBERS AND VETERANS, TEMPORARY LICENSURE, AND EMERGENCY LICENSURE

### 16.10.25.1 ISSUING

**AGENCY:** New Mexico Medical Board hereafter called the board, with the recommendations of the podiatry advisory committee, hereafter called the committee.

[16.10.25.1 NMAC - Rp/E, 16.21.3.1 NMAC 7/29/2025]

### 16.10.25.2 SCOPE:

Applicants for licensure as a podiatric physician.

[16.10.25.2 NMAC - Rp/E, 16.21.3.2 NMAC 7/29/2025]

### 16.10.25.3 STATUTORY

AUTHORITY: Podiatry Act, Section 61-8-6 through 61-8-9, and 61-8-14, NMSA and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978. [16.10.25.3 NMAC - Rp/E, 16.21.3.3]

16.10.25.4 **DURATION**:

NMAC 7/29/2025]

Permanent. [16.10.25.4 NMAC - Rp/E, 16.21.3.4 NMAC 7/29/2025]

### 16.10.25.5 **EFFECTIVE**

**DATE:** July 29, 2025, unless a later date is cited at the end of a section. [16.10.25.5 NMAC - Rp/E, 16.21.3.5 NMAC 7/29/2025]

### **16.10.25.6 OBJECTIVE:**

This part lists the requirements and documentation, which must be submitted to the board to obtain licensure as a podiatric physician. [16.10.25.6 NMAC - Rp/E, 16.21.3.6 NMAC 7/29/2025]

### **16.10.25.7 DEFINITIONS:**

A. "APMLE" means American podiatric medical licensing examination.

B. "Background findings" the board may deny, or otherwise limit a license if it is

determined the applicant hold or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the Podiatric Act, the Uniform Licensing Act, Impaired Health Care Providers Act. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

- C. "Complaint/review committee" means a committee established by the board to review all complaints and applicants with background findings and to report to the board at its next scheduled meeting.
- **D.** "CPME" means the council on podiatric medical education.

# E. "Eligible jurisdiction" means:

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in of 16.21.4.8 NMAC; and

(2) any foreign country included in 16.21.4.9 NMAC.

### F. "Emergency"

for purposes of this rule means any sudden or unforeseen situation that requires immediate action. The sudden onset of physical or mental illness, injury, impairment, or other incapacitating condition by a New Mexico licensed podiatrist is considered an emergency.

- **G.** "Expedited license by reciprocity" means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.
- H. "Fellowship" the period of medical training a podiatrist may undertake after completing residency.
- I. "Good standing" means a license or registration is active and not expired, suspended,

revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

- J. "Jurisprudence exam" means an examination concerning the laws and rules of the New Mexico medical board and the Podiatry Act.
- K. "Jurisdiction" has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.
- L. "Military service member" has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.
- M. "NBPME" means the national board of podiatric medical examiners.
- N. "Preceptorship" a period of practical experience and training for a podiatric medical school or college that is not defined as a residency program approved by the council podiatric medical education (CPME) and supervised by a New Mexico licensed podiatric physician.
- O. "Qualified applicant" means an applicant who:
- (1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction.
- (2) does not have a disqualifying criminal conviction, as defined in the board's rules; and
- (3) is not subject to pending disciplinary action in New Mexico.
- **P.** "Veteran" has the same meaning as defined in Paragraph (3) of Subsection E of 61-1-34 NMSA 1978.

[16.10.25.7 NMAC - Rp/E, 16.21.3.7 NMAC 7/29/2025]

# 16.10.25.8 REQUIREMENTS FOR ALL LICENSEES: Each applicant for licensure as a podiatric

physician shall furnish evidence satisfactory to the board that the applicant:

- **A.** has reached the age of maturity. (Note statute states majority);
- **B.** has graduated and been awarded a doctor of podiatric medicine degree from a college of podiatric

medicine accredited by the American podiatric medical association council on podiatric medical education; and

- A minimum, a one-year residency program at a hospital accredited by the American podiatric medical association council on education;
- an application under oath on forms supplied by the board with a signature and a passport quality photo taken within the past six months; applications are valid for one year from the date of receipt shall pay the required fees;
- E. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. Each applicant for a license by examination must submit the required fees and following documentation: [16.10.25.8 NMAC Rp/E, 16.21.3.8 NMAC 7/29/2025]

### **16.10.25.9 LICENSURE BY**

**EXAMINATION:** An applicant for licensure by examination shall submit evidence to the board that the applicant has passed the examinations administered by the national board of podiatry medical examiners for students graduating from colleges of podiatry and shall furnish the board an official transcript and take clinical and written examinations as the board deems necessary. The examinations shall be in English and the subjects covered by the examinations shall be determined by the board and taken from subjects taught in accredited colleges of podiatric medicine. No applicant for licensure by examination shall be licensed who has not received a passing score on all board-approved examinations.

16.10.25.9 NMAC - N, 7/29/2025]

# 16.10.25.10 DOCUMENTATION REOUIREMENTS:

- A. official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;
- B. certificate or letter from residency director verifying completion of residency program approved by the CPME and has completed, at a minimum, a one-year residency program at a hospital accredited by the American podiatric medical association council on education residency program;
- C. proof that the applicant has passed the NBPME examinations sent directly from the NBPME;
- D. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification from the other state(s) must be received electronically, and must attest to the status, issue date, license number, and other information contained in the form; and
- E. electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section 14-16-19 NMSA 1978.

[16.10.25.10 NMAC - Rp/E, 16.21.3.9 NMAC 7/29/2025]

# 16.10.25.11 EXPEDITED LICENSURE BY RECIPROCITY:

- A. A candidate for expedited licensure by reciprocity under Section 61-1-31.1 NMSA 1978 of the Uniform Licensing Act must submit to the board a complete application containing all the following:
- (1) proof of current licensure in an eligible jurisdiction as defined in these rules;
- (2) certificate of good standing for the license held by the applicant in an eligible jurisdiction;
- (3) official transcripts from the school of podiatric medicine or college, to be

sent directly to the board office from the accredited program;

- (4) certificate or letter from residence director verifying completion of residence program approved by the CPME;
- of active practice for the three consecutive years immediately preceding the date of application (such proof may include a letter from an accountant, the professional society, tax forms, or other documentation approved by the board):
- **B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by 16.10.3.11 NMAC, including documentation from third parties.
- C. Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.
- **D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-8-11 NMSA 1978:
- (1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- (2) the license may not be issued within 30 days of submission of the complete application; and
- (3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.10.25.11 NMAC - N, 7/29/2025]

### 16.10.25.12 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS.

Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure by reciprocity under Section 61-8-9 NMSA 1978 of the Podiatry Act:

- A. American Samoa, on the grounds that the board cannot determine the education or examination requirements in this jurisdiction;
- **B.** Guam, on the grounds that this jurisdiction does not require licensees to pass any examination;
- C. Kentucky and Pennsylvania, on the grounds that these jurisdictions do not require licensees to complete a residency program;
- D. Minnesota, New Jersey, and Puerto Rico, on the grounds that these jurisdictions do not require licensees to pass Part III of the NBPME AMPLE exam considered by New Mexico to be an integral portion of the national examinations to determine competency to practice podiatry;
- E. Montana, North Carolina and North Dakota, on the grounds that the boards cannot determine sufficiency of residency requirements in these jurisdictions; and
- F. Virgin Islands, on the grounds that the board cannot determine the examination requirements in this jurisdiction.

