

This is an amendment to 8.370.4 NMAC, Sections 1, 7, 16 and 30, effective 9/1/2026.

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

8.370.4.7 DEFINITIONS: For purposes of these regulations the following shall apply.

~~_____~~ **A. "Abuse"** means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

~~_____~~ (1) physical contact that harms or is likely to harm a resident of a health facility;

~~_____~~ (2) inappropriate use of a physical restraint, isolation, or medication that harms or is likely to harm a resident;

~~_____~~ (3) inappropriate use of a physical or chemical restraint, medication, or isolation as punishment or in conflict with a physician's order;

~~_____~~ (4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;

~~_____~~ (5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;

~~_____~~ (6) an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

~~_____~~ **B. "Exploitation"** of a resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

~~_____~~ **C. "Serious physical harm"** means physical harm of a type that causes a temporary or permanent physical loss of a bodily member or organ or functional loss of a bodily member or organ or of a major life activity.

~~_____~~ **D. "Serious psychological harm"** means psychological harm that causes a temporary or permanent mental or emotional incapacitation or that causes an obvious behavioral change or obvious physical symptoms or that requires psychological or psychiatric treatment or care.

~~_____~~ **E. "Health facility"** means any health care entity identified in the Public Health Act which requires state licensure in order to provide health services.

~~_____~~ **F. "Intermediate sanction"** means a measure imposed on a facility for a violation(s) of applicable licensing laws and regulations other than license revocation, suspension, denial of renewal of license or loss of certification.

~~_____~~ **G. "Licensing authority"** means the New Mexico health care authority.

~~_____~~ **H. "Neglect"** means subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

~~_____~~ (1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;

~~_____~~ (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident;

~~_____~~ (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident.

~~_____~~ **I. "Class A deficiency"** means:

~~_____~~ (1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible which results in death, or serious physical or psychological harm; or

~~_____~~ (2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$1,500; or

~~_____~~ (3) a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a patient, resident, or client.

~~_____~~ **J. "Class B deficiency"** means:

~~_____~~ (1) any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible; or

~~_____~~ (2) any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$100, but is less than \$1,500; or

_____ (3) _____ a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any patient, resident or client.

_____ **K. "Class C deficiency" means:**

_____ (1) _____ a violation or a group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any patient, resident or client if the violation is not corrected; or

_____ (2) _____ any exploitation of a patient, resident, or client by a facility employee in which the value of the property was less than \$100.]

_____ **A. Definitions beginning with "A": "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:**

_____ (1) _____ physical contact that harms or is likely to harm a resident of a health facility;

_____ (2) _____ inappropriate use of a physical restraint, isolation, or medication that harms or is likely to harm a resident;

_____ (3) _____ inappropriate use of a physical or chemical restraint, medication, or isolation as punishment or in conflict with a physician's order;

_____ (4) _____ medically inappropriate conduct that causes or is likely to cause physical harm to a resident;

_____ (5) _____ medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;

_____ (6) _____ an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

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

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

_____ (1) _____ "Class A deficiency" means:

_____ (a) _____ any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible which results in death, or serious physical or psychological harm; or

_____ (b) _____ any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$1,500; or

_____ (c) _____ a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a patient, resident, or client.

_____ (2) _____ "Class B deficiency" means:

_____ (a) _____ any abuse or neglect of a patient, resident, or client by a facility employee or for which the facility is responsible; or

_____ (b) _____ any exploitation of a patient, resident, or client by a facility employee or for which the facility is responsible in which the value of the property exceeds \$100, but is less than \$1,500; or

_____ (c) _____ a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any patient, resident or client.

_____ (3) _____ "Class C deficiency" means:

_____ (a) _____ a violation or a group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any patient, resident or client if the violation is not corrected; or

_____ (b) _____ any exploitation of a patient, resident, or client by a facility employee in which the value of the property was less than \$100.

_____ **D. Definitions beginning with "D": [RESERVED]**

_____ **E. Definitions beginning with "E": "Exploitation" of a resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.**

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

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

_____ **H. Definitions beginning with "H": "Health facility" means any health care entity identified in the Public Health Act which requires state licensure in order to provide health services.**

_____ **I. Definitions beginning with "I": "Intermediate sanction" means a measure imposed on a facility for a violation(s) of applicable licensing laws and regulations other than license revocation, suspension, denial of renewal of license or loss of certification.**

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

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

L. Definitions beginning with “L”: **“Licensing authority”** means the New Mexico health care authority.

M. Definitions beginning with “M”: **[RESERVED]**

N. Definitions beginning with “N”: **“Neglect”** means subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

(1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident;

(3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident.