  [16.10.25.12 NMAC N, 7/29/2025]

### 16.10.25.13 LIST OF APPROVED FOREIGN JURISDICTIONS. Applicants licensed in the following foreign countries outside of the United States may be eligible for expedited licensure under Section 61-8-9 NMSA 1978 of the Podiatry Act:

**A.** Spain; and **B.** Canada.

[16.10.25.13 NMAC - N, 7/29/2025]

### 16.10.25.14 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:

A. A candidate for expedited licensure by reciprocity under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

- (1) a completed and signed application form:
- (2) proof of current license in another jurisdiction; (3) certificate

of good standing for the license held by the applicant in another jurisdiction, including a branch of the United States armed forces;

(4) submission of the following documentation:

(a)

for military service member: a copy of military orders;

**(b)** 

for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c)

for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d)

for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following; a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e)

for veterans (retired or separated): proof of honorable discharge such as a copy of DD 214, DD 215, DD 256, DD 257, NGB Form 22, Military ID card, a driver's license or state ID card with a veterans designation, or other documentation as provided by a governmental entity verifying an honorable discharge.

- B. An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of all of the materials required by 16.21.4.20 NMAC, including documentation from third parties.
- C. Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

- D. If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-8-11 NMSA 1978:
- (1) matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;
- the **(2)** license may not be issued within 30 days of submission of the complete application; and
- **(3)** the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.
- Ε. A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board. [16.10.3.14 NMAC - N, 7/29/2025]
- 16.10.25.15 **TEMPORARY LICENSE:** A temporary license may be issued by the board in the following situations.
- A. In cases of emergency as determined by the board; a temporary license to practice as a podiatric physician may be issued under this rule for practice in the office of a New Mexico licensed podiatrist who is unable to continue his or her practice due to an emergency.
- To facilitate В. educational programs; a temporary license to practice podiatry in New Mexico may be issued to:
- **(1)** participant in a residency training program located in New Mexico accredited by the "CPME" and insure that at all times throughout the program the temporary license holder is supervised by a New Mexico licensed podiatrist; or
- **(2)** participant in a residency program that is located in the United States accredited by the "CPME" and insure that at all times the temporary license holder is supervised by a New Mexico

licensed podiatrist, if the program offers part of its program residency in New Mexico;

**(3)** participant in a post-graduate one year preceptorship program in New Mexico that at all times throughout the program is supervised by a New Mexico licensed podiatrist(s) in good standing and without restriction(s) of license; the board requires the supervising podiatrist(s) of this preceptorship to have notified the board in writing of the start and end dates for this post-graduate training position;

**(4)** participant in a Fellowship program known and listed by a recognized medical specialty organization provided that at all times the temporary license holder is supervised by a New Mexico Licensed podiatrist.

In cases to assist C. or perform surgical procedures with a licensed New Mexico podiatrist which is beyond the training and experience available in New Mexico [16.10.25.15 NMAC - N, 7/29/2025]

### 16.10.25.16 **TEMPORARY** LICENSE DOCUMENTATION **REQUIREMENTS:** Each

applicant for a temporary license must submit the required fees and submit or provide for the following documentation set forth in 16.10.3.8 NMAC.

[16.10.25.16 NMAC - N, 7/29/2025]

16.10.25.17 DISASTER **RELATED LICENSE:** Podiatric physician currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure, in a state in which a disaster has been declared by federal authorities, may apply for a license in New Mexico during the four months following the date the disaster was declared, at no cost.

[16.10.25.17 NMAC - N, 7/29/2025]

### 16.10.25.18 **DISASTER** RELATED LICENSE **DOCUMENTION**

**REQUIREMENTS:** Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.10.3.8 NMAC. Upon receipt of a completed application, including all required documentation designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be reviewed by the complaint/review committee. The board may formally accept the recommendation of the complaint/ review committee at the next scheduled meeting.

[16.10.25.18 NMAC - N, 7/29/2025]

16.10.25.19 **REPORTS:** The board requires obtainment of reports from the national practitioners data bank or other national reporting organization and the federation of podiatric medical boards disciplinary data bank.

[16.10.25.19 NMAC - Rp/E, 16.21.10 NMAC 7/29/2025]

### 16.10.25.20 LICENSURE

PROCEDURE: Upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may ratify the approval of the application at the next scheduled board meeting. Any application which cannot be approved by the designee of the board will be reviewed by the board at the next scheduled meeting.

[16.10.25.20 NMAC - Rp/E, 16.21.3.11 NMAC 7/29/2025]

### **HISTORY of 16.21.3 NMAC: Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives: Rule II, Initial Application for License, filed 7/21/1980; Rule II, Initial Application for License, filed 8/18/1989; Rule II, Initial Application for

License, filed 11/29/1990; Rule II, Initial Application for License, filed 12/10/1990; Rule V. Examinations, filed 9/11/1989.

### **History of the Repealed Material:**

16 NMAC 21.3, Podiatry -Application for License by Examination, repealed 10/15/2004. 16.21.3 NMAC, Podiatrists - License by Exam filed 9/15/2004, Repealed effective 5/3/2019. 16.21.3 NMAC, Podiatrists - License by Exam filed 4/3/2019, Repealed

### **Other History:**

effective 7/29/2025.

Rule II, Initial Application for License (filed 12/10/1990) was renumbered, reformatted and replaced by 16 NMAC 21.3, Podiatry - Application for License By Examination, effective 7/1/1996.

Rule V, Examinations, (filed 9/11/1989) and 16 NMAC 21.3, Podiatry - Application for License by Examination (filed 6/17/1996) were replaced by 16.21.3 NMAC, License by Exam, effective 10/15/2004. 16.21.3 NMAC, Podiatrists -License by Exam filed 9/15/2004 was Replaced by 16.21.3 NMAC, Podiatrists - License by Exam effective 5/3/2019.

16.21.3 NMAC, Podiatrists - License by Exam filed 4/3/2019 was replaced by 16.10.25 NMAC, Medicine And Surgery Practitioners - Licensure By Examination, Expedited Reciprocity, Expedited Licensure Military Service Members And Veterans, Temporary Licensure, And Emergency Licensure effective 7/29/2025.

### **MEDICAL BOARD -**PODIATRY BOARD

**TITLE 16** OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND **SURGERY PRACTITIONERS PART 29 LICENSE** EXPIRATION AND RENEWAL

### **ISSUING** 16.10.29.1

**AGENCY:** New Mexico Medical Board hereafter called the board, with the recommendations of the podiatry advisory committee, hereafter called the committee.

[16.10.29.1 NMAC - Rp/E, 16.21.7.1 NMAC 7/29/2025]

16.10.29.2 **SCOPE:** The provisions in 16.10.29.2 NMAC apply to all parts of Chapter 10 and provide information for applicants, licensed podiatric physician, board members, council and members of the public. [16.10.29.2 NMAC, - Rp. 16.21.7.2 NMAC 7/29/2025]

16.10.29.3 **STATUTORY AUTHORITY:** Podiatry Act, Section 61-8-10 NMSA and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978. [16.10.29.3 NMAC - Rp/E, 16.21.7.3 NMAC 7/29/2025]

### 16.10.29.4 **DURATION:**

Permanent. [16.10.29.4 NMAC - Rp/E, 16.21.7.4 NMAC 7/29/2025]

16.10.29.5 **EFFECTIVE DATE:** July 29, 2025 unless a later date is cited at the end of a section.

[16.10.29.5 NMAC - Rp/E, 16.21.7.5 NMAC 7/29/2025]

### 16.10.29.6 **OBJECTIVE:**

To establish procedures for license expiration and renewal. [16.10.29.6 NMAC - Rp/E, 16.21.7.6 NMAC 7/29/2025]

### 16.10.29.7 **DEFINITIONS:** [RESERVED]

[16.10.29.7.NMAC - Rp/E, 16.21.7.7 NMAC 7/29/2025]

16.10.29.8 LICENSE **EXPIRATION:** Podiatric licenses expire on January 1 of every second year.

[16.10.29.8 NMAC - Rp/E, 16.21.7.8 NMAC 7/29/2025]

16.10.29.9 RENEWAL **DEADLINE:** All licensee shall renew their licenses on or before

January 1 of every second year. A completed renewal application accompanied by the required fees, documentation of 32 hours of continuing education as defined in 16.10.8.13 NMAC, must be received electronically on or before January 1 of each renewal year. Fourteen hours of CE is required for the renewal years before January 2, 2105 on or after January 2, 2015 the CE requirement is 32 hours of CE, including 2 hours of pain management for each year of the renewal cycle. As a condition of renewal, all applicants shall furnish the board with evidence of completion of postgraduate study as required by board rule. [16.10.29.9 NMAC - Rp/E, 16.21.7.9

NMAC -7/29/2025]

16.10.29.10 LICENSEE **RESPONSIBILITY:** The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received thirty days prior to license expiration. [16.10.29.10 NMAC - Rp/E, 16.21.7.10 NMAC 7/29/2025]

### 16.10.29.11 **LATE**

**RENEWAL:** Renewal applications that are not received electronically or hand-delivered to the board office by January 1 must be accompanied by the completed renewal application as defined in [16.21.7.9] 16.10.7.9 NMAC and late fees defined in Subsection F of 16.10.2.8 NMAC. [16.10.29.11 NMAC - Rp/E, 16.21.7.11 7/29/2025]

16.10.29.12 **SUMMARY** SUSPENSION: A license that is not renewed by March 1 may be summarily suspended by the board. [16.10.29.12 NMAC - Rp/E, 16.21.7.12 7/29/2025]

### **HISTORY of 16.21.7 NMAC: Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

Rule VI, Renewal of License, filed 7/21/1980:

Rule VI, Renewal of License, filed 8/18/1989.

### **History of Repealed Material:**

Rule VI, Renewal of License (filed 8/18/1989), Repealed 10/15/2004. 16.21.7 NMAC, Podiatrists - License Expiration And Renewal (filed 9/15/2004), Repealed effective 7/29/2025.

### **Other History:**

Rule VI, Renewal of License (filed 8/18/1989) was renumbered, reformatted and replaced by 16.21.7 NMAC, License Expiration and Renewal, effective 10/15/2004. 16.21.7 NMAC, Podiatrists - License Expiration And Renewal (filed 9/15/2004), Replaced by 16.10.29 NMAC, Podiatrists - License Expiration And Renewal effective 7/29/2025.

### MEDICAL BOARD -PODIATRY BOARD

TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 10 MEDICINE AND
SURGERY PRACTITIONERS
PART 30 CONTINUING
EDUCATION

### 16.10.30.1 ISSUING

**AGENCY:** New Mexico Medical Board hereafter called the board, with the recommendations of the podiatry advisory committee, hereafter called the committee.

[16.10.30.1 NMAC - Rp/E, 16.21.8.1 NMAC 7/29/2025]

**16.10.30.2 SCOPE:** The provisions in 16.10.30.2 NMAC apply to all parts of Chapter 10 and provide information for applicants, licensed podiatric physician, board members, council and members of the public. [16.10.30.2 NMAC - Rp/E, 16.21.8.2 NMAC 7/29/2025]

16.10.30.3 STATUTORY AUTHORITY: Podiatry Act,

Section 61-8-6 NMSA 1978 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978. [16.10.30.3 NMAC - Rp/E, 16.21.8.3 NMAC 7/29/2025]

### 16.10.30.4 **DURATION:**

Permanent.

[16.10.30.4 NMAC - Rp/E, 16.21.8.4 NMAC 7/29/2025]

# **16.10.30.5 EFFECTIVE DATE:** July 29, 2025 unless a later date is cited at the end of a section. [16.10.30.5 NMAC - Rp/E, 16.21.8.5 NMAC 7/29/2025]

### **16.10.30.6 OBJECTIVE:**

To establish the criteria, standards, approval requirements, verification and waiver requirements, for post-graduate study required by the board for license renewal.

[16.10.30.6 NMAC - Rp/E, 16.21.8.6 NMAC 7/29/2025]

# 16.10.30.7 DEFINITIONS: [RESERVED]

[16.10.30.7 NMAC - Rp/E. 16.21.8.7 NMAC 7/29/2025]

### 16.10.30.8 HOURS

REQUIRED: Thirty-two hours of continuing education are required biannually, with two hours specifically related to pain management for each year of the renewal cycle as defined in 16.10.30.11 NMAC. Initial licenses issued for a period of less than six months do not require any continuing education for the initial licensing period. Licenses issued for more than six months but less than 12 months require eight hours of continuing education for the initial licensing period.

- A. Continuing education coursework must contribute directly to the practice of podiatric medicine.
- **B.** One hour of credit will be granted for every contact hour of instruction. This credit shall apply to either academic or clinical instruction.

[16.10.30.8 NMAC - Rp/E, 16.21.8.8 NMAC 7/29/2025]

# **16.10.30.9 APPROVED COURSES:** Continuing education courses offered or sponsored by the following organizations are automatically approved by the board:

- A. a college of podiatric medicine which is accredited by the council podiatric medical education (CPME) of the American podiatric medical association;
- **B.** constituent society of the American podiatric medical association:
- **C.** an organization or sponsor approved by the "CPME" of the American podiatric medical association; or
- **D.** hospital or other health care organizations sponsored in-service programs related to the practice of podiatry. [16.10.30.9 NMAC Rp/E, 16.21.8.9 NMAC 7/29/2025]

# 16.10.30.10 APPROVAL REQUIREMENTS: Any course not sponsored by a recognized provider may be approved by the designee of the board. The application for approval must include the name of the course, the sponsor, course outline, date, location, hours, names and qualifications of presenters, and the method that will be used to certify attendance.

[16.10.30.10 NMAC - Rp/E, 16.21.8.10 NMAC 7/29/2025]

# 16.10.30.11 ALLOWED COURSES AND PROVIDERS:

The following courses and activities are acceptable for CME credit for each year of the renewal cycle:

- A. Post Graduate Education: This category includes internships, residencies and fellowships, 14 hours of credit allowed for full time participants.
- B. Specialty Training/Certifications: Four hours of credit per certificate for specialty training with a maximum of 10 hours per year. A maximum of 10 hours of credit is allowed for certification with a CPME approved board initially obtained or renewed within the license renewal cycle.

- C. Teaching: One credit hour is allowed for each hour of teaching medical students or physicians in a United States medical school, an approved residency/ fellowship or for teaching in other programs approved by the board with maximum of 10 hours per reporting.
- D. Physician
  Preceptors/Mentors: A maximum
  of five hours of credit during a year
  reporting period is acceptable for
  licensed podiatrists who are acting
  as preceptors/mentors for students
  enrolled in an accredited medical
  degree program or as preceptors/
  mentors for students enrolled in
  a combined bachelor of arts and
  medical degree program.
- E. Papers and
  Publications: 10 hours of credit are allowed for each original scientific medical paper or publication written by a licensee. For acceptance, papers must have been presented to a recognized national, international, regional or state society or organization whose membership is primarily physicians; or must have been published in a recognized medical or medically related scientific journal.
- F. Advanced Life Support: A maximum of eight hours of credit may be claimed during reporting period for successful completion of advanced cardiac life support (ACLS), pediatric advanced life support (PALS), advanced trauma life support (ATLS) and neonatal advanced life support (NALS) courses.