O. Definitions beginning with “O”: **[RESERVED]**

P. Definitions beginning with “P”: **[RESERVED]**

Q. Definitions beginning with “Q”: **[RESERVED]**

R. Definitions beginning with “R”: **[RESERVED]**

S. Definitions beginning with “S”:

(1) **“Serious physical harm”** means physical harm of a type that causes a temporary or permanent physical loss of a bodily member or organ or functional loss of a bodily member or organ or of a major life activity.

(2) **“Serious psychological harm”** means psychological harm that causes a temporary or permanent mental or emotional incapacitation or that causes an obvious behavioral change or obvious physical symptoms or that requires psychological or psychiatric treatment or care.

T. Definitions beginning with “T”: **[RESERVED]**

U. Definitions beginning with “U”: **[RESERVED]**

V. Definitions beginning with “V”: **[RESERVED]**

W. Definitions beginning with “W”: **[RESERVED]**

X. Definitions beginning with “X”: **[RESERVED]**

Y. Definitions beginning with “Y”: **[RESERVED]**

Z. Definitions beginning with “Z”: **[RESERVED]**

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

8.370.4.16 LICENSED CAPACITY AND FACILITY PENALTY RATES:

A. Licensed capacity: For purposes of calculating the amount of civil monetary penalties, the facility's licensed capacity is determined by one of the following two methods, depending on the type of facility:

(1) For a facility having a capacity stated on its license, that capacity amount is employed in calculating the daily civil monetary penalty imposed by the licensing authority.

(2) For facilities not having a capacity reflected on the license, the licensed capacity will be based on the average number of patients or clients receiving services from the facility each day for the five working days preceding the day deficiencies were noted during the survey or investigation by the licensing authority.

B. Facility penalty rates: For purposes of calculation of the amount of civil monetary penalties the following penalty rates for facilities are as listed below:

TYPE OF FACILITY		PENALTY RATE
(1)	Adult residential facilities:	
	(a) adult residential shelter care home	\$10.00
	(b) community residential facility for developmentally disabled individuals	\$10.00
	(c) residential treatment home	\$10.00
	(d) boarding home	\$10.00
	(e) halfway home	\$10.00
	(f) new or innovative programs	\$10.00
(2)	Adult day care facilities:	
	(a) adult day care center	\$10.00
	(b) adult day care home	\$10.00
	(c) new or innovative programs	\$10.00
(3)	General and special hospitals:	
	(a) rehabilitation hospital	\$10.00

	(b)	general hospital	\$10.00
	(c)	psychiatric hospital	\$10.00
	(d)	specialty hospitals	\$10.00
	(e)	rural primary care hospital	\$10.00
(4)		Long term care facilities:	
	(a)	intermediate care facility (ICF)	\$10.00
	(b)	medicaid certified nursing facilities (NF)	\$10.00
	(c)	skilled nursing facility (SNF)	\$10.00
	(d)	intermediate care facility for the mentally retarded (ICF/MR) <u>individuals with intellectual disabilities (ICF/IID)</u>	\$10.00
(5)		Facilities providing outpatient medical services and infirmaries:	
	(a)	ambulatory surgical center	\$65.00
	(b)	diagnostic and treatment center	\$10.00
	(c)	limited diagnostic and treatment center	\$10.00
	(d)	rural health clinic	\$10.00
	(e)	infirmery	\$10.00
	(f)	new or innovative clinic	\$10.00
(6)		Other facilities:	
	(a)	home health agency	\$10.00
	(b)	end stage renal disease	\$65.00
	(c)	hospice	\$10.00

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

8.370.4.30 RELATED REGULATION AND CODES: Health facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

- A. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- B. Requirements for long term care facilities, New Mexico health care authority, 8.370.16 NMAC.
- C. Requirements for general and special hospitals, New Mexico health care authority, 8.370.12 NMAC.
- D. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
- E. Requirements for adult day care facilities, New Mexico health care authority, 8.370.20 NMAC.
- F. Requirements for adult residential care facilities, New Mexico health care authority, 8.370.14 NMAC.
- G. Requirements for inhome and inpatient hospice care, New Mexico health care authority, 8.370.19 NMAC.
- H. Requirements for home health agencies, New Mexico health care authority, 8.370.24 NMAC.
- I. Requirements for facilities providing outpatient medical services and infirmaries, New Mexico health care authority, 8.370.18 NMAC.
- J. Requirements for intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities, New Mexico health care authority, 8.370.22 NMAC.
- K. Requirements for end stage renal disease facilities, New Mexico health care authority, 8.370.26 NMAC.

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