[16.10.30.11 NMAC - Rp/E, 16.21.8.11 NMAC 7/29/2025]

# **16.10.30.12 VERIFICATION OF COURSE ATTENDANCE:** The following documents, or combination of documents, may be used to verify attendance in required continuing education.

- A. Course certificate with the course title, content, presenter, sponsor and hours.
- **B.** Course attendance sheet submitted by the sponsor.
- C. Course code or statement of attendance from

presenter or sponsor. [16.10.30.12 NMAC - Rp/E, 16.21.8.12 NMAC 7/29/2025]

## 16.10.30.13 VERIFICATION OF CONTINUING EDUCATION

HOURS: Each podiatrist renewing a license shall attest that they have obtained the required hours of continuing medical education (CME). Documentation of CME is not required unless you are selected for the annual CME compliance audit. If you are selected for audit you will be notified and provided with instructions for compliance. The board may audit CME records at any time, so CME records must be maintained for at least one year following the renewal cycle in which they are earned.

[16.10.30.13 NMAC - Rp/E, 16.21.8.13 NMAC 7/29/2025]

# 16.10.30.14 ACCEPTABLE DOCUMENTATION OF CME INCLUDES:

- **A.** Photocopies of original certificates or official letters from course sponsors or online providers.
- **B.** Postgraduate CME hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.
- C. Advanced degree studies must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.
- **D.** Teaching hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.
- E. Preceptor hours must be documented and attested either by the dean of the medical school, the chief of service, the course director, or an equivalent authority.
- F. Papers or publications must be documented with a copy.
  [16.10.30.14 NMAC Rp/E,

16.21.8.14 NMAC 7/29/2025]

**16.10.30.15 WAIVER OF REQUIREMENTS:** Waivers of the continuing education requirement may be considered for the following situations for licensees.

- **A.** During periods of prolonged illness or physical incapacity.
- (1) For the purposes of this rule, the duration of a prolonged illness or physical incapacity period will be defined as longer than six months.
- Any licensee who wishes to apply for this type of waiver of continuing education must submit in writing a letter detailing the nature of the illness or incapacity and its probable duration. The board will review this waiver request and allow the licensee or the licensee's representative to attend board meeting to present evidence of support of this waiver request and to speak to the board concerning the petition for waiver. The burden shall be on the licensee to prove to the board the necessity of the waiver. The decision of the board on the waiver shall be final.
- Any licensee who В. believes that the licensee is entitled to a waiver of a continuing education requirement for reasons of prolonged illness or physical incapacity shall request such a waiver by sending the board a letter from his or her physician setting out in detail the nature of the illness or incapacity and its probable duration. The board shall notify the licensee in writing of the date on which the application will be considered by the board. The licensee or the licensee's representative may attend the meeting, present evidence on behalf of a petition for waiver, and to speak to the board concerning the petition. The burden shall be on the licensee to satisfy the board of the necessity of the waiver. The decision of the board on the waiver shall be final.
- C. Licensee in the United States military practicing or residing outside the United States shall not be required to fulfill the continuing education requirements for the period of the absence.

(1) The board must be notified prior to license expiration that the licensee will be outside the United States, including the period of the absence.

return to the United States, the licensee shall complete the continuing education required for the years of practice within the US during the renewal cycle, or apply in writing to the board detailing reason for deferral of this requirement.

D. Applications for waiver under this section must be filed as soon as the licensee has reason to believe that grounds for the waiver exist.

[16.10.30.15 NMAC - Rp/E, 16.21.8.15 NMAC 7/29/2025]

# 16.10.30.16 EXTENSION TO MEET REQUIREMENTS: The

board may extend the time in which a licensee may meet the required continuing education requirements.

A. A licensee unable to fulfill the continuing education requirements may apply to the board for an extension of time in which to meet educational requirements. Extensions of up to three months may be granted by the board or its designee. Licensees granted an extension must pay the late fee defined in Subsection F of 16.10.24.2 NMAC to cover the cost of additional processing requirements.

**B.** A licensee who is unable to fulfill the requirements within the three month extension must apply to the board for an additional extension.

[16.10.30.16 NMAC - Rp/E, 16.21.8.16 NMAC 7/29/2025]

# HISTORY of 16.21.8 NMAC: Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

Rule VII, Continuing Education, filed 7/21/1980.

Rule VII, Continuing Education, filed 10/6/1987.

Rule VII, Continuing Education, filed 8/18/1989.

### **History of Repealed Material:**

Rule VI, Renewal Of License (filed 8/18/1989), repealed 10/15/2004.
16.21.8 NMAC, Podiatrists Continuing Education filed 9/15/2004,
Repealed effective 5/3/2019.
16.21.8 NMAC, Podiatrists Continuing Education filed 4/3/2019,
Repealed effective 7/29/2025.

Rule VII, Continuing Education

### **Other History:**

7/29/2025.

(filed 8/18/1989) was renumbered, reformatted and replaced by 16.21.8 NMAC, Continuing Education, effective 10/15/2004.
16.21.8 NMAC, Podiatrists Continuing Education filed 9/15/2004 was replaced by 16.21.8 NMAC, Podiatrists - Continuing Education effective 5/3/2019.
16.21.8 NMAC, Podiatrists Continuing Education filed 4/3/2019, Replaced by 16.10.30 NMAC, Medicine And Surgery Practitioners - Continuing Education effective

### MEDICAL BOARD -PODIATRY BOARD

TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 10 MEDICINE AND
SURGERY PRACTITIONERS
PART 32 LAPSE
OF LICENSE AND
REINSTATEMENT

### 16.10.32.1 ISSUING

**AGENCY:** New Mexico Medical Board hereafter called the board, with the recommendations of the podiatry advisory committee, hereafter called the committee.

[16.10.32.1 NMAC - Rp/E, 16.21.10.1 NMAC 7/29/2025]

16.10.32.2 SCOPE: Podiatric physicians licensed in New Mexico who do not submit an application for license renewal within 60 days of the expiration date.

[16.10.32.2 NMAC - Rp/E, 16.21.10.2 NMAC 7/29/2025]

### 16.10.32.3 STATUTORY

**AUTHORITY:** This rule is promulgated pursuant to the Podiatry Act, 61-8-10 and 61-8-10.1 NMSA 1978 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.32.3 NMAC - Rp/E, 16.21.10.3 NMAC 7/29/2025]

### 16.10.32.4 **DURATION**:

Permanent.

[16.10.32.4 NMAC - Rp/E, 16.21.10.4 NMAC 7/29/2025]

### 16.10.32.5 **EFFECTIVE**

**DATE:** July 29, 2025 unless a later date is cited at the end of a section. [16.10.32.5 NMAC - Rp/E, 16.21.10.5 NMAC 7/29/2025]

### **16.10.32.6 OBJECTIVE:** To

establish the procedures and policies for podiatric licenses that are not renewed within 60 days of the date of expiration.

[16.10.32.6 NMAC - Rp/E, 16.21.10.6 NMAC 7/29/2025]

# 16.10.32.7 DEFINITIONS: [RESERVED]

## 16.10.32.8 LICENSE SUSPENSION FOR NON-

**RENEWAL:** Unless an application for license renewal is received by the board office, or post-marked, before March 1, the license may be summarily suspended.

[16.10.32.8 NMAC - Rp/E, 16.21.10.8 NMAC 7/29/2025]

# 16.10.32.9 REINSTATEMENT OF SUSPENDED LICENSE: A

podiatrist may request reinstatement of a lapsed license within three years from the date the license expired by notifying the board in writing. Upon receipt of the request for reinstatement, board staff will send a reinstatement application. The board may designate a professional background information service, which compiles background information regarding an applicant from multiple sources. The following information is required for the request to be considered:

- A. a completed application, payment of the reinstatement fee, any delinquent renewal fees, and proof of sixteen hours of continuing education per the year of renewal and each full year the license was allowed to lapse;
- **B.** the application may be approved by the designee of the board if the application is complete and all requirements have been fulfilled:
- C. verification of licensure in all states where the applicant holds or has held a license to practice podiatry, or other health care profession; verification must be sent directly to the board office from the other state(s) and must attest to the status, issue date, license number, and other information contained in the form:
- p. the board required reports from the national practitioners data bank, or other national reporting organization, and the federation of podiatric medical boards disciplinary data bank if the applicant is currently licensed, or has previously been licensed as a podiatrist in another state:
- **E.** no podiatrist shall reactivate or resume their podiatric practice until his or her lapsed license is reinstated and a new license is issued:
- F. upon receipt of a completed application, including all required documentation and fees, the designee of the board will review and may approve the application. The results of the background check must either indicate no negative findings, or if there are negative findings, those findings will be considered by the board. The board may formally accept the approval of the application at the next scheduled meeting.

  [16.10.32.9 NMAC Rp/E,
  16.21.10.9 NMAC 7/29/2025]

16.10.32.10 REINSTATEMENT FOR LICENSEES WHO PRACTICE AS MEDICAL OFFICERS IN THE UNITED STATES SERVICE: Licensed podiatrists who practice podiatry

in the uniformed services may reinstate their expired New Mexico license within three months after the termination of such service without payment of any renewal, late or reinstatement fees as per the Podiatry Act, Subsection C of Section 61-8-10 NMSA 1978. Individuals using this option must notify the board prior to the expiration date of their license that they will not renew until the time they terminate their uniformed service practice.

[16.10.32.10 NMAC - Rp/E, 16.21.10.10 NMAC 7/29/2025]

# HISTORY of 16.21.10 NMAC: Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:
Rule VI, Renewal of License, filed 7/21/1980;
Rule VI, Renewal of License, filed

### History of the Repealed Material:

Rule VI, Renewal of License (filed 8/18/1989), repealed 10/15/2004. 16.21.10 NMAC, Podiatrists - Lapse of License and Reinstatement filed 4/3/2013, Repealed effective 7/29/2025.

### **Other History:**

8/18/1989.

That applicable portion of Rule VI, Renewal of License (filed 8/18/1989) was replaced by 16.21.10 NMAC, Lapse of License and Reinstatement, effective 10/15/2004.
16.21.10 NMAC, Podiatrists - Lapse of License and Reinstatement filed 4/3/2013 was replaced by 16.10.32 NMAC, Medicine And Surgery Practitioners - Lapse of License and Reinstatement effective 7/29/2025.

# PUBLIC REGULATION COMMISSION

This is an Amendment to 17.11.10 NMAC, Sections 19 & 31 effective 7/29/2025.

17.11.10.19 ANNUAL DETERMINATION OF FUND:

- A. The administrator shall determine the amount of the fund for the next calendar year and submit its findings to the commission on or before November 10 of each year to enable commission approval on or before November 20 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.
- B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund amount greater than that which the commission has previously established, the commission may order an adjustment to the amount of the fund, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.
- C. The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance; provided however, the total amount of the fund shall not exceed a cap of thirty million dollars (\$30,000,000.00) per year.
- **D.** Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.
- Except where E. the commission has established an alternative or additional amount pursuant to 17.11.10.25 or <del>17.11.10.31 NMAC,</del>] In 2025 and 2026, the annual revenue requirement for support pursuant to Subsection K of Section 63-9H-6 NMSA 1978, [2018 and each year thereafter] for each ETC that was an ETC [eligible] as of July 1, 2005, and is a local exchange carrier, shall be equal to the carrier's revenue requirement for 2023. [2014 SRUSF revenue requirement adjusted by the annual percentage change in the number of access lines served by the carrier as of December 31 of the prior calendar

year compared to the number of access lines served by the carrier as of December 31, 2014, and then reduced by the carrier's imputed benchmark revenue. For 2021, the access lines used for the comparisonto 2014 shall be as of December 31, 2019, adjusted annually thereafter. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed benchmark revenue. | Support pursuant to Subsection K of Section 63-9H-6 NMSA 1978, for each ETC that was an ETC as of July 1, 2005, and is a local exchange carrier, shall terminate after December 31, 2026.

- requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.
- G. For an ETC that is not eligible for funding pursuant to rate rebalancing per Subsection K of Section 63-9H-6 NMSA 1978 that has been previously authorized for support pursuant to [Subsection M] Subsection N of Section 63-9H-6 NMSA 1978, that ETC may petition for ongoing funding pursuant to [Subsection K] Subsection M of Section 63-9H-6 NMSA 1978, subject to the following:
- (1) the commission shall award an applicant ongoing fund support at no less than the average access line amount of funding support for comparable carriers; provided that an eligible telecommunications carrier receiving fund support pursuant to the subsection shall not offer basic local exchange residential and business services at rate levels lower than the rates for such services charged by any of the comparable carriers used for the determination of the level of support;
- (2) the commission shall act upon a request

for ongoing fund support within one hundred twenty days of the filing of the request.

[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 3/12/2024; A, 7/29/2025]

## 17.11.10.31 BROADBAND PROGRAM:

It is the goal of Α. the commission that New Mexico consumers have access to high-quality broadband service from both wireline and mobile broadband providers. Pursuant to [Subsection N] Subsection O of Section 63-9H-6, NMSA 1978, ETCs may separately apply to the commission for grants to fund the construction and maintenance of facilities that are capable of providing broadband internet access service to areas unserved or underserved by broadband in the state. Applications must be primarily for coverage of the construction costs of new facilities, but such applications may include a request for maintenance costs of those facilities as well. Each grant that is awarded will provide up to seventy-five percent of the budgeted project cost, with the ETC applying the remainder from its own funds. Projects receiving any source of third-party funding other than potential loan funds, FCC high-cost fund legacy support or connect America fund support (including mobility fund support) will not be eligible. Each applicant shall provide a detailed description in their application of the origin and type of funding provided for the carrier match, and a certification that those monies are not duplicative of other purposes or projects other than SRUSF broadband program projects. In evaluating applications, the commission shall seek to avoid duplication of service using the same technology. Awards of support under this section shall be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. For purposes of administering the broadband program, the commission may find that a broadband program proposed project area is a rural area,

notwithstanding the definition of rural area in Subsection U of 17.11.10.7 NMAC, if it determines that:

- (1) the area otherwise has the characteristics of a rural area;
- (2) the area is unserved or underserved by broadband; and
- (3) the public interest requires that the area be classified as rural.
- Funding of the broadband program. [At least eightmillion dollars (\$8,000,000.00) of the fund shall be dedicated annually to the broadband program.] Each year, the commission will dedicate an amount equal to thirty million dollars (\$30,000,000), less the amounts expended pursuant to Subsections K, L, M and N of Section 63-9H-6 NMSA 1978, to the broadband program. The amount of funding allocated to the broadband program shall not be subject to proration under Subsection E of 17.11.10.20 NMAC. [ To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the followingyear.]
- Applicants for broadband program grants may request that company-specific information contained within an application be treated as confidential. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The commission staff or a third-party contractor, shall keep confidential all company-specific information obtained from applicants for broadband program grants for which confidential treatment is requested. shall not use such information except for purposes of analyzing the

applications, and shall not disclose such information in company-specific form unless directed to do so by the commission.

D. Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including, without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

(1) support broadband internet access service at speeds of at least 25.0 Mbps download/3.0 Mbps upload to all households and businesses in the proposed project area;

voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services and mobile voice services;

(3) support access to emergency 911 services; and (4) offer

a latency that is sufficiently low to support real-time, interactive applications.

- E. Contents of grant applications. An application for support from the broadband program shall include, at a minimum:
- (1) a proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC;
- (2) a detailed build plan setting forth a description of the facilities to be deployed, including all costs of constructing facilities; and

(3) a map showing where service and coverage will be provided. This requirement can be met by providing;

(a)

for a wireline network, a map showing all homes, businesses, and other end user locations passed; or

**(b)** 

for a wireless network, a coverage map generated using a radio

frequency propagation tool generally used in the wireless industry;

estimate of the number of road miles and square miles to be covered and population and population density of the area covered;

amount of support requested from the broadband program and the amount of the applicant's financial match, and a description of any type, amount, and purpose of subsidy or financial support the applicant is currently receiving or is scheduled to receive in the area designated in the application;

description of the technology to be deployed, including data throughput speeds and latency characteristics of the service to be delivered to customers:

**(7)** 

a demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC. If the area to be served contains served, unserved and underserved areas, the application and map shall identify which portions of the area are served, unserved and which are underserved. Each served, unserved, and underserved area shall be clearly identified through color coding on the map submitted with the application. Each served, unserved, and underserved area shall be clearly identified through individual color coding indicators on all city street grid maps submitted with the applications. Satellite views are not acceptable for the application's requirement for mapping;

(8) a demonstration of the estimated customer subscription rates and revenues from the services to be offered as a result of the proposed construction sufficient to justify support from the broadband program;

commitment to provide a minimum twenty-five percent match of funds;

(10) if the project is a wireless network deployment, a commitment to allow collocation on reasonable terms by

other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program;

(11) sample terms and conditions for the service and proposed prices;

(12) explain how the proposed deployment will contribute to the enhancement of digital equity and digital inclusion in the proposed service territory;

(13) explain how the awards of support are consistent with federal universal service support programs;

(14)

a certification by an authorized representative affirming that all information set forth in the application is true and correct;

requirements to ensure accountability as the commission may develop and approve in a proceeding to determine the form and contents of grant applications; and

(16)

applications and mapping information must also be submitted contemporaneously with the New Mexico department of information technology broadband division.

- **F.** The ETC must make the following commitments and include them in its application:
- (1) the broadband service must be offered at reasonably comparable rates for comparable services in urban areas;
- (2) the broadband service must be provided for at least seven years following project completion;
- must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended; and
- (4) the ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-

related complaints in a reasonable manner.

**G.** Procedure for awarding support from the fund:

(1) On or before May 1 of each year, the commission shall open a non-adjudicative, administrative docket and establish a deadline for filing applications for broadband program support for the following calendar year. The telecom bureau, or a third-party contractor, shall review and summarize all timely applications. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following

(2) Interested persons may seek intervention in these proceedings, pursuant to 1.2.2.23 NMAC.

January 1.

before September 1, the telecom bureau shall make a presentation to the commission, with analysis of the applications for awards. The telecom bureau, or a third-party contractor, may communicate with applicants to request additional information or clarify information presented in the applications in order to prepare its presentation. Such presentations shall be considered by the commission but shall not bind the commission.

(4) At the September 1 presentation, the telecom bureau shall present a summary of projects. The telecom bureau shall provide the following information for each project on a single spreadsheet.

(a)

cost per customer served or passed;

**(b)** 

type of technology;

(c)

whether area is unserved or underserved (or, if area includes both, in what proportions);

(d)

download and upload speed of service:

(e)

monthly rates that the grantee intends to charge for the service; and

(f)

telecom bureau comments on the project.

(5)

On or before October 15, the commission, in coordination with the broadband office and the council, for prioritization and alignment with the statewide broadband plan, shall issue a decision approving or denying in whole or in part, each application. Among the factors that the commission will consider when selecting proposed projects for funding are the download and upload speeds that a project will provide and whether the project will serve an area unserved by broadband or an area underserved by broadband.

(6) On or before November 1, any interested person may file with the commission a request for reconsideration, in whole or in part, of any award of funds. Requests for reconsideration will not be valid after November 1.

(7) On or before December 1, the commission shall dispose of any motions for reconsideration.

**H.** Conditions for disbursement of awarded funds:

(1) The awardee commits to complete construction of its project within three years from the date of the commission's final order approving an award pursuant to 17.11.10.31 NMAC.

**(2)** For each awarded project, project reports shall be submitted to staff, consultant(s), and administrator(s) semiannually, during June and December and at the mid-point and completion of the project that provide information regarding the status of the project in a form accepted by staff. Semi-annual reports shall be submitted June 30, and December 31 of the calendar year. The midpoint disbursement report shall describe ETC progress on project milestones at the mid-point of the completion of the project pursuant to Paragraph (1) of Subsection E of 17.11.10.25 NMAC, prior to the release of a mid-point disbursement. The mid-point and final reports may be filed concurrently with the submission of the semi-annual reports, but may not be combined

into one report. Within 30 days after project completion, the awardee shall submit a final report in a form accepted by staff demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

Prior to the (3) initial disbursement, the ETC must notify the commission in writing that it is prepared to commence the project with regard to project engineering, ordering or delivery of required equipment, labor requirements, and that all permits have been granted to begin construction. The administrator shall disburse one third of the award promptly following receipt of the ETC's written notice that it is prepared to commence the project, one third at the midpoint of the project, and the remaining third upon project completion. The second and third payments may be requested as a single disbursement upon completion and are contingent upon the submission of acceptable project status reports pursuant to Paragraph (2) of Subsection H of 17.11.10.31 NMAC. The commission may, within 30 days after submission of a report, order additional information to be provided, suspend payment by the administrator, or take other action as necessary after notice and hearing.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, may be subject to refund of award funds or other actions of the commission.

[17.11.10.31 NMAC - Rp, 17.11.10.31 NMAC, 3/12/2024; A, 7/29/2025]

# STATE PERSONNEL OFFICE

This is an amendment to 1.7.4 NMAC, Sections 7, 8, 9, 10, 11, 12, 13 and 14, effective 7/29/2025.

### 1.7.4.7 **DEFINITIONS:**

- A. "Alternative pay band" means a pay band based on current market rate for benchmark jobs in the relevant labor market(s).
- B. "Alternative work schedule" means a schedule that is requested by an employee and approved by the agency that deviates from the normal work schedule.
- C. "Appropriate placement" means those elements to be considered in determining pay upon hire, promotion, transfer or reduction including the employee's education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.
- D. "Base pay" or "base salary" means the rate of compensation paid to an employee exclusive of benefits, temporary increases (Subsection J and K [and L] of 1.7.4.12 NMAC), pay differentials ([Subsection M of 1.7.4.12 NMAC,] 1.7.4.13 NMAC), overtime payments (1.7.4.14 NMAC), call-back pay (1.7.4.15 NMAC), on-call pay (1.7.4.16 NMAC), holiday pay (Subsection C of 1.7.4.17 NMAC), and incentive awards (1.7.4.18 NMAC).
- E. "Comparison market" means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

# [F: "Contributor proficiency zones" means subdivisions of the pay band that designate the employee's contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

- G E. "In pay band adjustment" means movement within a pay band for demonstrated performance, skill or competency development, or internal alignment, which allows agency management to provide base salary growth within a pay band.
- [H] <u>G</u>. "Internal alignment" means an adjustment

- that addresses pay issues involving the proximity of one employee's salary to the salaries of others in the same agency and classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.
- [1] H. "Normal work schedule" means a schedule established by the agency, defining a start and end time for the employee.
- [4] I. "Pay plan" means a document developed by the <u>State</u> <u>Personnel Office (SPO)</u> director and approved annually by the board, that describes the board's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

# [K. "Shift work schedule" means a normal work schedule assigned to an employee aspart of a rotating group of individuals that must continuously maintain a twenty-four hour operation.

— E] J. "Total compensation" means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

[1.7.4.7 NMAC - Rp, 1.7.4.7 NMAC, 8/1/2021; A, 07/29/2025]

### 1.7.4.8 PAY PLAN:

- A. The SPO director, pursuant to direction from the board, shall establish, maintain and, in conjunction with state agencies, administer a pay plan for all positions throughout the classified service, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay band.
- **B.** Agencies shall develop and utilize a compensation policy that is in compliance with 1.7.4 NMAC. Agency compensation policies will be filed with, reviewed by, and approved by the <u>SPO</u> director. Subsequent revisions to the compensation policy shall be filed with, reviewed by, and approved by the <u>SPO</u> director prior to adoption of the policy.

- C. The board shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.
- D. The SPO director shall conduct an annual compensation survey that includes total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, regional state government employers, and central, western and southwestern state government employers. The board or SPO director may authorize additional comparison markets when deemed necessary and appropriate.
- E. Prior to the end of each calendar year, the SPO director shall submit a compensation report that includes a summary of the status of the classified pay system and the results of the annual compensation survey that includes total compensation to the board. The board shall review, adopt and submit this report to the governor and the legislative finance committee.

  [1.7.4.8 NMAC Rp, 1.7.4.8 NMAC, 8/1/2021; A, 07/29/2025]

# 1.7.4.9 ASSIGNMENT OF PAY BANDS: The [director] SPO shall appoint a job evaluation committee consisting of 10 members. The [director] SPO will provide training in the job evaluation and measurement process. The committee shall apply the job evaluation and measurement process to all newly created or revised classifications.

- A. The committee shall submit the results of the job evaluation(s) as recommendations to the <u>SPO</u> director. [The director shall review the results and convert the total job evaluation points to the appropriate pay band.] The <u>SPO</u> director shall submit the pay band assignment results to the board for adoption.
- **B.** Agencies may request a re-evaluation of a classification which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months

unless otherwise approved by the <u>SPO</u> director.

[1.7.4.9 NMAC - Rp, 1.7.4.9 NMAC, 8/1/2021; A, 07/29/2025]

# 1.7.4.10 ASSIGNMENT OF ALTERNATIVE PAY BANDS:

- A. The <u>SPO</u> director shall recommend to the board the assignment of an alternative pay band(s).
- **B.** Alternative pay band(s) will be utilized to address compensation related to recruitment and retention issues.
- C. Requests for alternative pay bands must meet criteria established in the pay plan.
- **D.** The board shall assign alternative pay bands based on the <u>SPO</u> director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.
- E. The assignments to alternative pay bands shall be reviewed annually to determine their appropriateness. The <u>SPO</u> director shall recommend to the board the continuation or removal of the alternative pay band assignments. The salary of affected employees shall be governed by [Subsection H] Subsection G of 1.7.4.12 NMAC. [1.7.4.10 NMAC Rp, 1.7.4.10 NMAC, 8/1/2021; A, 07/29/2025]

# 1.7.4.11 SALARY SCHEDULES:

- A. Based on the pay plan, the <u>SPO</u> director shall develop and maintain salary schedules for the classified service that shall consist of pay bands.
- B. No employee in the classified service shall be paid a salary less than the minimum nor greater than the maximum of their designated pay band unless otherwise authorized by the SPO director, or provided for in these rules, or the employee has been transferred into the classified service by statute, executive order, or order of a court of competent jurisdiction.
- C. The <u>SPO</u> director, pursuant to the direction of the board, shall adjust the salary schedules to

- address the external competitiveness of the service or other concerns. Employees whose pay band is adjusted upward or downward shall retain their current salary. Such salary schedule adjustments may result in employees temporarily falling below the minimum or above the maximum of their pay band upon implementation.
- (1) The pay of employees who would be above the maximum of the pay band shall not be reduced.
- The pay **(2)** of employees who fall below the minimum of their pay band shall be raised to the minimum unless the SPO director confirms that the agency does not have budget availability. In these instances, agencies shall raise the pay of employees to the minimum of their pay band within six months of the effective date of the salary schedule adjustment. The SPO director may grant an extension to the six-month time period upon submission and approval of a plan by the agency to raise the pay of employees to the minimum of their pay band.
- **D.** An employee's placement in the pay band will be identified by a compa-ratio value. [1.7.4.11 NMAC Rp, 1.7.4.11 NMAC, 8/1/2021; A, 07/29/2025]

### 1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance salary:
Upon entrance to a classified position, a newly [appointed] hired employee's salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary [in the principal contributorzone] at or above one hundred and fifteen percent compa-ratio must receive approval from the SPO director prior to [appointment] hire.

# B. Legislative authorized salary increase:

(1) Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within their assigned pay band.

- (2) Employees with a salary at or above the maximum of the position's pay band shall not be eligible for an increase unless authorized by statute.
- C. Salary upon in pay band adjustment: Agencies may increase an employee's base salary within the assigned pay band once per fiscal year, subject to SPO director approval, budget availability and reflective of appropriate placement. In pay band adjustments may not result in the employee's base salary exceeding the maximum of the assigned pay band. When reviewing requests for in pay band adjustments the SPO director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band. In pay band adjustments for demonstrated performance, or skill and competency development shall be capped at ten percent per fiscal year.
- D. Salary upon promotion: Upon promotion, an employee's salary subject to budget availability should reflect appropriate placement within the pay band. A salary increase of less than five percent [(5%)] or greater than [fifteen]ten percent [(15%)] per pay band increase shall require approval of the SPO director. A salary increase greater than [fifteen] ten percent [(15%)] to bring an employee's salary to the minimum of the pay band or less than five percent [(5%)] to prevent an employee's salary from exceeding the maximum of the pay band does not require the approval of the SPO director. The salary of a promoted employee shall be in accordance with Subsection B of 1.7.4.11 NMAC.
- E. Salary upon demotion: Upon demotion: Upon demotion, an employee's salary shall be decreased by no more than fifteen percent [(15%)], unless a greater decrease is required to bring the salary to the maximum of the new pay band. [or the decrease is being made in accordance with Paragraph (2) of Subsection F of 1.7.4.12 NMAC.]

F. Pay allowance for

### performing first line supervisorduties:

agency shall grant a pay allowance to an employee in a non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and shall be between zero percent (0%) and twenty percent (20%) above the employee's base pay rate.

allowance granted under this
Subsection F shall be considered a
part of an employee's base salary
while it is in place. When the
supervisor duties are no longer beingperformed, the agency shall remove
the pay allowance.

(3) Agencies shall require that a form, established by the director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

# G] F. Salary upon transfer:

(1) Upon transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased or decreased by up to ten percent. The SPO director may approve a salary increase greater than ten percent [(10%)] due to special circumstances that are justified in writing.

**(2)** 

Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

[H] G. Salary upon pay band change: When a change of pay band is authorized in accordance with the provisions of 1.7.4.9 NMAC, 1.7.4.10 NMAC, or 1.7.4.11 NMAC the salaries of affected employees shall be determined in accordance with Subsection C of 1.7.4.11 NMAC. Employees whose pay band is

adjusted upward or downward shall retain their current salary in the new pay band. Employees' salaries may be addressed through in pay band adjustment unless otherwise allowed by statute.

[1] H. Salary upon reduction: The salary of employees who take a reduction may be reduced by up to fifteen percent [(15%) unless-the reduction is made in accordance with Paragraph (2) of Subsection Fof 1.7.4.12 NMAC.] An employee's salary should reflect appropriate placement within the pay band. The SPO director may approve a salary reduction greater than fifteen percent [(15%)] due to special circumstances that are justified in writing.

[J] I. Salary upon return to work or reemployment: The salary of former employees who are returned to work or re-employed in accordance with the provisions of 1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC shall not exceed the hourly rate of their base salary at the time of separation, unless a higher salary is necessary to bring the employee to the minimum of the pay band.

[K] J. Salary upon temporary promotion: Pay for a temporary promotion under Subsection F of 1.7.5.12 NMAC, will be administered in accordance with Subsection D of 1.7.4.12 NMAC, except that payment of a temporary promotion increase shall be separate from the employee's base salary. The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12-month period, whichever occurs first.

[H] K. Temporary salary increase: An agency may, with the approval of the SPO director, grant a temporary salary increase [of upto fifteen (15%),] of an employee's base pay for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability or a higher valued job. The SPO

director may approve temporary salary increases above the maximum of the employee's current pay band. Payment of a temporary salary increase shall be separate from the employee's base salary. The agency shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12-month period, whichever occurs first.

[M] L. Salary adjustment to minimum: An employee whose salary falls below the minimum of the pay band will be adjusted in accordance with Paragraph (2) of Subsection C of 1.7.4.11 NMAC. [1.7.4.12 NMAC - Rp, 1.7.4.12 NMAC, 8/1/2021; A, 07/29/2025]

# 1.7.4.13 PAY DIFFERENTIALS:

A. Temporary recruitment differential: The SPO director may authorize, in writing, a pay differential of up to fifteen percent [(15%)] of an employee's base pay to an employee who fills a position which has been documented as critical to the effective operation of the agency and has been demonstrated and documented to be a severe recruitment problem for the agency.

temporary recruitment differential authorized under this provision shall be tied to the position and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary. Agencies shall demonstrate to the office, at least biennially, the circumstances which justified the differential to determine the necessity for its continuance.

temporary recruitment differential of more than fifteen percent [(15%)] of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band may be authorized by the SPO director.

B. Temporary retention differential: The SPO director may authorize, in writing, a pay differential of up to fifteen percent [(15%)] of an employee's

base pay to an employee in a position which the agency has documented and has been designated as critical to the effective operation of the agency and the employee's departure would disrupt the agency's ability to fulfill its mission.

(1) A

temporary retention differential authorized under this provision may be approved up to one year. The agency shall demonstrate to the office, at least annually, the circumstances which justify the continuance of the differential. The agency must provide a detailed plan that outlines how they intend to resolve the problems associated with the retention difficulties. Payment of this differential shall be separate from the employee's base salary and may not transfer with the employee should the employee leave that position.

2) A

temporary retention differential of more than fifteen percent [(15%)] of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band may be authorized if approved by the SPO director.

- C. The temporary recruitment differential and the temporary retention differential are separate and distinct pay differentials that are administered separately.
- D. Pay for dusk to dawn work: Employees shall be paid, in addition to their hourly pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m.
- (1) Agencies shall notify the <u>SPO</u> director of any change to the dusk to dawn differential or hours of eligibility.
- may choose not to pay the dusk to dawn differential to an employee whose alternative work schedule request results in the employee working any hours between 6:00 p.m. and 7:00 a.m.

[1.7.4.13 NMAC - Rp, 1.7.4.13 NMAC, 8/1/2021; A, 07/29/2025]

### **1.7.4.14 OVERTIME:**

A. Agencies are

- responsible for the evaluation of each employee's position and duties in order to determine their overtime status as set forth under the Fair Labor Standards Act.
- **B.** Agencies shall provide documentation to employees as to the determination of their overtime status.
- C. Employees have the right to appeal the determination of their overtime status according to the provisions of 1.7.6.13 NMAC. Agencies shall notify employees in writing of their appeal decision within 30 calendar days. The employee may file an appeal of the agency's decision to the SPO director within 30 calendar days of the [agencies] agency's decision. Agencies shall notify employees that their appeal to the SPO director must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documentation describing the work currently being performed by the employee and any other relevant information. All information contained in the appeal shall be verified by the employing agency.
- **D.** Agencies shall maintain a record on each employee containing information required by the provisions of the Fair Labor Standards Act.
- E. Workweek is a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The SPO director may approve an alternative workweek.
- F. Time worked in excess of 40 hours during the designated workweek shall be compensated in accordance with the provision of the Fair Labor Standards Act [29 U.S.C. Sections 201 to 262] for Fair Labor Standards Act covered, non-exempt employees.
- Agencies shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.

- **H.** Agencies shall determine the need for employees to work overtime, and be responsible for authorizing overtime work.
- I. Paid holiday leave in accordance with the provisions of Subsection A of 1.7.4.17 NMAC, annual leave taken in accordance with the provisions of Subsection F of 1.7.7.8 NMAC, and administrative leave for voting taken in accordance with the provisions of Subsection C of 1.7.7.14 NMAC shall also count as time worked in the consideration of overtime for Fair Labor Standards Act covered, non-exempt employees.
- J. Agencies shall pay Fair Labor Standards Act covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute and shall be paid for accrued compensatory time upon separation.
- K. Employees not covered or exempt from the overtime provisions of the Fair Labor Standards Act may be compensated for overtime if an agency's policy permits.
- L. Any additional regular hours worked shall not be substituted for approved paid leave time during the same week additional regular hours were worked.

  [1.7.4.14 NMAC Rp, 1.7.4.14 NMAC, 8/1/2021; A, 07/29/2025]

### **End of Adopted Rules**

This Page Intentionally Left Blank

### Other Material Related to Administrative Law

# HIGHER EDUCATION DEPARTMENT

### NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Higher Education Department gives Notice of a Minor, Nonsubstantive Correction to 5.7.15 NMAC.

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

Section 3: The correct statutory authority citation should be, "Section 21-21G-1 et seq. NMSA 1978."

Section 10: Subsections are incorrectly numbered as there is a missing subsection B. The Subsections from "C" to "G" are renumbered as "B" to "F".

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

End of Other Material Related to Administrative Law

# 2025 New Mexico Register Submittal Deadlines and Publication Dates Volume XXXVI, Issues 1-24

| Issue    | Submittal Deadline | <b>Publication Date</b> |
|----------|--------------------|-------------------------|
| 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                |
| Issue 7  | March 27           | April 8                 |
| Issue 8  | April 10           | April 22                |
| Issue 9  | April 24           | May 6                   |
| Issue 10 | May 8              | May 20                  |
| Issue 11 | May 22             | June 10                 |
| Issue 12 | June 12            | June 24                 |
| Issue 13 | June 26            | July 15                 |
| Issue 14 | July 17            | July 29                 |
| Issue 15 | July 31            | August 12               |
| Issue 16 | August 14          | August 26               |
| Issue 17 | August 28          | September 9             |
| Issue 18 | September 11       | September 23            |
| Issue 19 | September 25       | October 7               |
| Issue 20 | October 9          | October 21              |
| Issue 21 | October 23         | November 4              |
| Issue 22 | November 6         | November 18             |
| Issue 23 | November 20        | December 9              |
| Issue 24 | December 11        | December 23             |

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